



House of Commons
European Scrutiny Committee

**Fourth Report of
Session 2012–13**

**Documents considered by the Committee on 14 June 2012,
including the following recommendations for debate:**

EU Home Affairs Funds for 2014-20

Minimum standards for the protection of victims of crime

European Semester and the UK

Preparation of the 2013 EU Budget



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Preparation of the 2013 EU Budget

Report, together with formal minutes

*Ordered by The House of Commons
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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

*Explanatory Memoranda (EMs) can be downloaded from the Cabinet Office website:
<http://europeanmemorandum.cabinetoffice.gov.uk/search.aspx>.

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

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1 EU Home Affairs Funds for 2014–20

(a) (33394) 17285/11 COM(11) 752	Draft Regulation laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management
(b) (33395) 17287/11 COM(11) 753	Draft Regulation of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management
(c) (33396) 17289/11 COM(11) 751	Draft Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund
(d) (33397) 17290/11 COM(11) 750	Draft Regulation of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visas

<i>Legal base</i>	(a) Articles 78(2), 79(2), 79(4), 82(1), 84 and 87(2) TFEU; co-decision; QMV (b) Articles 82(1), 84 and 87(2) TFEU; co-decision; QMV (c) Articles 78(2), 79(2) and (4) TFEU; co-decision; QMV (d) Article 77(2) TFEU; co-decision; QMV
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister's letter of 17 May 2012
<i>Previous Committee Report</i>	(a)-(c) HC 86–ii (2012–13), chapter 4 (16 May 2012) (a)-(d) HC 428–li (2010–12), chapter 8 (22 February 2012); HC 428–xliv (2010–12), chapters 11, 12 and 13 (14 December 2011)
<i>Discussion in Council</i>	7/8 June 2012
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	(a)-(c) Recommended for debate in European Committee B (decision reported 16 May 2012) (d) Not cleared; relevant to the debate on the EU Home Affairs Funds

Background and previous scrutiny

1.1 The Commission's goal in proposing two new Home Affairs funds for 2014–20 — the Asylum and Migration Fund and the Internal Security Fund — is to simplify the funding structure by reducing the number of EU funding instruments and establishing a set of overarching provisions applicable to both Funds. The Commission has proposed a combined budget of €8.5 billion for the two new Funds to support the implementation of policies in the field of justice and home affairs. The Funds would be based on four Regulations comprising:

- a single horizontal Regulation containing general provisions on the programming, management and control of both Funds — document (a);
- a Regulation establishing the Asylum and Migration Fund (“the AMF”) — document (c); and
- two Regulations together establishing the Internal Security Fund (“the ISF”): the first setting out the objectives and budget for the police component (“ISF (Police)”) — document (b); the second covering the common visa policy and management of the EU's external borders (“ISF (Borders and Visas)”)– document (d).

1.2 The UK's Title V (justice and home affairs) opt-in applies to documents (a), (b) and (c), but not to document (d) because it builds on elements of the Schengen free movement *acquis* on visas and external border controls in which the UK does not participate. Our Forty-ninth Report of 14 December 2011 provides an overview of the draft Regulations and the Government's position.

1.3 The Government has provided regular progress reports on the negotiations and, in April, informed us that it had decided to opt into document (a) — the horizontal Regulation establishing general rules applicable to both Funds — and document (c) — the draft Regulation establishing the Asylum and Migration Fund.¹ The Government decided against opting into the police component of the Internal Security Fund, but the Home Secretary (Mrs Theresa May) indicated that the UK would continue to play an active part in the negotiations with a view to considering a post-adoption opt-in. Our Second Report of 16 May 2012 sets out the factors influencing the Government's opt-in decisions.

The Minister's letter of 17 May 2012

1.4 The Parliamentary Under-Secretary for Crime and Security (James Brokenshire) provides a further update on progress made in negotiations within the relevant Council working groups.

“Although there have been 8 meetings of the ad hoc Friends of Presidency working group set up to negotiate these dossiers, the scale of the work (with 4 Regulations to consider) means that progress has been mixed. In particular negotiations on the AMF are more advanced than on the ISF (police). Unfortunately we do not, at this stage, have the revised texts of the Regulations to be able to comment on the extent to

¹ Each progress report corresponds to the Report chapters highlighted in the head note.

which our negotiating aims have been met. I can, however, assure you that we will keep the Committee updated as these negotiations progress. We expect to receive revised texts for the AMF and Horizontal Regulation on or around the 23rd May.”

1.5 The Minister notes that the Presidency had intended to reach a partial general approach at the Justice and Home Affairs Council on 7/8 June covering all elements of the Funds, with the exception of the budgetary provisions, but adds that the timetable proved to be too ambitious. As a result, there will be a “state of play discussion” at the Council whilst negotiations continue at working group level.

1.6 The Minister summarises the progress made to date. Turning first to the borders and visas component of the Internal Security Fund, he explains:

“Discussions have focused on the definition and scope of eligible actions, reducing administrative burdens, ensuring technical assistance will cover the actual cost of administering the Funds and ensuring control remains with Member States rather than with the Commission through the use of implementing acts over delegated acts. Our key concern is to ensure that objectives of the Fund are compatible with the legal base cited; that arrangements for administering the Fund, given the link to ISF (police), remain consistent across all Home Affairs proposals, and that any solutions to horizontal issues, such as technical assistance, remain acceptable. However, as you will be aware, we are excluded from this Fund.”

1.7 The Minister indicates that there is a “significant consensus” between Member States on the draft horizontal Regulation which applies to both Funds. He continues:

“Our key concern has been to ensure that this Regulation should cite the appropriate legal base. As noted in my last letter, there was a suggestion during negotiations that it should be classified as building on the Schengen *acquis* since it will support the ISF (External Borders) Fund as well as the AMF and ISF (Police) Funds. The ISF (External Borders) Fund is of course a development of Schengen. However, it has been agreed at COREPER that this Horizontal Regulation is not Schengen related, maintaining the original proposal from the Commission. This decision was taken at the same time it was agreed that the Schengen classification of the ISF (Police) was inaccurate and should be removed. However, given that the provisions within the Horizontal Regulation will support the operation of the ISF (External Borders) Fund, it has been agreed that the associated countries, namely Norway, Switzerland, Iceland and Liechtenstein, will participate fully in discussions on this text. The Government believes that this is a pragmatic solution.

“In the Explanatory Memorandum we also indicated a concern about the resource implications of the arrangements for shared management of the Programme, whereby Member States would allocate a proportion of funding directly in line with national priorities. In particular, this will require Member States to create teams to manage the Funds at a national level. Whilst the proposals allocate a percentage of the Funds to support the work of the teams e.g. staff costs, we have been concerned that the amount allocated is insufficient. Other delegations have shared that concern and there is a prevailing view that a minimum sum should be allocated through the Regulation, in addition to a percentage of the funds, to ensure that Member States

have sufficient resources to manage the programmes at a national level. We welcome this approach.

“More generally, we have continued to argue that administrative burdens and therefore costs for all parties, but particularly Member States, should be reduced and proportionate. We also take the view that expectations around the development of the content of the policy dialogue, the national programmes, procedures for consultation and reporting requirements should from the beginning be transparent, efficient, timely, appropriate, proportionate and avoid duplication. Discussions to date have seen some consensus on these elements from Member States in a direction that is helpful in addressing our concerns and the Commission has stated its intention, in principle, to reduce administrative burdens. We believe we will be able to achieve the majority of these aims.”

1.8 The Minister sets out the UK’s objectives for the police component of the Internal Security Fund.

“The JHA Council in January indicated that the ISF (police) would be the appropriate source for providing Member States with support to develop and implement systems for the use of Passenger Name Records to combat terrorism and serious crime. The UK has developed its own system and encouraged the need for EU funding to support other Member States in setting up their systems. The Presidency, Commission and a number of delegations have also indicated that they support this. We wish to ensure that the Article on eligible actions specifically includes developing and implementing systems for this.

“In the previous multiannual financial framework the issue of tackling misuse of drugs was dealt with through a number of programmes under health legal bases. This included the Drugs Prevention and Information Programme. For 2014–2020 the Commission has proposed to combine all drugs programmes, including health elements, in the Justice Funding programme. However, we take the view that elements of this work, such as tackling trafficking of drugs, are better addressed in the priorities of ISF (police) programme. Other delegations have also queried this approach to support counter narcotics efforts and the Presidency has therefore proposed that elements in the Justice programme pertaining to reducing the supply of drugs and drugs reinforcement are transferred to ISF (police) and elements that have a health legal base be transferred to the Health for Growth programme. We believe this is a sensible approach and expect to see necessary changes to all three proposals.

“As with the Horizontal measure, we wish to keep administrative burdens to a minimum and, as already explained, ensure that the allowance for technical assistance to support national teams in administering the Fund through shared management is sufficient. We support the pragmatic solution already outlined which identifies a minimum sum for all Member States plus a small percentage.

“On the distribution key in Article 10 of the Regulation, which is the basis for allocating resources to Member States under shared management, we have been seeking to delete the criteria on the number of designated Critical Infrastructures and

the weighting for Gross Domestic Product (GDP). The tenure of discussions to date has shown that Member States have similar concerns. There is less consensus regarding the distribution key involving the allocation of resources against GDP.”

1.9 Finally, the Minister indicates that there have been no further discussions on the Asylum and Migration Fund since his last update in April.

Conclusion

1.10 We thank the Minister for his comprehensive account of the progress made in negotiations to date and are pleased to note that the Presidency has accepted that the objective of achieving a partial general approach at the June Justice and Home Affairs Council is unrealistic. We welcome confirmation that neither the horizontal Regulation governing both Funds, nor the police component of the Internal Security Fund, should be classified as Schengen-building measures. As, however, the horizontal Regulation will also apply to the borders component of the Internal Security Fund, which is a Schengen-building measure, we agree that Norway, Iceland, Switzerland and Liechtenstein (countries associated with the development of the Schengen *acquis*) should have the opportunity to participate fully in discussions. Like the Minister, we consider that the solution agreed at COREPER is pragmatic and reasonable.

1.11 We have already recommended the draft Regulations establishing the Asylum and Migration Fund and the police component of the Internal Security Fund for debate in European Committee B. As the Government’s latest progress report will help to inform that debate, we consider that it merits a substantive Report to the House.

2 Minimum standards for the protection of victims of crime

(33488)	Draft Directive establishing minimum standards on the rights, support and protection of victims of crime
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<i>Legal base</i>	Article 82(2) TFEU; co-decision; QMV
<i>Department</i>	Justice
<i>Basis of consideration</i>	Minister’s letters of 24 April and 11 June 2012
<i>Previous Committee Reports</i>	HC 428–xliii (2010–12), chapter 11 (7 December 2011); HC 428–xxix (2010–12), chapter 4 (8 June 2011)
<i>Discussion in Council</i>	Before end of June
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; for debate in European Committee B

Background

2.1 According to Article 1 of the proposed Directive, its aim is to ensure that all victims of crime receive appropriate protection and support; are able to participate in criminal proceedings and are recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind, in all contacts with any public authority, victim support or restorative justice service.

2.2 The proposed Directive will replace the 2001 Council Framework Decision on the standing of victims in criminal proceedings² (“the Framework Decision”) in participating Member States. It is part of a package of measures on victims adopted by the Commission, which includes a Communication on strengthening victims’ rights in the EU and a proposal for a Regulation on mutual recognition of protection measures in civil matters.³ This proposal is intended to be the first step on a Roadmap to strengthen the rights of victims, which was tabled by the Hungarian Presidency in April 2011 and is intended to be adopted as a Resolution at the Justice and Home Affairs Council on 10 June 2011.

2.3 The Stockholm Programme asked the Commission and the Member States to examine how to improve legislation and practical support measures for the protection of victims. The Commission conducted an impact assessment and concluded that it was necessary to replace the 2001 Framework Decision with a new Directive to amend and expand its provisions.

Previous scrutiny

2.4 In our Report of 8 June 2011, we recommended that the Government’s decision on whether to opt into this proposal be debated on the Floor of the House, together with related Commission proposals on victims’ rights. The debate took place on 11 July.⁴

2.5 We further reported on the proposal on 7 December, when we concluded as follows:

“The UK’s main objectives in negotiations have been to ensure that the Directive is compatible with the role of victims in the UK’s common law legal systems; to clarify the obligations in the Directive; and to ensure that the obligations do not place a disproportionate burden on Member States.

“We congratulate the Government on its success in achieving these objectives. In these circumstances the Committee accedes to the Minister’s request to lift the scrutiny reserve on the most recently deposited text, document (b), so that a general approach on the proposal can be reached in the Council on 14th December. We do this pursuant to paragraph (3)(b) of the Scrutiny Reserve Resolution of 17 November 1998.

“We would be grateful to be informed by letter of any further amendments to the text agreed on 14 December.”

2 2001/220/JHA

3 See the previous chapter of this Report.

4 *HC Deb*, 11 July 2011, cols. 11–128.

The Minister's letter of 24 April 2012

2.6 The Secretary of State for Justice (Mr Kenneth Clarke) wrote to the Committee with an update on first reading negotiations within the European Parliament. He explained that, on 27 March, the Civil Liberties, Justice and Home Affairs (LIBE) in enhanced cooperation with the Women's Rights and Gender Equality (FEMM) Committee held an orientation vote on their amendments. 538 amendments were tabled. The Rapporteurs condensed some of them into 39 compromise amendments which were unanimously voted through along with 205 further amendments. The final set of 244 amendments is the mandate for Rapporteurs in trilogue negotiations; it is attached to this letter for reference. Trilogue negotiations commenced very swiftly following the orientation vote and two further meetings are scheduled to take place on 24 April and 10 May. The Danish Presidency hopes to reach a first reading deal by the end of its tenure in June, the Minister writes.

2.7 Given the volume and wide range of amendments proposed by the European Parliament, the Minister focuses on the main areas that would make a practical difference to UK policy, and the Government's response to them.

Article 2 — Definitions

2.8 The European Parliament proposes the Directive be applied regardless of the "legal status" of the victim. The Government understands this to refer to the immigration status of the victim rather than their status in criminal proceedings and has sought clarity on this point. The Government would be content for the rights to apply to all victims of crime regardless of immigration status. However, it does not accept the right to participate in all stages of the proceedings if the reference to "legal status" is intended to effectively give a victim the rights of a party to proceedings.

2.9 The Government does not accept that definitions of "gender based violence" or "violence in close relationships" are necessary as they relate to amendments that would define categories of victim throughout the Directive, which it opposes. However, domestic violence is a priority area for the European Parliament and some compromise is likely, potentially around support services for victims of these crimes. The Government will propose that victims in these categories benefit from support and protection measures during criminal proceedings according to the impact the absence of such measures would have on the quality of their evidence. It disagrees that the objective of "restorative justice services" is to reach an out-of-court settlement; it can be used at a number of stages during and beyond criminal proceedings.

Articles 3 and 4 — Right to receive information about their case

2.10 The European Parliament proposes that a victim be provided with information on the conditions under which they are entitled to interpretation and translation. The Government can accept this proposal. It disagrees with the amount of information it is proposed be provided to a victim as a disproportionate administrative burden, for example it is proposed that information will be provided on how evidence may be given at court regardless of whether a complaint has reached that stage. It also rejects the proposal to give

information regarding entitlement to medical care. The EU has very little competence in relation to medical care for victims of crime.

2.11 Amendments that would oblige Member States to provide a copy of the complaint and for acknowledgement of the complaint to be translated are not acceptable. They would be unduly expensive and administratively burdensome, and if a complaint were to include a witness statement, this would potentially compromise the administration of justice. It has also been proposed that a victim be able to access ‘relevant case files’; this is incompatible with UK rules of both disclosure designed for the common law system and data protection obligations, and will be strongly opposed. The Government disagrees with the proposal that notification of the release of an offender should be on an “opt out” basis; the offer should be made and the onus then be on the victim to decide whether they want the information. Where the victim does not wish to receive the information but may be at risk of harm it is proposed it is provided regardless; the Government disagrees that this obligation is proportionate unless (as required under Article 2 of the ECHR) it is to protect the victim from the possibility of imminent death.

Article 7 (6 of the Commission proposal) — Interpretation and translation

2.12 The General Approach text limited the right to interpretation to be “in accordance with their role in the relevant criminal justice system, for their participation in criminal proceedings”. This limitation is not included in the European Parliament amendment but is essential to ensure this right is not afforded to victims who are not actively participating in proceedings and is, as a result, prohibitively expensive and not necessary for justice to be done. It is proposed that interpretation and translation be provided for ‘any communication with their legal counsel’; this will be resisted.

Article 8 (7 of the Commission proposal) — Right to access victim support services

2.13 A large number of amendments have been proposed in relation to this article as support is a key area of interest for the European Parliament. The Government disagrees that support can be provided from the moment a crime is committed as the authority may not be aware of the victim, and that it should be open-ended. The General Approach text copies the language in the Directive combating trafficking in human beings to link support provision to the criminal proceedings.

Article 11 — Right to safeguards in the context of mediation and other restorative justice services

2.14 The Government can be flexible on some of the amendments that seek to clarify the measures that will be in place to safeguard victims but it does not agree that victims of certain crimes should be prohibited from participating in restorative justice.

Article 17 — Right to protection

2.15 The European Parliament has proposed including detail of measures that might be available to protect victims. The Government disagrees that this level of detail is necessary

although it would be content for a recital to be added to cross-reference the Directive 2011/99/EU on the European Protection Order and the Regulation on civil protection measures that is currently being drafted.

Article 21 — (18 of the Commission proposal) Identification of vulnerable victims

2.16 It is proposed that the title of this article is amended to “identification of victims with specific needs”; the Government is flexible on this point but prefers the term “vulnerable” as it is the language used in other Directives. A long list of victims who are considered to be vulnerable has been proposed. As this is an instrument establishing minimum standards the Government disagrees that an extensive list is appropriate in the operative text but could accept a list as an illustration in a recital. Two new parts have been proposed to be added to this Article which the Government does not consider necessary as, again, they refer to provision for specific categories of victims.

Article 23a — Prevention (new proposal)

2.17 The Government opposes the inclusion of this Article on the grounds that legislation to prevent hate crimes is not within the scope of the legal base under which this Directive has been brought. Article 84 TFEU permits the EU to legislate to prevent crime, but does not permit harmonisation of laws.

Article 24 — Training of practitioners

2.18 The Government disagrees that training should be mandatory in respect of the judiciary as this interferes with judicial independence, but accepts it should be available. It does not agree that the proposed list of professionals requiring training is necessary or proportionate.

Minister’s letter of 11 June 2012

2.19 The Minister writes that the negotiations on this proposal have progressed at pace; four trilogues having been held in quick succession. It now seems likely that the Danish Presidency will fulfil their ambition to reach a first reading deal by the end of their tenure in June. He continues as follows:

“Since my last letter the areas I noted as concerns have been resolved or significantly progressed; these are set out below.

“Article 2

Proposed amendments made by the European Parliament (EP) to define gender based violence and the ‘legal status’ of the victim have not been incorporated into the draft Directive.

“Articles 3 and 4 — Right to receive information about their case

The European Parliament's proposal that a victim may be permitted to access a case file has not been incorporated into the draft Directive. The notification of the release of an offender is to be available where the victim has expressed a wish to receive it. This is in line with the notification scheme operated by the National Offender Management Service for victims of sexual or violent crimes.

“Article 7 (6 of the Commission proposal) — Interpretation and Translation

As I set out in my previous letter, the General Approach text limited the right to interpretation to be ‘in accordance with their role in the relevant criminal justice system, for their participation in criminal proceedings’. Negotiations on this point are ongoing. We are seeking to ensure that there is some limitation to this right so that in the UK only witnesses are afforded it to be essential.

“Article 8 (7 of the Commission proposal) — Right to access victim support services

Support is to be available from the time the authorities are aware of the victim and is time limited to be linked to the duration of criminal proceedings and an appropriate time after. This is consistent with current domestic practice whereby victims are referred to support providers following the report of a crime.

“Article 21 (18 of the Commission proposal) — Identification of vulnerable victims

The proposed list of victims who are considered to be vulnerable has not been included in the draft proposal. A briefer list is included including, amongst others, victims of terrorism and hate crime but these are illustrative of offences where particular attention should be paid to the possibility of the victim having specific needs. It is not a presumption of vulnerability.

“Article 23a — Prevention (new proposal)

The European Parliament's proposed provision has not been incorporated into the draft Directive.

“Article 24 — Training

Training for the legal profession is to be recommended rather than mandatory and therefore does not impinge upon judicial independence.

“The pace at which these negotiations are moving combined with the dates of committee meetings make it difficult, if not impossible, to provide you with an agreed text for consideration before agreement is sought by the Danish Presidency to adopt the proposal. I am therefore writing to seek your agreement to clear the proposal from scrutiny on the basis that the agreed text is in line with that which we have previously seen and shared with the Committee and the amendments you have been advised of. My officials have raised with the Presidency the difficulty this poses in terms of ensuring full parliamentary scrutiny. I will of course provide the Committee with an agreed text as soon as possible.”

Conclusion

2.20 We thank the Minister for keeping us informed of first reading negotiations with the European Parliament on this proposal.

2.21 We note the Government's concerns about the European Parliament's proposed amendments, as set out in the Minister's letter of 24 April, have for the most part been addressed, as set out in his subsequent letter of 11 June.

2.22 Nonetheless, this proposal contains legally binding obligations for UK criminal justice procedure, and so we think it should be debated in European Committee B before being cleared. That debate, which should be preceded by a further update on final negotiations from the Minister, should focus on the transposition requirements arising from each of the substantive Articles of the proposal.

3 European Semester and the UK

(a) (33919) 10834/12 COM(12) 299	Commission Communication: <i>Action for stability, growth and jobs</i>
(b) (33931) 10557/12 + ADD 1 COM(12) 309	Draft Council Recommendation on the United Kingdom's 2012 national reform programme and delivering a Council opinion on the United Kingdom's convergence programme for 2012–2017
(c) (33987) 10846/12 SWD(12) 161	Commission Staff Working Document: <i>In-depth review for the United Kingdom in accordance with Article 5 of Regulation (EU) No 1176/2011 on the prevention and correction of macroeconomic imbalances</i>

Legal base

(a) —
(b) Articles 121(2) and 148(4) TFEU; —; QMV
(c) —

Documents originated

30 May 2012

Deposited in Parliament

(a) 31 May 2012
(b) 1 June 2012
(c) 12 June 2012

Department

HM Treasury

Basis of consideration

EM of 11 June 2012

Previous Committee Report

None

<i>Discussion in Council</i>	28–29 June 2012
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	For debate in European Committee B

Background

3.1 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%. Each year the Council of Economic and Finance Ministers (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.

3.2 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 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.

3.3 In 2011 the excessive deficit procedure of the Pact was supplemented by a macroeconomic imbalances procedure to identify and correct such imbalances in Member States. Like the excessive deficit procedure it consists of Commission reports followed by a stepped series of Council Recommendations and similarly the coercive steps do not apply to non-members of the eurozone.

3.4 On the basis of two Commission Communications, *Reinforcing economic policy coordination* and *Enhancing economic policy coordination for stability, growth and jobs: tools for stronger EU economic governance*,⁵ and of the Van Rompuy Task Force report, *Strengthening economic governance in the EU*⁶ the June, September and October 2010 European Councils considered and endorsed measures to increase coordination of EU economic governance, including strengthening the Stability and Growth Pact and a “European Semester” which would tie together consideration of National Reform Programmes (reports on progress and plans on structural reforms, under the Europe 2020

5 (31618) 9433/10 (31776) 11807/10: see HC 428–i (2010–11), chapter 8 (8 September 2010).

6 See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/117236.pdf.

Strategy) and Stability and Convergence Programmes (reports on fiscal policy, under the Stability and Growth Pact).⁷

3.5 The European Semester begins each year with the Commission's Annual Growth Survey and Joint Employment Report, outlining economic and employment prospects for the EU and eurozone and providing an initial assessment of reform priorities at the national and EU levels. The Spring European Council endorses and complements the guidance in the Annual Growth Survey and Joint Employment Report. Following this, Member States submit their annual updated National Reform Programmes and Stability or Convergence Programmes to the Commission by the end of April. The Commission then presents an overview of Member States' progress with fiscal policy and structural reforms as presented in National Reform Programmes and Stability and Convergence Programmes and draft Council Recommendations for each Member State in relation to their own programmes. These are discussed by the Employment and Social Protection and Economic and Financial Affairs Councils before endorsement at the Summer European Council.

3.6 The current Annual Growth Survey and Joint Employment Report was published in November 2011 and endorsed by the European Council in March.⁸ The Government submitted the UK's updated National Reform and Convergence Programmes on 30 April.

The documents

3.7 These documents are the Commission's overview of Member States' progress with fiscal policy and structural reforms, document (a), its draft Council Recommendation for the UK, document (b) and a Commission staff working document concerning an in-depth review of the UK's situation in relation to the macroeconomic imbalance procedure, document (c). The draft Council Recommendation is accompanied by a Commission staff working document assessing the UK's National Reform and Convergence Programmes. The documents are part of the package presented for discussion by the Employment and Social Protection and Economic and Financial Affairs Councils and endorsement by the European Council before the end of June — we will be reporting on the other documents separately.

The Commission Communication 'Action for Stability, Growth and Jobs'

3.8 In this document the Commission sets out the different elements of its growth initiative, based on action at EU level and at Member State level. First the Commission highlights progress it says has been made on strengthening Economic and Monetary Union, including:

- reinforcing the Stability and Growth Pact to give the EU the rules-based, strong policy instruments it needs to ensure sound public finances;

7 See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/115346.pdf, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/116547.pdf and http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/117496.pdf.

8 (33451) 17229/11 + ADDs 1-4: see HC 428-xlvi (2010-12), chapter 4 (11 January 2012) and *Gen Co Debs*, European Committee B, 20 February 2012, cols 3-28.

- reinforcing the financial backstops, with the European Stability Mechanism scheduled to come into effect on the 1 July 2012 and an increase in IMF resources;
- a stronger EU banking sector through establishment of the European Systemic Risk Board;
- looking forward, the deepening of Economic and Monetary Union through mapping out the basic building blocks towards a banking union, which should include, amongst other things, integrated financial supervision and a single deposit guarantee scheme; and
- noting that it has already put forward ideas on how the euro area can move to joint issuance of debt

3.9 Secondly the Commission suggests a number of ways to tap into potential sources of growth from EU funding, including:

- targeting the Structural Funds on growth and convergence in 2012–13;
- using receipts from a financial transaction tax to reduce Member States' contributions to the EU budget; and
- increasing the paid-in capital of the European Investment Bank by €10 billion (£8.13 billion), with the additional lending being directed to help the small and medium sized enterprise sector (SMEs), including in areas such as energy efficiency and housing renovation.

Thirdly the Commission assesses the steps that Member States are taking against the five priorities from the Annual Growth Survey (differentiated growth-friendly fiscal consolidation, promoting growth and competitiveness, restoring normal lending to the economy, tackling unemployment and modernising public administration).

3.10 The Commission concludes by noting that, although the new system of economic governance is beginning to help Member States focus on essential reforms that will deliver sustainable growth and jobs overall, more prominence and urgency should be given to growth measures in the next twelve months, while continuing with differentiated, growth-friendly fiscal consolidation and stabilisation of the financial sector.

The Commission's draft Council Recommendation for the UK

3.11 The Commission staff working document assessing the UK's National Reform and Convergence Programmes discusses the state of implementation of the 2011 recommendations in the UK and identifies the UK's current policy challenges in light of the Annual Growth Survey and the UK's structural reform plans as set out in the Programmes. The opinion the Commission suggests for the Council Recommendation:

- considers that, overall, the UK has made significant progress on developing reforms relating to the 2011 recommendations, but that most have of these not yet been fully implemented — the challenges identified in 2011, therefore, remain valid;

- recognises, however, that in the areas of housing, employment and access to finance, partial implementation is linked in a large part to the challenging economic environment;
- describes the Government's fiscal consolidation plans as set out in the Convergence Programme, which have already reduced the deficit from 11.6% of GDP in 2009–10 to 8.4% in 2011–12 — and the structural balance has improved by an average of 1.35 percentage points of GDP per year;
- finds, however, that the UK has challenges ahead in reconciling future deleveraging with the need for more investment across the economy to support sustainable and balanced growth;
- notes that there are mismatches between supply and demand within the UK housing market;
- broadly supports the Government's recent reforms to increase the housing supply through a range of measures, including a presumption in favour of sustainable development in the planning system and recent financial incentives such as the New Build Indemnity Scheme and the New House Bonus;
- notes the growing challenges of unemployment and labour market participation within the UK;
- highlights that the Government recognises the urgency of developing effective labour market policies and promoting business creation and self-employment, including through delivering the Work Programme and the Youth Contract;
- particularly supports the Government's introduction of Universal Credit in 2013, which will aim to ensure that work is rewarded;
- notes that the 2011 recommendation on workless households has been partially implemented;
- cautions, however, that there remain significant challenges to effective implementation of the Government's welfare reforms in the context of a weak labour market;
- sets out the UK's challenges in terms of skills, noting that the UK continues to have too many people with low skills and a high proportion of early school leavers;
- supports the steps that the Government has taken to improve the education and training systems, including the Building Engagement, Building Futures plan, which aims to maximise the participation of 16–24 year in education, training and employment;
- supports the Government in (relatively) protecting the education and training budget and prioritising areas that support long-term growth, core universal frontline services and services that protect the more disadvantaged;

- highlights the high number of apprenticeships that the Government has created, although it also considers that these apprenticeships need to be well-targeted and provide high-level skills;
- highlights, on access to finance, that financing conditions remain tight for SMEs;
- notes that access to non-bank lending is largely restricted to bigger firms and highlights that competition in the banking sector is limited;
- highlights, however, the initiatives that the Government has undertaken, including through promoting access to wholesale debt markets, peer-to-peer lending, private equity and venture capital; and
- notes that the UK faces challenges to improve its transport infrastructure, but highlights that the Government recognises this challenge and has set out its plans in the 2011 National Infrastructure Plan.

3.12 The recommendations for the period 2012–2013 the Commission proposes in the draft document are:

- fully implement the budgetary strategy for the financial year 2012–13 and reinforce the budgetary strategy for the financial year 2013–14 and beyond, supported by sufficiently specified measures, to ensure a timely correction of the excessive deficit in a sustainable manner and the achievement of the structural adjustment effort specified in the Council recommendations under the excessive deficit procedure and to set the high public debt ratio on a sustained downward path and prioritise growth-enhancing expenditure to avoid the risk that a further weakening of the medium-term outlook for growth will negatively impact on the long-term sustainability of public finances;
- address the destabilising impact of high and volatile house prices and high household debt by implementing a comprehensive housing reform programme to increase housing supply and alleviate problems of affordability and the need for state subsidy of housing and pursue further reforms to the mortgage and rental markets, financial regulation and property taxation to prevent excessive volatility and distortions in the housing market;
- continue to improve the employability of young people, in particular those not in education, employment or training, including by using the Youth Contract, ensure that apprenticeship schemes are taken up by more young people, have a sufficient focus on advanced and higher-level skills, and involve more small- and medium-sized businesses and take measures to reduce the high proportion of young people leaving school with very poor basic skills;
- step up measures to facilitate the labour market integration of people from jobless households, ensure that planned welfare reforms do not translate into increased child poverty and fully implement measures aiming at facilitating access to childcare services;

- further improve the availability of bank and non-bank financing to the private sector, in particular to SMEs and support competition within the banking sector, in particular through measures to reduce barriers to entry, increase transparency and facilitate switching between banks as recommended by the Independent Commission on Banking and explore ways to improve access to venture and risk capital and other forms of non-bank lending; and
- pursue a long-term strategy for improving the capacity and quality of the UK's network infrastructure, including measures to address pressures in transport and energy networks by promoting more efficient and robust planning and decision-making processes, and harnessing appropriate public-private financing arrangements.

The Commission notes that its advice under the Stability and Growth Pact is covered by the first of these recommendations and that its advice under the macroeconomic imbalance procedure is reflected in the second, third and sixth recommendations.

In-depth review of the UK's situation in relation to the macroeconomic imbalance procedure

3.13 Following publication of its first Alert Mechanism Report under the macroeconomic imbalance procedure on 14 February 2012, where the Commission considered that the UK had exceeded threshold reference values for indicators on Real Effective Exchange Rate, Export Market Share, Private and Public Sector Debt, the it placed the UK (along with 11 other Member States) in an in-depth review. This review, document (c), takes a broad view of the UK economy in order to identify actual or potential imbalances and the possible macroeconomic risks which they may entail and looks in detail at the two areas that the Commission consider to be of potential concern — household debt and the housing market and external competitiveness. As part of its investigation, the Commission gathered evidence during an official-level visit to the UK on 27–28 March.

3.14 The macroeconomic section of the review gives a broad overview of the UK's economic performance. Overall, the UK is considered to have a generally flexible economy. The UK's labour market performance is assessed as somewhat more resilient than that of the EU as a whole. The main findings of the review are that:

- high levels of household debt accumulated over the past decade are linked to high house prices and that this represents an internal imbalance for the UK economy; and
- the external competitiveness and export position of the UK is worthy of attention, although the potential risks associated with this are less pressing.

In this context, the Commission considers that the UK is experiencing macroeconomic imbalances, but that none are excessive.

3.15 Details of the Commission's comment include that:

- private sector debt as a percentage of UK GDP increased by 84 percentage points from 1995, to reach 212% in 2010;

- UK non-financial corporations appear more leveraged than eurozone companies due to a number of structural features;
- UK financial corporation debt is exceptionally high, but this is due to the UK being a global financial sector hub;
- the level of household debt had risen from 69% of GDP in 2000 to a peak of 104% in 2009, although this has since fallen;
- the marked appreciation in UK house prices between 1995 and 2007 was the result of a rigid housing supply and buoyant demand;
- household deleveraging is underway, but the fall in household debt is driven more by a fall in new lending than by accelerated paying off of existing lending;
- the Government has tried to increase housing supply through a major reform of the planning system, as detailed in the housing strategy for England in November 2011;
- addressing household indebtedness, reforms to the planning system and financial regulation should take place, in line with the Council's 2011 recommendations;
- losses in export market shares are a persistent feature of the UK economy and have reached a particularly high level in 2007 and 2008;
- the drop in UK export market share is explained by a number of structural and associated factors, including fierce competition from emerging economies, a goods export sector that is outperformed by the services sector and an increase in unit labour costs in the pre-crisis upturn;
- a depreciation of sterling implied a decrease in UK export values measured in euro and thereby accounts to an extent for the record drop in export market shares witnessed in 2008, but the UK is undergoing a process of rebalancing and competitiveness adjustment, which has already helped to support its external performance;
- the UK experienced a drop in international export market shares in value terms of 24% in the five years to 2010, which was the highest among all Member States;
- at the same time, the Real Effective Exchange Rate saw a similarly sized drop of nearly 20%, a value which caused the UK to exceed the threshold in the Alert Mechanism scoreboard;
- the UK, like most advanced economies, has lost export market share to high-growth export-oriented emerging economies;
- in addition, the evolution of UK world export market shares in value terms suffered from a short-term negative price effect due to the depreciation of sterling;
- UK export shares only show a small estimated decline in 2006–10 when controlling for the effects of depreciation; and

- while unfavourable developments are less pronounced than those arising from the internal dimension of the economy, policy action should be considered to improve overall export performance.

The Government's view

3.16 The Commercial Secretary to the Treasury (Lord Sassoon) says that the Government welcomes the Commission Communication, document (a), particularly the focus on EU-level reforms such as tapping the potential of the single market. He continues that the Government agrees that Member States should prioritise measures that support growth and job creation and, specifically, the focus on young unemployed people and that this is one of the key components of a sustainable exit from the crisis.

3.17 However, the Minister also says that:

- the Government is opposed to any new taxes, including a financial transaction tax, to fund the EU budget;
- it considers that it is important for Member States to retain the flexibility to shape their own tax policies to suit their economic circumstances and compete in a global environment;
- on steps towards a banking union, the Government's view is that further steps need to be taken by the eurozone;
- the Government is clear, however, that, while there is a case for some element of eurozone integration, the interests of those outside of the currency union must be acknowledged and protected;
- on targeting the structural funds on growth and convergence in 2012–13, the Government views the Commission's proposed 6.8% increase in the 2013 Draft Budget as too high and hence any proposals for reprogramming funds must not increase calls on the budget or set a precedent for higher spending in the next Multiannual Financial Framework;
- the Government can, however, support reprogramming that respects national allocations and represents greater value for money in structural fund spending; and
- it will carefully assess the Commission's proposal for a paid-in capital increase for the European Investment Bank, to enable it to maintain higher lending levels — any proposal must safeguard the AAA credit rating of the bank.

3.18 In relation to the Commission's draft Council Recommendation, document (b), and the accompanying staff working document, the Minister tells us that the Government:

- welcomes the Commission's support for the UK's fiscal consolidation plans;
- broadly welcomes the draft recommendations, which are in line with the Government's structural reform plans; and

- will take note of these recommendations when making plans for next year's budget, while noting that no sanctions for failing to follow these recommendations can be applied to the UK under any circumstances in the European Semester process.

3.19 The Minister continues that:

- the Government welcomes the fact that the recommendations are in line with last year's messages, highlighting the importance of continuity and implementation of existing reform plans for 2012 — the additional recommendation on infrastructure is in line with the actions set out in the National Infrastructure Plan;
- it welcomes the Commission's finding that the UK is taking implementation of its medium-term reform agenda seriously and that overall the UK is making significant progress;
- while the impacts of structural reforms and measures to rebalance the economy will be felt in the medium to long term, the Commission recognises that the Government is taking sustainable action to restore growth and correct potential imbalances;
- the Government welcomes that the Commission's messages are in line with advice to the UK from the International Monetary Fund and Organisation for Economic Co-ordination and Development (OECD), particularly with regard to implementing fiscal consolidation, reforms to the planning system and improving skills provision;
- it will look to ensure that the recommendations and opinion respect Member States' competence over economic and employment policy, as set out in the Treaty and reinforced by the June 2010 European Council, which agreed that "recommendations shall be fully in line with relevant Treaty provisions and EU rules and shall not alter Member States' competences, for example, in areas such as education";
- it notes the draft recommendation to implement fully the budgetary strategy for the financial year 2012–13 and welcomes the Commission's calls on the Government to set the high public debt ratio on a sustained downward path;
- reversing the historic rise in public debt is crucial to ensuring the long-term sustainability of public finances, which will strengthen the UK's medium-term growth prospects — the Government's fiscal plans ensure that debt as a percentage of GDP falls in 2015–16;
- the Government notes the recommendation on housing and the Commission's recognition of the UK's ambitious planning reforms — the recommendation is also in line with the recent assessment by the OECD, which noted that the Government's plan to reform land-use planning and further reforms in this direction would allow the housing market to perform better;
- to alleviate problems within the housing sector, the Government is introducing a range of financial incentives for local authorities to promote house building;

- through the New Homes Bonus, communities are being offered significant incentives to build new homes;
- over the Spending Review period, almost £1 billion has been set aside, including nearly £250 million in the three years to 2015;
- within the housing recommendation, the Government notes the Commission's suggestion that the UK should pursue further reforms to property taxation — the Government already keeps all taxes, including property tax, under review in its annual budget;
- the Government welcomes the Commission's focus on the employability of young people and welcomes the recognition that the UK is addressing these issues through the Youth Contract;
- it is already investing in continuing the expansion of apprenticeship programmes, which have seen record growth, and in particular encouraging more take-up of apprenticeships by SMEs — the new measures include the new Apprenticeship Grant for Employers, which offers up to 40,000 incentive payments to encourage SME employers to take on 16–24 year olds
- the Government is also encouraging growth in apprenticeships at advanced and higher skills levels, including through the Higher Apprenticeship Fund, which will create over 19,000 new apprenticeship places at Level 4 and above over the next three years;
- it notes, however, that a broader focus than the one set out in the Commission's draft recommendation will be needed to tackle the immediate problem of a cohort of low-skilled young people not entering or progressing within the labour market;
- it recognises the Commission's concern around labour market integration of households with little or no work attachment;
- the Government has an ambitious agenda for welfare reform that will modernise the welfare system — it is committed to tackling poverty and welfare dependency, helping people without jobs to find work and support themselves and their families and ensuring that the most vulnerable in society are protected;
- it believes that work is the best route out of poverty for those who can work, and is committed to protecting those who cannot work;
- it notes, however, that a range of factors currently inhibit people from working and is committed to increasing employment opportunities for all by providing support mechanisms and benefit systems that incentivise work and reduce unemployment, to ensure that individuals can fulfil their potential within the labour market;
- the Government is committed to ending child poverty by 2020 and, in the last year, it published a child poverty strategy, social mobility strategy and social justice strategy, setting out detailed plans to ensure that every child has a fair chance to succeed in life, regardless of the circumstances of their birth;

- it recognises the ongoing importance of access to finance, particularly for small innovative companies as key to promoting private investment and delivering sustainable economic recovery;
- it is taking a number of steps to improve the availability of bank and non-bank financing to the private sector;
- in the 2012 budget the Chancellor extended and updated the package of credit easing interventions worth up to £21 billion to improve the flow of credit to businesses that do not have ready access to capital markets and increased the generosity of the Enterprise Finance Guarantee scheme for 2012–13;
- in addition, the launch of the Seed Enterprise Investment Scheme and significant reforms to the Enterprise Investment Scheme and Venture Capital Trusts commenced from April 2012 and will improve access to equity finance for SMEs;
- the Government will continue to monitor and work with the market to improve the availability of bank and non-bank financing to businesses, and in particular to SMEs;
- it recognises, however, that there are demand-side problems affecting the flow of credit to SMEs and is taking measures to address this — in the 2012 budget the Government announced further corporation tax rate reduction from 28% to 26% in 2012 and to 23% by 2014;
- the Government notes the Commission’s recommendation and opinion on providing a long term approach to developing its energy and transport infrastructure, building capacity and improving quality where needed to support growth;
- to this end, it published an updated National Infrastructure Plan in November 2011, which contains major spending commitments to improve the transport networks as well as steps to attract and diversify major new private sector investment and reform electricity markets to deliver safe and secure supplies — it should be noted that the transport investment figures cited in the Commission’s assessment are in addition to the funds allocated to transport in Spending Review 2010, which will ensure that in 2014–15 transport capital investment will be higher in real terms than 2005–06 levels; and
- the Government is also taking measures to streamline project and programme delivery to address business and investor concerns, including by improving the planning system and reducing the costs of delivering infrastructure — in November 2011 the Chancellor announced a fundamental reassessment of the Private Finance Initiative model and a call for evidence, to bring forward proposals for reform from stakeholders, was launched by the Treasury in December 2011.

3.20 On the Commission’s in-depth review, document (c), the Minister says that:

- the Government notes that the UK does not have an excessive imbalance, but has been placed in the “preventive arm” of the macroeconomic imbalances procedure;

- this means that, while the Government needs to continue with its plans to rebalance the economy and reduce public debt, no further steps are foreseen under the procedure — the Government will not have to submit a Corrective Action Plan; and
- this is consistent with the Commission's approach that Member States that had taken sustainable action to address imbalances would not be subject to follow-up measures

3.21 The Minister comments further that:

- as the Commission notes, UK private sector debt as a percentage of GDP is on a downward trajectory, falling from 223% in 2009 to 212% in 2010 by the Commission's measure;
- the necessary process of deleveraging, or repayment of debt and increasing savings, by the private sector, is therefore already under way;
- in addition, the Government has established a framework for macro-prudential policy in which the Financial Policy Committee of the Bank of England will be responsible for identifying and addressing systemic risks to the resilience of the financial system arising from unsustainable debt;
- the Government recognises that over a number of years preceding the recent financial crisis, economic growth in the UK was partly driven by an excessive build-up of private sector debt, which was unsustainable — in particular, the increase in UK households' debt is primarily due to the house price boom prior to the recent financial crisis and the relatively higher levels of home ownership in the UK compared with many other advanced economies;
- any sharp deleveraging would be harmful — deleveraging should take place in the context of steady income growth, rather than sharp and potentially damaging retrenchment by households and firms;
- the Government has committed via the Growth Review to rebalancing the economy and boosting exports, as set out in the February 2011 White Paper 'Trade and Investment for Growth' — this will include supporting trade finance and insurance, supporting exporters through UK Trade and Investment (ULTI), furthering the single market and promoting global trade;
- the 2012 budget announced further measures to increase exports, including expanding the overseas role of UK Export Finance to enable it to develop finance packages that could help UK exporters secure opportunities identified through UKTI's High Value Opportunities programme and continuing to increase UK Export Finance's regional presence in the UK to support SMEs seeking trade finance;
- as the Commission notes, the UK's export market share has stabilised in the past three years and the economy is rebalancing towards external demand, which is forecast to continue; and

- from 2009 to 2011, the volume of UK exports increased by 12.5%, compared to no growth in volumes in the two years to 2008 and the Office of Budget Responsibility forecasts that export volumes will rise by 2.9% in 2012 and 5.3% in 2013.

Conclusion

3.22 Whilst the UK as a non-eurozone Member State is not as constrained in determining its economic policies as those within the eurozone, the role of the European Semester in consideration of policy options is important. So we recommend that these documents be debated in European Committee B. In that debate Members might wish to explore the elements of the growth initiative set out in the Commission's Communication and the Commission's assessment of the UK's situation and its draft advice in the other two documents.

4 Preparation of the 2013 EU Budget

(33959)	Statements of estimates of the Commission for 2013 (Preparation of the 2013 Draft Budget)
—	
SEC(12) 270	Document I: Political Presentation Document II: Figures by budget line and overall presentation of the changes in the nomenclature between the Budget 2012 and the 2013 Draft Budget Document III: Changes in budgetary remarks and establishment plan staff

<i>Legal base</i>	Article 314 TFEU; co-decision; QMV
<i>Document originated</i>	25 April 2012
<i>Deposited in Parliament</i>	13 June 2012
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM 5 June 2012
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	26 July 2012
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate on the Floor of the House

Background

4.1 The Draft Budget (DB) sets out the Commission's proposals for EU expenditure in 2013. It is the first stage in the annual process of establishing the EU's budget for the following year and provides the basis for negotiations between the two arms of the Budgetary Authority (the Council and the European Parliament). The ECOFIN Council

will negotiate and agree its first reading position on the DB on 26 July (the TFEU requires the Council to complete this stage by 1 October), which will then be forwarded to the European Parliament. The European Parliament will in turn discuss and agree its first reading position by late October (the TFEU deadline is 42 days after the Council adopts its position). If it proposes further amendments to those made by the Council, a conciliation committee would be convened to meet over 21 days, largely in late October and early November, with the aim of reaching agreement on the 2013 Budget. This will be subject to separate approval by both the Council and the European Parliament, after which the EU's Budget for 2013 will be deemed to have been adopted.

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

- Sustainable growth;
- Preservation and management of natural resources;
- Citizenship, freedom, security and justice;
- EU as a global player;
- Administration; and
- Compensation (temporary measures for Bulgaria and Romania in their first years of accession, no longer applicable after 2009).

The Commission's Draft Budget

4.3 The DB for 2013 is the seventh and last of the 2007–2013 Financial Framework. It consists of draft estimates of required appropriations for the EU institutions — the European Parliament, the Council, the Office of the President of the Council (the latter two being treated as one institution for the purpose of establishing the budget), the Commission, the European Court of Justice, the European Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the European Ombudsman and the European Data Protection Supervisor and the European External Action Service.

4.4 The DB is presented in several documents, the principal three being a political presentation, including information on objectives and spending levels for each major EU programme, one providing line-by-line information on EU spending under different programmes and one giving details of changes to the nomenclature accompanying the final EU budget. The Explanatory Memorandum provided to us by the Financial Secretary to the Treasury (Mr Mark Hoban) focuses on the political presentation of the DB for 2013, as no substantive policy issues are raised in the other documents.

Overview

4.5 The Commission explains that the key objective of the DB is to use the EU Budget to enhance growth and job creation in Member States. It believes that the DB usefully

complements national efforts, by concentrating investment on the priority areas defined in the Europe 2020 Strategy, while also taking into account the difficult economic context and pressure on national budgets.

4.6 The Commission proposes commitment appropriations⁹ of €150,932 million (£122,708 million). This is 1.13% of EU Gross National Income (GNI) and an increase of €3,031 million (£2,464 million) or 2.0% above 2012 levels. For payment appropriations,¹⁰ the Commission proposes €137,924 million (£112,132 million) or 1.03% of EU GNI. This represents an increase of €8,818 million (£7,169 million) or 6.8% compared to the 2012 budget. The margin¹¹ under the MFF ceiling is €2,420 million (£1,967 million) for commitment appropriations and €6,182 million (£5,026 million) for payment appropriations. Tables summarising the key figures of the DB in both euros and sterling are annexed.

Detail of Proposed Expenditure by Heading

Heading 1 — Sustainable Growth

4.7 Overall, proposed expenditure of Heading 1 is €70,531 million (£57,342 million) for commitment appropriations and €62,527 million (£50,834 million) for payment appropriations, leaving a margin of €116 million (£94 million) under the MFF ceiling for commitment appropriations.

4.8 For Sub-Heading 1a (Competitiveness for Growth and Employment) the Commission proposes an extra €629 million (£511 million) or 4.1% in commitment appropriations and €2,051 million (£1,667 million) or 17.8% in payment appropriations, taking total commitment appropriations in 2013 for the Sub-Heading to €16,032 million (£13,034 million) and payment appropriations to €13,552 million (£11,018 million). The Commission argues that additional funds are needed to meet the pre-financing payment requirements for the growing level of commitment appropriations for research. In addition, it says that it needs more funding to cover intermediate and final payments on outstanding commitments.

4.9 Major changes are:

- increases to research and development spending — €625 million (£508 million) or 6.1% in commitment appropriations and €1,965 million (£1,597 million) or 28% in payments appropriations;
- an increase of €45 million (£36 million) or 7.3% in commitment appropriations and €176 million (£143 million) or 47% in payment appropriations for the Competitiveness and Innovation Programme; and

9 Commitment appropriations set the limit of legal obligations that can be made in the budget year for activities that will lead to payments in the current and/or future budget years.

10 Payment appropriations are the amounts of funds available to be spent during the budget year, arising from commitments in the budget for the current or preceding years.

11 Here, "the margin" refers to the difference between total commitment or payment appropriations in the DB and total commitment or payment appropriations provided for in the MFF.

- as a consequence of the procurement cycle, expenditure on EGNOS and Galileo, the EU global navigation satellite systems, decrease by €170 million (£138 million) or 99% lower in commitment appropriations and €6 million (£5 million) or 1.6% lower in payment appropriations.

4.10 For Sub-Heading 1b (Cohesion for Growth and Employment) the Commission proposes commitment appropriations of €54,498 million (£44,306 million) and payment appropriations of €48,975 million (£39,816 million), representing increases of €1,746 million (£1,419 million) or 3.3% and €5,139 million (£4,178 million) or 11.7% respectively relative to 2012. The Commission argues that the significant increase in payment appropriation shows the momentum of the 2007–2013 cohesion policy on the ground, noting the likely positive impacts on economic growth and job creation in the EU.

4.11 Major changes are increases in payment appropriations of:

- €3,102 million (£2,521 million) or 11% in payments under the convergence objective;
- €901 million (£732 million) or 15.2% under the regional competitiveness and employment objective;
- €224 million (£182 million) or 23.5% under the European territorial cooperation objective; and
- €914 million (£743 million) or 10.4% under the Cohesion Fund.

Heading 2 — Preservation and Management of Natural Resources

4.12 The Commission proposes commitment appropriations of €60,307 million (£49,029 million) and payment appropriations of €57,964 million (£47,124 million), representing an increase in commitment appropriations of €331 million (£269 million) or 0.6% and an increase in payment appropriations of €930 million (£756 million) or 1.6% compared to the 2012 Budget. The Commission reserves a margin of €981 million (£797 million) under the MFF ceiling for commitment appropriations. Market related expenditure and expenditure on direct aids represents the majority of the increase, with an increase in commitment appropriations of €160 million (£130 million) or 0.4% and €236 million (£191 million) or 0.5% in payment appropriations. However, there is a reduction of commitment appropriations for the fisheries market and animal and plant health and expenditure on “other actions and programmes” decreases by €25 million (£20 million) or 83.6% in commitment appropriations and €20 million (£16 million) or 53.7% in payment appropriations.

Heading 3 — Citizenship, Freedom, Security and Justice

4.13 The proposed expenditure under this Heading is €2,081 million (£1,691 million) for commitment appropriations and €1,574 million (£1,279 million) for payment appropriations, representing a slight decrease in commitment appropriations of €1 million (£0.8 million) or 0.1% and an increase in payment appropriations of €72 million (£58

million) or 4.8% over 2012. This leaves a margin of €294 million (£239 million) under the MFF ceiling for commitment appropriations.

4.14 For Sub-Heading 3a (Freedom, Justice and Security) the Commission proposes an increase of €24 million (£19 million) or 1.8% in commitment appropriations and €92 million (£74 million) or 11% in payment appropriations compared to the 2012 Budget. A margin of €268 million (£217 million) under the MFF ceiling remains. Major changes to appropriations within the Sub-Heading include:

- an increase of €112 million (£91 million) or 14.1% in commitment appropriations and €74 million (£60 million) or 18.0% in payment appropriations for solidarity and the management of migration flows; and
- a decrease of €75 million (£60 million) or 53% in commitment appropriations and an increase of €0.5 million (£0.4 million) or 1.2% in payment appropriations for security and safeguarding liberties.

4.15 For Sub-Heading 3b (Citizenship) the Commission proposes a decrease of €26 million (£21 million) or 3.6% in commitment appropriations and €20 million (£16 million) or 3% in payment appropriations compared to the 2012 Budget. This leaves a margin of €25 million (£20 million) below the ceiling in the MFF. The main changes include:

- a decrease of €1.8 million (£1.4 million) or 6.6% in commitment appropriations for “Europe for Citizens”; and
- an increase of €6 million (£4.8 million) or 4.8% in payment appropriations for “Youth in action”.

Heading 4 — The EU as a Global Player

4.16 Under this Heading the Commission proposes €9,467 million (£7,696 million) in commitment appropriations and €7,311 million (£5,943 million) in payment appropriations, representing an increase of €61 million (£49 million) or 0.7% in commitment appropriations and €356 million (£289 million) or 5% in payment appropriations relative to the 2012 Budget. There is a margin of €391 million (£317 million) below the MFF ceiling for commitment appropriations. The main changes include:

- EU guarantees for lending operations — a decrease of €104 million (£84 million) or 40.2% in both commitment and payment appropriations; and
- European Neighbourhood Policy Instrument — an increase of €44 million (£35 million) or 1.9% in commitment appropriations and of €153 million (£69 million) or 11.6% in payment appropriations.

Heading 5 — Administration

4.17 For this Heading the Commission proposes commitment appropriations of €8,544 million (£6,946 million) and payment appropriations of €8,545 million (£6,947 million), representing an increase of €264 million (£214 million) or 3.2% in commitment

appropriations and €267 million (£217 million) or 3.2% in payment appropriations in comparison to the 2012 Budget. There is a margin of €636 million (£517 million) under the MFF ceiling for commitment appropriations. There is 1.5% growth in the Commission's budget, increasing it to €3,373 million (£2,742 million) for both commitment and payment appropriations. The change in commitment and payment appropriations is accounted for by:

- €32 million (£26 million) for additional administrative expenditure for all institutions, related to Croatia's accession;
- €114 million (£92 million) or 3.3% for the other institutions;
- €90 million (£73 million) or 6.8% for pensions across all the institutions; and
- €11 million (£8 million) or 6.8% for the European Schools.

The Government's view

4.18 The Minister says that:

- the Government has been very clear that, at a time of ongoing economic fragility in the EU, with countries across the area taking difficult decisions to reduce public spending, a 6.8% increase in EU spending in 2013 is unacceptable;
- the Commission's proposal for a larger EU budget is not the way to fix the EU's problems — by spending more smartly, the EU budget can meet the key challenges without soaring expenditure;
- the increase would also impose unaffordable costs on taxpayers in the UK and other Member States;
- the Government's key objective will be to limit the size of the 2013 EU Budget;
- in December 2010, the Prime Minister signed a joint letter with France, Germany, Finland and the Netherlands calling to progressively step up efforts to tackle growth in payments in 2012 and 2013;¹²
- last year the 2012 EU Budget was set at €129.1 billion, an increase of 2.02% on 2011 levels — this delivered the Government's promise to freeze the EU budget in real terms and set EU spending €4 billion below the level advocated by the European Parliament; and
- to deliver a restrained budget this year, the Government intends to focus on reducing waste and ensuring that EU spending delivers high added-value, which will require strict and rigorous prioritisation.

4.19 The Minister then outlines, heading by heading, the Government's initial intended approach towards the DB, saying that:

¹² See <http://www.number10.gov.uk/news/letter-to-president-of-european-commission/>.

Sub-Heading 1a (Competitiveness for Growth and Employment)

- the Government believes that spending under this Sub-Heading should send the clearest possible signal about orienting the 2013 EU budget towards growth and competitiveness;
- it recognises that EU spending to support measures intended to improve the working of EU internal energy market, facilitate vital energy infrastructure and support the EU's transition to a low carbon economy should be protected as much as possible, as should other areas important to the transition to the next Framework Programme for Research and Innovation (Horizon 2020);
- nevertheless, the very high rate of growth in this area means that significant savings will also be necessary;

Sub-Heading 1b (Cohesion for Growth and Employment)

- there is considerable pressure on payment appropriations in this Sub-Heading, but forecasts of spending needs in this area are highly uncertain and fluctuate considerably as implementation rates for major programmes change;
- the Government believes that the Commission should provide proper justificatory evidence for any increase in payments this year, in order to avoid over-allocating funds;
- payment appropriations should be set at the minimum necessary to fund programme implementation and be based on realistic implementation rates and estimates of Member States' absorption capacity;

Heading 2 (Preservation and Management of Natural Resources)

- the Common Agricultural Policy (CAP) accounts for over 40% of the EU Budget and much of this expenditure, in particular in Pillar 1 of the CAP, represents very poor value for money;
- the Government believes that the CAP budget should fall substantially over the next MFF;
- in addition, the Government will closely scrutinise budget proposals for possible cuts, including in light of under spending and margins last year;
- the Government will also consider whether the level of payments being proposed is consistent with the trend of actual spending in recent years and a realistic future profile;

Heading 3 (Citizenship, Freedom, Security and Justice)

- the Government believes that funding under this Heading should be sufficient to: develop and sustain a more robust and effective returns policy, help ensure that responses to sudden influxes of migrants are addressed through existing levels of

EU funding, develop a more formalised and sustainable approach to practical cooperation through the European Asylum Support Office (EASO) and protect the funding available for resettlement programmes;

- in addition, funding to support the Internal Security Strategy by preventing and combating crime should be supported;
- the Government believes, however, there is scope for savings by reducing bureaucracy and increasing flexibility;

Heading 4 (The EU as a Global Player)

- the Government believes that EU spending on external activities should continue to focus on low income and fragile countries, counter-terrorism, human rights and capacity building, to promote stability and security in priority regions;
- it believes that support for the Arab Spring continues to be a priority and support for Afghanistan and Pakistan should be maintained;

Heading 5 (Administration)

- the Government will continue to argue for budgetary restraint on administration;
- the Commission has proposed to reduce its staff by 1% over the year, a proposal on which the Government should actively hold the Commission to account; and
- seeking savings in administrative spending outside of Heading 5 to ensure that programme spending is channelled to the front line should complement this approach.

4.20 Noting that the EU annual budget is subject to QMV by the Council and agreement by the European Parliament, the Minister says that this means that the Government's success in the 2013 negotiation will depend on corraling a group of like-minded Member States around a strong position on the 2013 EU Budget.

4.21 On the financial implications of the DB the Minister says that:

- the Commission's provisional estimate of the total post-abatement UK contribution to the 2012 budget is 11.3%;
- the actual net financial cost to the UK of the 2013 EU Budget is contingent on both the size of the final budget and the distribution of spending across programmes within the budget; and
- these factors determine the level of UK receipts and also affect the size of the UK's abatement in the following year.

Conclusion

4.22 As always the EU Budget has significant financial and policy implications and the Government has a substantial interest and role in scrutinising the Draft Budget (DB), not least because of the large sums involved and the UK's position as a large net contributor — it is in the UK's interest to restrict budget growth and ensure efficient use of resources. As is customary, we recommend that the DB be debated, this year on the Floor of the House. The debate should take place before the Budget Council on 26 July.

4.23 In the debate Members may wish to examine the Government's objectives for the forthcoming budget negotiations, as outlined by the Minister, particularly in relation to the size of the overall increase proposed, and the continuing issues of value-for-money and of absorption and implementation capacity.

Annex A: Draft Budget 2012 (€ million)

Heading	MFF ceiling 2013 CA ^{13 14}	Budget 2012 ¹⁵		Draft Budget 2013		Difference: 2013 draft budget — 2012 budget (%)		Difference: 2013 draft budget — 2012 budget	
		CA	PA ¹⁶	CA	PA	CA	PA	CA	PA
1. Sustainable growth	70,147.0	68,155.6	55,336.7	70,531.0	62,527.8	3.5	13.0	2,375.4	7,191.1
<i>Margin¹⁷</i>				116.0					
1a. Competitiveness for growth and employment	15,623.0	15,403.0	11,501.0	16,032.0	13,552.8	4.1	17.8	629.0	2,051.8
<i>Margin</i>				91.0					
1b. Cohesion for growth and employment	54,524.0	52,752.6	43,835.7	54,498.9	48,975.0	3.3	11.7	1,746.4	5,139.3
<i>Margin</i>				25.1					
2. Preservation and management of natural resources	61,289.0	59,975.8	57,034.2	60,307.5	57,964.9	0.6	1.6	331.7	930.7
<i>Margin</i>				981.5					
3. Citizenship, freedom, security and justice¹⁸	2,376.0	2,083.3	1,502.3	2,081.6	1,574.6	-0.1	4.8	-1.7	72.3
<i>Margin</i>				294.4					
3a. Freedom, security and justice	1,661.0	1,367.8	835.6	1,392.2	928.3	1.8	11.1	24.4	92.8
<i>Margin</i>				268.8					
3b. Citizenship ¹⁹	715.0	715.5	666.8	689.4	646.3	-3.6	-3.1	-26.1	-20.5
<i>Margin</i>				25.6					
4. European Union as a global player	9,595.0	9,405.9	6,955.1	9,467.2	7,311.6	0.7	5.1	61.2	356.5
<i>Margin²⁰</i>				391.9					
5. Administration	9,059.0	8,279.6	8,277.7	8,544.4	8,545.5	3.2	3.2	264.8	267.8
<i>Margin²¹</i>				636.6					
TOTAL²²	152,502.0	147,900.2	129,106.1	150,931.7	137,924.4	2.0	6.8	3,031.5	8,818.3
<i>Margin</i>				2,420.4	6,182.6				
Appropriations as a percentage of EU GNI		1.14	0.99	1.13	1.03				

¹³ MFF = Multiannual Financial Framework.

¹⁴ CA = commitment appropriations.

¹⁵ Budget 2012 includes amending budget 1 and draft amending budgets 2 to 3.

¹⁶ PA = payment appropriations.

¹⁷ The margin for heading 1a does not take into account the appropriations related to the European Globalisation adjustment Fund (€500 million).

¹⁸ If the EU Solidarity Fund is excluded in this comparison for heading 3, commitment and payment appropriations increase by 0.8% and 6.1% respectively.

¹⁹ If the EU Solidarity Fund is excluded in this comparison for heading 3b, commitment and payment appropriations decrease by 1.2% and 0.4% respectively.

²⁰ The margin for heading 4 does not take into account the appropriations related to the Emergency Aid Reserve (€264.1 million).

²¹ For calculating the margin under the ceiling for heading 5, account is taken of the footnote (1) of the financial framework 2007–13 for an amount of €86 million for the staff contributions to the pensions scheme.

²² Due to rounding, the sum of the lines may not equal the total.

Heading	MFF ceiling ²³	Budget 2012 ²⁵		Draft Budget 2013		Difference: 2013 draft budget — 2012 budget (%)		Difference: 2013 draft budget — 2012 budget	
	CA ²⁴	CA	PA ²⁶	CA	PA	CA	PA	CA	PA
1. Sustainable growth	57,030.0	55,410.5	44,988.7	57,341.7	50,835.1	3.5	13.0	1,931.2	5,846.4
<i>Margin²⁷</i>				94.0					
1a. Competitiveness for growth and employment	12,701.5	12,522.6	9,350.3	13,034.0	11,018.4	4.1	17.8	511.0	1,668.1
<i>Margin</i>				74.0					
1b. Cohesion for growth and employment	44,328.0	42,887.9	35,638.4	44,307.6	39,816.7	3.3	11.7	1,419.8	4,178.3
<i>Margin</i>				20.4					
2. Preservation and management of natural resources	49,828.0	48,760.3	46,368.8	49,030.0	47,125.5	0.6	1.6	269.7	756.7
<i>Margin</i>				798.0					
3. Citizenship, freedom, security and justice²⁸	1,931.7	1,693.7	1,221.4	1,692.3	1,280.1	-0.1	4.8	-1.4	58.8
<i>Margin</i>				239.3					
3a. Freedom, security and justice	1,350.4	1,112.0	679.3	1,131.9	754.7	1.8	11.1	20.0	75.4
<i>Margin</i>				218.5					
3b. Citizenship ²⁹	581.0	581.7	542.1	560.5	525.4	-3.6	-3.1	-21.0	-16.7
<i>Margin</i>				20.8					
4. European Union as a global player	7,800.7	7,647.0	5,654.4	7,696.8	5,944.3	0.7	5.1	49.8	289.8
<i>Margin³⁰</i>				318.0					
5. Administration	7,365.0	6,731.3	6,729.8	6,946.6	6,947.5	3.2	3.2	215.3	217.7
<i>Margin³¹</i>				517.6					
TOTAL³²	123,984.1	120,242.9	104,963.3	122,707.5	112,132.5	2.0	6.8	2,464.6	7,169.3
<i>Margin</i>				1,967.8	5,026.5				
Appropriations as a percentage of EU GNI		1.14	0.99	1.13	1.03				

²³ MFF = Multiannual Financial Framework.

²⁴ CA = commitment appropriations.

²⁵ Budget 2012 includes amending budget 1 and draft amending budgets 2 to 3.

²⁶ PA = payment appropriations.

²⁷ The margin for heading 1a does not take into account the appropriations related to the European Globalisation adjustment Fund (£406.5 million).

²⁸ If the EU Solidarity Fund is excluded in this comparison for heading 3, commitment and payment appropriations increase by 0.8% and 6.1% respectively.

²⁹ If the EU Solidarity Fund is excluded in this comparison for heading 3b, commitment and payment appropriations decrease by 1.2% and 0.4% respectively.

³⁰ The margin for heading 4 does not take into account the appropriations related to the Emergency Aid Reserve (£214.7 million).

³¹ For calculating the margin under the ceiling for heading 5, account is taken of the footnote (1) of the financial framework 2007–13 for an amount of EUR 86 million for the staff contributions to the pensions scheme.

³² Due to rounding, the sum of the lines may not equal the total.

5 The European Social Fund and European Regional Development Fund

(a) (33218) 15247/11 + ADDs 1–2 COM(11) 507	Draft Regulation of the European Parliament and of the Council on the European Social Fund and repealing Regulation (EC) No 1081/2006
(b) (33219) 15249/11 + ADDs 1–4 COM(11) 614	Draft Regulation of the European Parliament and the Council on specific provisions concerning the European Regional Development Fund and the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006
(c) (33225) 15253/11 COM(11) 611	Draft Regulation of the European Parliament and the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal

<i>Legal base</i>	(a) Article 164 TFEU; co-decision; QMV (b) Articles 178 and 349 TFEU; co-decision; QMV (c) Article 178 TFEU; co-decision; QMV
<i>Department</i>	(a) Work and Pensions (b) and (c) Business, Innovation and Skills
<i>Basis of consideration</i>	Minister's letter of 25 May 2012
<i>Previous Committee Report</i>	HC 428–lvii (2010–12), chapter 8 (18 April 2012)
<i>Discussion in Council</i>	26 June 2012
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background and previous scrutiny

5.1 The three draft Regulations concern the EU's Structural Funds which have two components: the European Social Fund (ESF) and the European Regional Development Fund (ERDF). Together with the Cohesion Fund, these Funds seek to strengthen economic, social and territorial cohesion by providing targeted financial assistance to regions across the EU to help reduce disparities in levels of social and economic development. The purpose of the draft Regulations is to identify the principal objectives underpinning ESF and ERDF support and to set out more detailed investment priorities for the next financial period from 2014–20. Our Forty-sixth and Forty-seventh Reports of 9 and 23 November 2011 provide an overview of the draft Regulations and the Government's views.

5.2 The three draft Regulations form part of a broader package of measures proposed by the Commission last October, of which the most important is the draft Common

Provisions Regulation. This overarching Regulation would establish a common strategic framework and a set of common provisions to govern all of the EU's cohesion policy instruments, including the ESF and the ERDF.³³ The draft Common Provisions Regulation proposes a global budget of €336 billion for the EU's Structural and Cohesion Funds for the period 2014–20, of which approximately €84 billion would be allocated to the ESF and €183 billion to the ERDF, and sets out the criteria for the distribution of EU resources between regions across the EU. The draft Common Provisions Regulations was debated in European Committee C on 6 March 2012.

5.3 In his letter of 17 April 2012, the Minister for Business and Enterprise (Mr Mark Prisk) informed us that the Danish Presidency intended to seek “a partial general approach” at the General Affairs Council (GAC) on 24 April 2012 on elements of the October package. The elements included in the partial general approach reflected the outcome of negotiations on six “negotiating blocks” covering: strategic programming; ex-ante conditionality; management and control; monitoring and evaluation; major projects; and eligibility for funding. Although most of the elements concerned Articles in the draft Common Provisions Regulation (cleared by the debate in March 2012), some (on strategic programming, management and control, and eligibility) also concerned Articles in the draft ESF and ERDF Regulations.

5.4 According to the Minister, the partial general approach would “freeze” negotiations on those elements of the package on which a consensus had been reached, but he assured us that “nothing is agreed until everything is agreed” and that the UK would be able to re-open discussions if it considered it necessary to do so. He suggested that UK support for the partial general approach would enable negotiations to focus on other (more important) provisions, and give the UK “further leverage to intervene on issues that really matter.” He emphasised that the partial general approach would not apply to any Articles which determine the future budget for the EU Structural and Cohesion Funds. Accordingly, he asked us to consider waiving scrutiny in relation to these three draft Regulations so that the Government could support the partial general approach (see our Sixty-third Report of 18 April 2012).

5.5 We objected to the accelerated timetable proposed by the Presidency for reaching a partial general approach, could see no compelling reason to justify such haste, and noted that it seriously undermined the rigour and credibility of national Parliamentary scrutiny. We considered that agreement to a partial general approach, albeit limited in scope, would be premature and were therefore unwilling to waive scrutiny.

5.6 In his letter of 2 May 2012, the Minister informed us that the Government decided to support the partial general approach at the GAC on 24 April because it represented “a positive outcome” for the UK, thereby overriding our scrutiny reserve. He said that agreeing the general approach would enable the UK to focus on other important issues, such as thematic concentration, financial instruments, performance management, financial management and information and communication.

33 See (33217): HC 428–xli (2010–12), chapter 1 (9 November 2011). The draft Common Provisions Regulation also applies to the EU's Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund.

5.7 In our reply, we expressed deep regret at the Government's decision to override scrutiny.³⁴ We noted that the Government's request for a waiver of our scrutiny reserve reached us the day before our meeting and less than a week before the GAC on 24 April and asked the Minister to confirm that he had raised with the Presidency our concerns about the accelerated timetable and its implications for effective Parliamentary scrutiny. Notwithstanding the Minister's positive assessment of the partial general approach approved by the GAC, we stated that the information provide in his letter of 17 April was insufficient to enable us to understand what was being proposed and what its impact would be for the UK. To avoid a similar situation arising again, we set out the information which we would expect to receive on those elements of the draft Regulations which remain subject to further negotiations. In particular, we requested a summary of any substantive changes made to the Commission's original proposals, an assessment of their impact on the UK, and an explanation of how issues or concerns identified in the Government's Explanatory Memoranda and in any subsequent progress reports have been addressed. We asked the Government to resist any attempt to secure agreement to a partial general approach on the remaining issues until we had had a reasonable opportunity to consider its content and implications for the UK.

The Minister's letter of 25 May 2012

5.8 The Minister informs us that the Presidency is likely to seek a partial general approach on three further negotiating blocks, covering thematic concentration, financial instruments and revenue generating projects, at the GAC on 26 June 2012.

5.9 Turning first to the negotiating block on thematic concentration, the Minister explains:

“[T]he Presidency will aim to get agreement to the scope of the funds and their specific objectives. This will include provisions to focus future European Regional Development Fund (ERDF) programmes on innovation, SME competitiveness and shifting to a low carbon economy and the European Social Fund (ESF) on only four priorities to be chosen by each Member State from a menu of 18. As set out in the explanatory memorandum we have submitted, the UK supports the principle of thematic concentration but has concerns about the rigidity imposed by the specific ring-fences for low carbon and social inclusion.”

5.10 The Minister next addresses the second of the three negotiating blocks, which concerns financial instruments:

“[T]he UK Government wants to see greater use made of repayable assistance, venture capital and equity financing as an alternative to grants. It is important however that such instruments are designed in a way that works with the markets and leverages private investment. The UK has worked successfully with the European Investment Bank to put in place some of these instruments in the current programmes (known as JESSICAs and JEREMIEs). We and the EIB are concerned that such arrangements would not be possible under the rules proposed by the Commission, particularly in terms of the restrictions on preferential remuneration in

³⁴ See the letter of 9 May 2012 from the Chairman of the European Scrutiny Committee to the Minister of State for Business and Enterprise (Mr Mark Prisk).

Article 38 and we are pressing for changes that allow greater scope for preferential remuneration where it is justified by a rigorous *ex ante* assessment. We also want more certainty at the beginning of the programming period and are concerned that the number of delegated acts in this part of the Common Provisions Regulation. Financial instruments take time to set and we need to know the rules at an early stage. Furthermore, once contracts with financial intermediaries are signed, it is difficult for changes subsequently to be made.”

5.11 The Minister notes that the third negotiating block concerns technical rules on revenue generating operations which establish the adjustments that need to be made to take account of any income arising from projects. He continues:

“Substantial amendments have been proposed to reflect the growing importance of public-private partnerships (PPPs). [...] The UK Government has been involved in developing these ideas and supports them as an effective way of engaging private sector partners in large projects supported by the structural and cohesion funds.”

5.12 He encloses new text on public-private partnerships which would be included in the overarching draft Common Provisions Regulation. This is intended to make clear that EU Funds covered by the common strategic framework may be used to support public-private partnerships which deliver public infrastructure operations.

5.13 The Minister says that negotiations will continue at working group level and that further changes are likely before the texts are presented to the GAC for agreement on 26 June. He undertakes to provide a further update once the texts are closer to being finalised. He adds:

“I would point out that, as before, agreement at the Council is likely to be on the basis that ‘nothing is agreed until everything is agreed.’ However, Council agreement will signal its key priorities to the European Parliament, which is considering its own reports on the various Regulations and will be voting in Committee on these in July and September.”

5.14 Finally, the Minister explains that some issues will remain outstanding at the end of the Danish Presidency (for example, provisions on information and communication and on territorial development) and will be taken forward under the Cypriot Presidency. He continues:

“Furthermore, we will need to look horizontally at the specific regulations for the funds covered by the Common Provisions Regulation, including those for the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund in order to ensure consistency between them and to maximise the opportunities for harmonising the rules to reduce burdens for final recipients and authorities.”

Conclusion

5.15 We thank the Minister for his letter and welcome his efforts to provide us with information on the scope and content of the partial general approach which is likely to be proposed for agreement at the General Affairs Council on 26 June.

5.16 We note that, once again, the time available to us to consider any request for a scrutiny waiver in advance of the Council meeting is likely to be extremely tight. The Minister anticipates that further changes are likely before the Council meeting, and indicates that the Government has outstanding concerns on thematic concentration (particularly the requirement for Member States to ring-fence a proportion of ESF and ERDF funding on programmes promoting social inclusion and supporting the shift to a low carbon economy) and on financial instruments. We look forward to hearing how these are resolved and remind the Minister of the information (set out above in paragraph 5.7) we expect to receive in advance of the Council. We also ask him to confirm that he has raised with the Presidency our concerns about the hasty and piecemeal approach to securing partial general approaches and the difficulties it creates for effective Parliamentary scrutiny. Meanwhile, the draft Regulations remain under scrutiny.

6 Establishing an EU Civil Protection Mechanism

(33509) 18919/11 + ADDs 1–2 COM(11) 934	Draft Decision of the European Parliament and of the Council on a Union Civil Protection Mechanism
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<i>Legal base</i>	Article 196 TFEU; co-decision; QMV
<i>Department</i>	Cabinet Office
<i>Basis of consideration</i>	Minister’s letter of 8 May 2012
<i>Previous Committee Report</i>	HC 428–lii (2010–12), chapter 6 (29 February 2012)
<i>Discussion in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background and previous scrutiny

6.1 Civil protection has long featured as one of the objectives of EU action and, in 2001, the EU established a Civil Protection Mechanism to strengthen cooperation between the EU and Member States in the event of major emergencies, such as natural or man-made disasters, acts of terrorism or damage to the environment occurring within or outside the EU. The Treaty on the Functioning of the European Union (TFEU) introduced a specific legal base on civil protection — Article 196 TFEU — which provides for EU action to “support and complement” Member States’ efforts to prevent, prepare for and respond to disasters, to encourage effective operational cooperation with and between Member States, and to promote consistency in international civil protection work.

6.2 The draft Decision, which is based on Article 196 TFEU, would replace the existing Civil Protection Mechanism and introduce some significant changes. These include:

- the establishment of an Emergency Response Centre operating around the clock, and a European Emergency Response Capacity based on a voluntary pool of response capacities committed in advance by Member States;
- the introduction of a new monitoring mechanism to identify and fill gaps in the European Emergency Response Capacity, including EU support for the development of response capacities at national or EU level, if EU-subsidised assets would be a more cost-effective means of responding to shared risks; and
- support for the pre-positioning of Member States' emergency response assets in logistical hubs within the EU.

6.3 The Commission has proposed a budget of €513 million for the new Civil Protection Mechanism for the period 2014–20. This contrasts with a sum of €189.8 million for the existing Mechanism for 2007–13. Our Fifty-seventh Report of 29 February 2012 provides a detailed overview of the draft Decision and the Government's position.

6.4 The Minister for the Cabinet Office and Paymaster General (Mr Francis Maude) indicated that the Government had substantial concerns with the Commission's proposal. He suggested that elements of the draft Decision, particularly those imposing mandatory requirements on Member States, exceeded the competence conferred on the EU under Article 196 TFEU. He questioned whether certain measures, such as the development of a European Emergency Response Capacity or an EU logistical support capability, were justified in terms of EU added value and complied with the principle of subsidiarity, and he highlighted the substantial increase in expenditure proposed by the Commission. On the latter, he said that the Government would be seeking "significant reductions."

6.5 We noted the difficulty of reconciling established practice, under the existing Civil Protection Mechanism, with the limitations on EU competence under Article 196 TFEU and encouraged the Minister to secure clearer wording in the draft Decision to underline the complementary nature of EU assistance. We also noted the Minister's concern as to whether EU measures to support and complement Member State action could impose an obligation to act, and said that we looked forward to hearing how negotiations fared on this point. Finally, as the Minister anticipated that the Danish Presidency would seek to make substantial headway before the end of its term (in June), we asked the Minister to provide us with a progress report on negotiations, explaining how the areas of concern identified in his Explanatory Memorandum were being addressed.

The Minister's letter of 8 May 2012

6.6 The Minister (Mr Francis Maude) informs us that the Presidency has not achieved sufficient consensus amongst Member States to prepare a compromise text for agreement at the Justice and Home Affairs Council on 7/8 June. Instead, the Presidency will provide a progress report and may seek to facilitate "a general orientation debate."

6.7 The Minister notes that the draft Decision is subject to the co-decision procedure and that the European Parliament is unlikely to agree a formal position on the Commission's

proposal before the end of the year. Turning to the Council, he says that there has been a preliminary exchange of views within the Civil Protection Working Party, and adds:

“A number of Member States, notably: Austria; Germany; Netherlands; Sweden; Slovenia; the UK; and to a lesser extent France and Spain have raised significant concerns over the current proposals and sought clarification and further information from the Commission on many issues. My officials are working closely with like-minded Member States to further develop our mutual understanding of the proposal’s implications and identify areas of shared concern.

“The main issues raised so far by Member States are broadly similar to those highlighted in my Explanatory Memorandum, in particular: the need to respect the principles of subsidiarity and proportionality; concerns about the scope of the legal base and; concerns around the development of the European Emergency Response Capacity including addressing capacity gaps with EU-level assets.”

6.8 The Minister confirms that there is “broad agreement” that Article 196 TFEU is the correct legal base (a view shared by the Council Legal Service). However:

“[...] Member States, including the UK, continue to consider their own views on its scope, for example whether and, if so, to what extent, it permits the imposition of mandatory requirements on Member States.”

6.9 The Minister says that “many Member States can accept the development of a voluntary pool of Member States’ assets but, like the UK, are keen to ensure that the text is more clearly drafted to reflect the truly voluntary nature of such a pool.” By contrast, the proposal to address capability gaps with EU-funded assets has raised “significant concerns”, with some Member States opposing this element of the draft Decision in its entirety and only one Member State (Greece) supporting it so far.

6.10 In conclusion, the Minister notes that negotiations are at an early stage and undertakes to provide a further update in due course.

Conclusion

6.11 We thank the Minister for his progress report which suggests that little headway has been made so far.

6.12 The Minister tells us that there is broad agreement that Article 196 TFEU, which provides for EU action to support and complement Member States’ action, is the correct legal base for the draft Decision, but that there is some uncertainty as to its scope and, in particular, whether and to what extent it enables the EU to impose “mandatory requirements” on Member States. By contrast, we note that the Council Decision establishing the existing Civil Protection Mechanism (which was adopted on a different legal base) does impose obligations on Member States.³⁵ We ask the Minister to clarify the Government’s position on the scope of Article 196 TFEU by explaining whether its principal objection to the Commission’s proposal is a legal one, namely that

35 See Council Decision 2007/779/EC, OJ L No. 314, 1 December 2007, pp. 9–19.

the provisions of the draft Decision which impose obligations on Member States exceed the powers conferred on the EU by Article 196 TFEU, or whether, as a matter of policy, the Government considers that the Mechanism should operate as a purely voluntary arrangement.

6.13 The Minister's letter does not make any reference to the budget proposed for the new Civil Protection Mechanism. As we have indicated previously, the size of the budget is likely to have a significant impact on the operation of the Mechanism and, in particular, on the ability of the Commission to develop a logistical support capability at EU level and to subsidise the acquisition of emergency response capacities. It is difficult to see how discussions on the substance of the draft Decision can be separated from broader negotiations on the budget. We ask the Minister to explain how these two sets of negotiations will mesh together and would also welcome a preliminary indication of other Member States' reactions to the large increase in resources for the Mechanism proposed by the Commission.

6.14 We look forward to receiving the Minister's response and further progress reports on the negotiations. Meanwhile, the draft Decision remains under scrutiny.

7 European Earth Monitoring Programme (GMES) from 2014 to 2020

(33888) 10035/12 COM(12) 218	Commission Communication on the establishment of an Intergovernmental Agreement for the operations of the European Earth Monitoring Programme (GMES) from 2014 to 2020
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<i>Legal base</i>	—
<i>Document originated</i>	11 May 2012
<i>Deposited in Parliament</i>	21 May 2012
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 28 May 2012
<i>Previous Committee Report</i>	None, but see footnote
<i>Discussion in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information awaited

Background

7.1 The European Earth Monitoring Programme (GMES) is a joint initiative by the Commission and European Space Agency (ESA) to deliver improved environment and civil security information and monitoring services. It was established in 1998, and is based on a range of data sources, including ground and satellite based observation, with four such

services being developed for land monitoring, marine monitoring, atmosphere monitoring, and emergency response, and future services under development for climate change and security.

7.2 Until 2011, GMES was funded through the EU Framework Programme for research and technological development, and by contributions to its space component from ESA members (including the UK), the focus then being on development activities. Regulation 911/2010 continued this joint funding between 2011 and 2013, but also introduced a further contribution from the EU to provide for the first element of operational funding.

7.3 In November 2011, the Commission put forward a Communication,³⁶ proposing an approach from 2014 onwards, when GMES will enter its full operational phase. This noted that, from 1998 to 2013, the overall funding allocated to the programme by the EU and ESA had reached over €3.2 billion for the development and initial operation of the services, and of the space and in situ infrastructures (and had included €1,890 million from the ESA and €1,300 million from the EU). It added that, for the period from 2014 to 2020, in which there would be full deployment of GMES, an estimated budget of €5,841 million would be required, comprising €1,091 million for services, €350 million for the in situ component, and €4,400 million for the space component.

7.4 The Communication also pointed out that GMES has not shown any cost over-runs in the past, and that these are unlikely in the future (because it is based on a structure which allows the reprioritisation of the content of the different components in order to remain within foreseen costs), and that, according to cost benefit analysis, the programme was expected to deliver benefits worth at least twice the cost of investments in the period to 2020, and four times those costs to 2030. At the same time, however, it recalled that the Communication on the Multi-annual Financial Framework for 2014–2020 had proposed that GMES should be financed outside that framework, and it suggested that a specific Fund managed by the Commission should be established under an inter-governmental agreement between the EU Member States, with contributions from all 27 of them, based on their gross national income, as in the case with the European Development Fund.

7.5 The Communication also looked at the governance of the GMES required to provide the necessary political coordination and supervision, management of tasks and budgets, and technical coordination of the implementation. It suggested that the Commission should be responsible, on behalf of the EU, for overall political coordination, but pointed out that programme management during the operational phase will require specialised staff which it will find difficult to recruit. It therefore believed that certain tasks relating to programme management, such as evaluation, negotiation and follow up of contracts, as well as technical support should be entrusted to European entities having appropriate knowledge in related fields. It also stressed the need for GMES data and information policy to continue to be based on the principle of full and open access, and to take into account current legislation to promote the sharing and continuity of GMES information and data, strengthen Earth observation markets, and support European research, technology and innovation.

36 (33547) —: see HC 428–xlvi (2010–12), chapter 19 (18 January 2012).

7.6 As we noted in our Report of 18 January 2012, the Government recognises the value of the GMES programme for monitoring and observing the earth and tackling climate change, as well as its potential to deliver growth in the downstream geospatial services industry and to play a significant role in civil protection activities. It noted that the UK space sector is well-positioned to benefit from recurrent contracts for GMES satellites in the operational phase of the programme, with GMES also being able to promote stronger Earth observation markets in Europe: and it stressed the importance of GMES being user-driven, and of this being reinforced throughout its governance and management, with continued and increasing influence of the user fora. However, it also cautioned that the management structure should not become overly complicated, and that Member States are able to ensure adequate control over the priorities and management of the programme.

7.7 In particular, the Government said that the GMES programme should be within the EU budget (and therefore the next Multi-annual Financial Framework), and that the Commission's proposal to move funding for the programme out of the Multi-annual Financial Framework and establish a separate GMES fund was therefore not acceptable. In addition, it believed that the uncertainty over funding models for the programme would impact on the uptake of services by both public and private sector users, which could undermine the business case for the programme.

7.8 We noted the value which the Government attaches to Earth observation, and its broad support for the specific arrangements suggested, but that, as with so many current policy areas, its main concern centred around the funding arrangements proposed for the period 2014–2020, and in particular the creation of a separate GMES Fund outside the Multi-annual Financial Framework. However, since the Communication as a whole otherwise raised no significant or novel issues, we decided to clear it, but we asked the Government to keep us informed of any significant developments regarding the proposed Fund.

The current document

7.9 In this latest Communication, the Commission re-states its view that, for the reasons it set out in November 2011, an early decision is needed on the arrangements for GMES in the period 2014–2020, and in particular its position on the need for funding to be outside the multi-annual financial framework remains unchanged. It adds that it is committed to supporting Member States in the establishment of the necessary intergovernmental agreement, and it points out that such an agreement, accompanied by implementing and financial regulations, will take some time, and that, as these have to be in place by 1 January 2014, it has urged Member States to start the necessary preparations without further delay.

7.10 In order to facilitate this process, the Commission has annexed to its Communication a draft setting out as a basis for negotiation what it sees as the main elements of such an agreement. This would establish a “GMES Fund”, managed by the Commission, to fund all the operations and actions of the GMES programme, with signatories contributing in proportion to their gross national income, as a result of which the UK would contribute 13.82% (or some €807 million over the seven year period in question). The Fund would be supervised by a GMES Council, which would be chaired by the Commission, with representation from Member States in proportion to their contributions to the Fund.

7.11 The GMES council would be empowered by a qualified majority vote of two thirds of its members to adopt the general budget and approve its execution and the accounts of the previous year; decide on any measures of financing programmes, including through dedicated financial instruments; decide on the terms and conditions governing accession of third countries; and approve the conclusion of any agreement with the Member States, third countries, international governmental and non-governmental organisations, or national organisations of Member States. In addition, it would be empowered by a simple majority vote of its members to decide on the adjustment of the annual contributions to the GMES Fund by its Member States; appoint the auditors and to decide the length of their appointments; adopt its own rules of procedure; adopt recommendations to the Member States concerning amendments to the Agreement; and undertake any management measure not entrusted to the Commission warranted by the good functioning of the GMES Fund. The agreement proposes that the Commission would undertake the financial implementation of the budget approved by the GMES Council as well as the financial execution of the programme.

The Government's view

7.12 In his Explanatory Memorandum of 28 May 2012, the Parliamentary Secretary at the Department for Environment, Food and Rural Affairs (Lord Taylor of Holbeach) notes that, in the period 2011–13, the land and emergency services of GMES have been established as operational, and that the next stage would continue these until 2020, and put other services (marine, atmosphere, climate change and security) on a similar footing. He goes on to reiterate many of the views he expressed on the earlier Communication, and in particular he confirms that it is not acceptable for the funding of this programme to take place separately from the multi-annual financial framework. However, as the continuing uncertainty over the funding model for GMES could cause delays, and perhaps undermine the business case for the programme, he says that the UK will, in partnership with several other Member States, continue to press for the programme to be re-integrated into the multi-annual financial framework as soon as possible.

Conclusion

7.13 As we have indicated, much as this document, and the Government's reaction to it, is similar to what we reported to the House earlier this year in relation to the Communication produced by the Commission in November 2011. In that case, we decided to clear the document, but, as the current Communication is clearly intended primarily to provide greater impetus to the Commission's wish — contrary to that expressed by the UK — to see a separate GMES Fund, outside the multi-annual financial framework, we propose to hold it under scrutiny, pending further information. In particular, quite apart from the level of funding proposed, we would be interested to know the outcome of the Government's intention to join with other Member States in pressing for the programme to be re-integrated into the multi-annual financial framework.

8 The EU and Guinea-Bissau

(a) (33874) —	Council Decision 2012/237/CFSP of 3 May 2012 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau
(b) (33875) —	Council Regulation (EU) No.377/2012 of 3 May 2012 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau
(c) (33913) —	Council Decision concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau and repealing Council Decision 2012/237/CFSP
(d) (33914) —	Council Implementing Regulation implementing Article 11(1) of Regulation (EU) No.377/2012 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau

<i>Legal base</i>	(a) Article 29 TEU; unanimity (b) Article 215 TFEU; QMV (c) Article 29 TEU; unanimity (d) Article 215 TFEU; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EMs of 10 and 31 May 2012
<i>Previous Committee Report</i>	None; but see (32403) 5048/11 and (32381) 18202/10: HC 428–xiii (2010–12), chapter 15 (19 January 2011); also see (32985) 12382/11: HC 428–xxxiii (2010–12), chapter 13 (13 July 2011)
<i>Discussion in Council</i>	3 May 2012 and 1 June 2012
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

8.1 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 directly elected president and an elected national assembly).

8.2 As the Committee's most recent report notes:

- Guinea-Bissau has been in a state of continuous political and economic instability since the end of armed conflict in 1998/9. Since 2000 there have been two coups and three murdered Chiefs of the Armed Forces. In June 2009, President Vieira was murdered by soldiers. The overly large military seemingly acts with impunity — no-one has as yet been indicted for the murder of the previous President — and entirely in its own interests;
- Guinea-Bissau is a key transit point for narcotics trafficking, principally cocaine, between South America and Europe; this poses a direct threat to the security of the United Kingdom. Drugs money permeates through both the military and the civilian authorities. The narcotics trade undermines civilian authority over the military, the rule of law and the effectiveness of development aid in Guinea Bissau and across West Africa;
- on 1 April 2010 there was a military mutiny that resulted in the arrest and detention of the then Chief of the Armed Forces and, briefly, the Prime Minister; the instigators being General Antonio Indjai and the then, recently re-appointed Head of the Navy, Bubo Natchuto.

8.3 In November 2010, the Minister for Europe (Mr David Lidington) said that both individuals had taken active steps to prevent a peaceful political process in Guinea-Bissau, continued to undermine stability, and should therefore be targeted by EU restrictive measures, consisting of a travel ban and an asset freeze. If all this had a familiar ring, it was because the Committee had only recently reported to the House the decision, finally, to close the ESDP security sector reform mission in Guinea-Bissau — that decision being in response to the circumstances the Minister described. The proposed measures against the two main culprits were thus not surprising; and since they were in all respects standard and raised no questions, the Committee concluded that this consequential Council Decision was not, in and of itself, of sufficient political interest to warrant a further substantive Report so soon after the one on closure of the ESDP mission.

8.4 Then, in January 2011, the Committee considered two documents that encompassed both these and other EU measures. The first, a Commission Communication, proposed the opening of consultations under Article 96 of the Cotonou Agreement. The Minister for Europe (Mr David Lidington) described this device as one of the few formal options the EU had at its disposal to try to influence the actions of the military and Government of Guinea-Bissau, and therefore the situation in the country. He said that the Government would work in the EU and in Guinea-Bissau to try to ensure that the results of these consultations — the “appropriate measures” open to the EU, including the cessation of EU development funding into Guinea-Bissau, if the consultations did not lead to an acceptable solution — did not affect the most vulnerable amongst the population in that country; but rather influence their leaders into acting in the best interests of their citizens.

8.5 With regard to the second, the Minister said that, though the Council Decision on restrictive measures was agreed by the November 2010 Foreign Affairs Council, its adoption was put on hold until a Council Regulation could be circulated and then subsequently agreed, enabling the (policy-making) Decision and (implementing) Regulation to be agreed together (the Council Regulation being required to allow EU Member States' relevant competent authorities — HM Treasury in the UK's case — to implement the asset freeze). These measures were, the Minister explained, designed “to send a clear signal to both the ruling military and political groups in Guinea-Bissau that the current *status quo* is unacceptable, and that change needs to happen in the country”. He again argued that, beyond their symbolic value, these measures could catalyse tougher regional political measures; and that, with West Africa having recently had a number of elections in which violence and undemocratic behaviour were a real concern, there was a wider benefit to the region of the EU imposing restrictive measures on individuals in Guinea-Bissau at that time by making it clear to them that the EU was committed to peaceful civilian rule.³⁷

8.6 On July 13 2011, the Committee considered a further Council Decision, to close the Article 96 consultations and begin a conditions-based process of normal political dialogue (under Article 8 of the Agreement). The Decision suspended development funding under the 9th and 10th European Development Fund (EDF), with the exception of ongoing contracts, humanitarian and emergency operations, measures in direct support of the population, and projects to combat transnational crime and support the consolidation of democracy; the gradual resumption of funding is linked to the attainment of commitments undertaken by Guinea-Bissau during the consultations; and, in a further letter to the Prime Minister of Guinea-Bissau from the High Representative and the Development Commissioner setting out this process in detail, noting that the EU:

- reserved the right to amend these measures in the light of the changing political situation and progress in the implementation of commitments;
- would continue to monitor the situation in Guinea-Bissau closely over a period of 18 months, with the first monitoring mission to take place in principle within six months;
- would focus Article 8 dialogue on reforms in the areas of political, judicial and economic governance; and
- would pay particular attention to the reform of the security sector and to measures to tackle impunity and organised crime, particularly drug trafficking.

8.7 As the Committee noted, its previous Reports demonstrated that engaging with the authorities in Guinea-Bissau had been a long-drawn out and, thus far, pretty fruitless process. Even now, the Minister for Europe — who judged closure of Article 96 consultations as the right next step for Guinea-Bissau — was unable to provide evidence of any positive move in the months since the consultations were opened. While dialogue was no doubt better than non-contact, we felt it hard to see that the Article 96 process *per se* had made any real difference to the behaviour of those in power whose misdemeanours had initiated it.

37 See headnote: (32381) 18202/10 and (32403) 5048/11: HC 428–xiii (2010–12), chapter 15 (19 January 2011).

8.8 We nonetheless looked forward to hearing from the Minister in 18 months time when the Council Decision was due to come to an end, cleared it, and asked the Minister to clarify why Committee had not received the draft Council Decision and further Explanatory Memorandum before the Council went ahead with the proposal to open the consultations.³⁸

The first Council Decision and Council Regulation

8.9 This Council Decision and Council Regulation impose targeted sanctions — an asset freeze and travel ban — on persons identified as threatening the peace, security or stability of the Republic of Guinea-Bissau.

8.10 Those so identified, and the reasons stated, are:

(a) General António INJAI (a.k.a António INDJAI)

“António Injai has been personally involved in planning and leading the mutiny of 1 April 2010, culminating with the illegal apprehension of the Prime Minister, Carlo Gomes Junior, and the then Chief of Staff of the Armed Forces, José Zamora Induta. António Injai has operated in a way to pressure the Government for his appointment as Chief of Staff of the Armed Forces. Indjai has been consistently making public statements threatening the lives of the legitimate authorities namely against Prime Minister Carlos Gomes Junior and undermining rule of law, undercutting civilian powers, furthering a pervasive climate of impunity and instability in the country. During the 2012 electoral period, in his capacity as Chief of Staff of the Armed Forces, Injai again made statements threatening to overthrow the elected authorities and to put an end to the electoral process. António Injai has been once again involved in the operational planning of the *coup d'état* of 12 April 2012. In the aftermath of the coup, the first communiqué by the ‘Military Command’ was issued by the Armed Forces General Staff, which is led by General Injai. He did not in any way counter or distance himself from that unconstitutional military action.”

(b) Major General Mamadu TURE (N’KRUMAH) (a.k.a. N’Krumah)

“Deputy Chief of Staff of the Armed Forces. Member of the ‘Military Command’ which has assumed responsibility for the *coup d'état* of 12 April 2012.”

(c) General Augusto MÁRIO CÓ

“Army Chief of Staff. Member of the ‘Military Command’ which has assumed responsibility for the *coup d'état* of 12 April 2012.”

(d) General Estêvão NA MENA

“Navy Chief of Staff. Member of the ‘Military Command’ which has assumed responsibility for the *coup d'état* of 12 April 2012.”

(e) Brigadier General Ibraima CAMARÁ (a.k.a “Papa Camará”)

38 See headnote: (32985) 12382/11: HC 428–xxxiii (2010–12), chapter 13 (13 July 2011).

“Chief of Staff of the Air Force. Member of the ‘Military Command’ which has assumed responsibility for the *coup d’état* of 12 April 2012.”

(f) Lieutenant colonel Daba NAUALNA (a.k.a. Daba Na Walna)

“Spokesperson of the ‘Military Command’ which has assumed responsibility for the *coup d’état* of 12 April 2012.”

8.11 In his Explanatory Memorandum of 10 May 2012, the Minister for Europe (Mr David Lidington) explains that the restrictive measures that the EU had agreed in November 2010 to impose on the two leaders of the April 2010 military mutiny were not adopted “due to positive developments on the ground.”

8.12 The Minister then explains that:

- on 12 April, another, another army-led *coup d’état* took place in Guinea-Bissau as campaigning was due to start for the second round of Presidential elections;
- an ECOWAS³⁹ delegation visited Guinea-Bissau on 16 April and held meetings with the junta, the ruling and opposition parties, the AU and the UN;
- on 18 April the military junta announced a caretaker government, dissolved public institutions and pledged that democracy would be restored “little by little”.

8.13 The Minister then notes that the 23 April Foreign Affairs Council:

- strongly condemned the *coup d’état*;
- demanded the immediate reestablishment of the legitimate government, the completion of the interrupted democratic electoral process and the immediate restoration of constitutional order;
- said that self-appointed transitional institutions will not be recognised, nor any kind of arrangement which would allow the armed forces to continue to threaten or control the civil powers;
- rejected the establishment of a so-called “Transitional National Council”;
- called for the immediate and unconditional release of those held in illegal detention and an end to violence and intimidation against political leaders and civil society representatives, and said that the freedom and security of all citizens must be ensured and the perpetrators of human rights violations be held accountable;
- acknowledged the decision of the African Union to suspend Guinea-Bissau, and firmly supported the efforts of the UN, ECOWAS and CPLP⁴⁰ to restore stability, democracy and respect for human rights there;

³⁹ Economic Community of West African States (ECOWAS) is a regional group of fifteen countries, founded in 1975. Its mission is to promote economic integration in “all fields of economic activity, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions, social and cultural matters ...” Guinea-Bissau is a member. See <http://www.ecowas.int/> for full information on ECOWAS.

- said that it was ready to impose restrictive measures against individuals who continued to engage in or provide support for acts that threaten the peace, security and stability of Guinea-Bissau.⁴¹

The Government's view

8.14 The Minister says that the Government fully supports the EU in adopting targeted sanctions against the coup leaders, which, he says, support the efforts by ECOWAS and the international community to bring about a restoration of constitutional order.

8.15 The Minister concludes by noting that both Council Decision and the Council Regulation were adopted by written procedure on 3 May 2012.

8.16 The Minister apologises for the ensuing scrutiny over-ride in a separate letter; this, he says, was unavoidable because of the need to agree the measures as quickly as possible in order to exert as much pressure as possible on the individuals concerned and minimise the possibility of asset flight.

8.17 We pointed out, via official channels, that:

- the Committee had still heard nothing from the Minister in response to the issues that we had raised regarding the consultation process under Article 96 of the Cotonou Agreement (c.f. paragraphs 8.7 and 8.8 above);
- moreover, his Explanatory Memorandum of 10 May 2012 contained no explanation of what the “positive developments on the ground” were that had made the Council decide not to go ahead with the earlier restrictive measures;
- his EM had been written as if no other EU activity had been taking place, and thus had the restricted focus that (as had been noted on previous occasions) was unhelpful in terms of enabling the House to understand overall EU policy in the area in question;
- there ought accordingly to have been some information about the nature and outcome “regular political dialogue between the two parties under Article 8 of the Cotonou Agreement focusing on reforms in the area of political, judicial and economic governance, paying particular attention to the reform of the security sector, and measures to tackle impunity and organised crime, particularly drug trafficking”, that was presaged in the document relating to the closing of the consultations, especially in the light of the latest, once again adverse, developments; and
- a supplementary letter from the Minister was needed in order to enable the Committee to deal appropriately with these latest measures.

40 The Community of Portuguese Language Countries; The CPLP was formed in 1996 with seven countries: Portugal, Brazil, Angola, Cape Verde, Guinea-Bissau, Mozambique, and São Tomé and Príncipe. East Timor joined the community in 2002 after gaining independence.

41 See page 11 of the Council Conclusions, which are available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/EN/foraff/129739.pdf.

United Nations Security Council Resolution 2048 (2012)

8.18 On 18 May 2012, the United Nations Security Council adopted Resolution 2048 (2012), which imposed a travel ban on persons seeking to prevent the restoration of the constitutional order in Guinea-Bissau.⁴²

The further Council Decision and Council Implementing Regulation

8.19 In his Explanatory Memorandum of 31 May 2012, the Minister of Europe (Mr David Lidington) explains that this Council Decision and Council Implementing Regulation:

- target a further 15 individuals who have been identified as meeting the designation criteria of threatening the peace, security or stability of the Republic of Guinea-Bissau; and
- makes the necessary amendments to reflect the travel ban that has been imposed on certain individuals in Guinea-Bissau through the adoption of UN Security Council Resolution 2048(2012);

8.20 The Minister notes that, of the six individuals identified as the coup leaders and were targeted with an EU travel ban and asset freeze through the adoption of Council Decision 2012/237/CFSP on 3 May 2012, five were subsequently subjected by Security Council Resolution 2048(2012) to a travel ban. Those individuals are:

- General António INJAI (a.k.a. António INDJAI);
- Major General Mamadu TURE (N 'KRUMAH);
- General Estêvão NA MENA;
- Brigadier General Ibraima CAMARA (a.k.a. “Papa Camara”); and
- Lieutenant colonel Daba NA WALNA (a.k.a. “Daba Na Walna”).

8.21 They are listed in Annex 1 to the Council Decision. Article 3 provides that the Council shall implement modifications to Annex I on the basis of the determinations made by the UN Security Council or by the monitoring committee established by UNSCR 2048 (2012).

42 Deploring the continuing refusal of coup leaders in Guinea-Bissau to reinstate legitimate authority in the country, the Security Council imposed targeted sanctions against them, establishing a new monitoring committee and requesting the Secretary-General to be actively engaged in coordinating international efforts to help restore constitutional order. Through the unanimous adoption of resolution 2048 (2012), the Council imposed a travel ban, with exemptions for humanitarian, judicial or reconciliatory purposes, on Armed Forces Chief of Staff General António Injai and other members of the so-called “Military Command” that ousted the Government of Prime Minister Carlos Gomes Júnior on 12 April 2012, who are listed in an annex attached to the resolution. Through the text, the Council also demanded that the Military Command take immediate steps to restore and respect constitutional order by reinstating the legitimate authorities and ensuring that all soldiers return to barracks, making way for the completion of the disrupted electoral process. It stressed the need for all national stakeholders and Guinea-Bissau’s international bilateral and multilateral partners to remain committed to the restoration of constitutional order, encouraging the continuation of mediation efforts by the Economic Community of West African States (ECOWAS), in close coordination with the United Nations, the African Union and the Community of Portuguese-Speaking Countries, the efforts of whom would be harmonized by the Secretary-General. The Council affirmed that it would keep the situation in Guinea-Bissau under continuous review and that it was prepared to strengthen, modify, suspend or lift the measures in light of progress achieved in stabilization of the country and restoration of legitimate order. See <http://www.un.org/News/Press/docs/2012/sc10653.doc.htm> for full information.

8.22 The Council Decision also provides for a travel ban and asset freeze persons not covered by Annex I engaging in or providing support for acts that threaten the peace, security or stability of the Republic of Guinea-Bissau and persons associated with them; they are to be listed in Annexes II (travel ban) and III (asset freeze). The Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt amendments to the lists contained in Annexes II and III as required.

The Government's view

8.23 The Minister comments as follows:

“We remain deeply concerned about the situation in Guinea-Bissau, in the aftermath of the *coup d'état* there on 12 April and have joined international partners in condemning it and in calling for a return to constitutional and civilian government. We have also called for the completion of the Presidential elections which the coup interrupted, and have supported the imposition of EU and UN restrictive measures against the coup leaders and others who were involved in or who supported the coup.

“We have concerns about the appointment of Serifo Nhamadjo as interim President given that, constitutionally, Raimundo Pereira remains the legitimate interim President. We have welcomed the regional leadership shown by ECOWAS and the African Union, as well as the efforts of the EU and, in particular, Portugal. We are working with each, as well as the UN, to ensure we maintain a coherent, unified response.”

8.24 The Minister concludes by noting that both Council Decision and the Council Implementing Regulation were to be adopted by written procedure on 1 June 2012.

8.25 The Minister again explains in a separate letter that the decision to agree these measures on 1 June is in order to exert maximum pressure on the “Military Command”, which regrettably coincides with Parliamentary Recess and makes the over-ride of scrutiny unavoidable, for which he apologises.

Conclusion

8.26 Though the measures themselves raise no questions, we are reporting their adoption to the House because of the level of political interest in developments in West Africa.

8.27 Even though already adopted (because of the need to respond swiftly to the coup and support the other international actors involved), we are retaining them under scrutiny, until we get a response from the Minister (see paragraph 8.08 and 8.17 above). Only when it can relate these measures to the overall context of EU policy in Guinea-Bissau, and in particular the political dimension of the EU/ACP Cotonou Agreement will the House be able fully to see, and thus judge the impact, of overall EU policy in this troubled country.

9 EU police, rule of law and civilian administration mission to Iraq

(33911)	Council Decision on the European Union Integrated Rule of Law mission for Iraq EUJUST LEX — IRAQ
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Legal base	Articles 28 and 43(2) EU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 31 May 2012
Previous Committee Report	None; but see (32849) — : HC 428–xxx (2010–12), chapter 15 (22 June 2011); (31693) —: HC 428–i (2010–11), chapter 60 (8 September 2010); (30633) —: HC 19–xviii (2008–09), chapter 18 (3 June 2009) and HC 19–xvii (2008–09), chapter 3 (13 May 2009); also see (26356) — : HC 38–ix (2004–05), chapter 9 (23 February 2005) and (27480) —: HC 34–xxix (2005–06) chapter 9 (17 May 2006)
Discussion in Council	23–24 June 2011 Foreign Affairs Council
Committee’s assessment	Politically important
Committee’s decision	Not cleared; further information requested

Background

9.1 EUJUST LEX was launched in July 2005 with the aim of increasing capacity and co-ordination in the Iraqi criminal justice system and promoting human rights and respect for the rule of law. During its initial mandate, the mission delivered courses within EU Member States focused on management and crime investigation for senior Iraqi criminal justice officials. For security reasons, all the preparation and the courses were held outside Iraq. But a small liaison office, headed by a Briton, was set up inside the British Embassy in Baghdad. Its costs, and other common costs, have been funded by the CFSP budget; training provided by Member States, including the UK, is funded by them. The full background to and nature of the mission is set out in detail in the previous Committee’s Report of 13 May 2009.⁴³

9.2 In June 2006, the Council of Ministers agreed to extend the mission’s mandate for a further 18 months. This mandate authorised the provision of more specialised courses as well as secondments in EU Member States for senior Iraqi police officers and prison governors. Both these actions were reported to the House.⁴⁴ At the time at which the draft Joint Action was submitted for scrutiny, the additional cost had yet to be worked out; the financial reference amount was subsequently increased by € 11.2 million.

43 See headnote: HC 19–xvii (2008–09), chapter 3 (13 May 2009).

44 See headnote: HC 38–ix (2004–05), chapter 9 (23 February 2005) and (27480) —: HC 34–xxix (2005–06) chapter 9 (17 May 2006).

9.3 Then, in November 2007, the Council decided on a further extension, until 30 April 2008. The UK was to continue to contribute by providing specialised courses and offering a work-experience prisons secondment for a senior Iraqi official, as well as continuing to support the Baghdad Liaison Office with office and living accommodation. This further extension would be at no additional cost. Looking ahead, the then Minister for Europe (Mr Jim Murphy) said that, with the arrival of an EC Delegation in Baghdad, there was potential for the eventual development of Community-supported institution-building and rule of law programmes to carry forward EUJUST LEX 's work, which was expected to end in 2009.

9.4 In April 2008 the then Minister for Europe submitted the draft of a further Council Joint Action, which extended the mandate, at no additional cost, until 30 June 2008. He supported the continuation of the mission, which had facilitated training for over 1,400 Iraqis from the police force, the judiciary and the penitentiary system; as of January 2008, the Mission had received commitments for over 40 training interventions by Member States until June 2009 and would therefore be able to maintain its level of activities.

9.5 Finally, a further “no cost” extension was submitted for scrutiny by the then Minister on 12 June 2008, which we cleared on 18 June 2008. This authorised continuation of the mission until June 2009.

9.6 The previous Committee judged that none of these straightforward, “no cost”, extensions warranted a substantive Report to the House, and were cleared accordingly.

9.7 The Joint Action that the previous Committee considered on 13 May extended the current mandate for a further 12 months until 30th June 2010. In brief, the mission had provided 88 training courses and 17 work experience secondments for over 1,900 Iraqis since summer 2005; the UK had provided 17 courses and three secondments; the mission's success was recognised in 2008 when the Head of Mission won the prestigious Webber-Seavey Award for “excellence in law enforcement and leadership”. In addition to continuing the mission's current activity, the then Minister for Europe (Caroline Flint) explained in her 9 May 2009 Explanatory Memorandum that EUJUST LEX would carry out a pilot phase of activities in Iraq, in which up to 18 activities would be undertaken in Baghdad, Sulamanayah and Talil regions; they would include further training courses, providing strategic advice on the ground and follow up mentoring sessions for previous course participants; planning was ongoing but “by engaging in country EU Just Lex will be able to be more visible, proactive and better placed to aid the Iraqi authorities when needed.”

9.8 The then Minister also noted that the UK had:

- judged that the EU's original strategic objectives for an ESDP mission for Iraq remained valid;
- been a strong advocate of EUJUST LEX moving in country, which she said would allow the mission to further assist the Iraqi government in strengthening the rule law through the provision of follow up programmes with past course participants and “increase the impact of the EU's intervention by building on the mission's activities so far, improving

evaluation of the mission's activities, and improving local ownership, including through increased contact and participation”;

and that:

- other EU Member States continued “to demonstrate an increased willingness to engage in Iraq”, with the Mission having received in January 2008 commitments for over 40 training interventions by Member States until June 2009;
- the Government of Iraq also remained “highly supportive of the mission with the Iraqi Chief Justice and Acting Minister of Justice both visiting EUJUST LEX courses in Europe in the last few months.”

9.9 On the financial aspects, the then Minister said that the mission was operating within budget and continuing to deliver a full training schedule; had cost €28.4 million since 2005; and would require a further €11.5 million to cover the period from 1 July 2009 to 30 June 2010.

9.10 The previous Committee therefore asked the Minister to explain more fully what the rationale was for continuing with the Mission for a further year when, last April, her predecessor said that he expected it to end in 2009, and the basis of her thinking about its longer-term future.

9.11 The previous Committee were also now able to see that, when what became Council Joint Action 2008/190/CFSP was adopted on 23 June 2008, it contained a provision authorising a new financial reference amount to cover the period 1 July 2008 to 30 June 2009; and that, from the draft text, this amounted to a further €7.2 million — notwithstanding having been told by the then Minister's predecessor that this was to be a “no cost” extension — and asked the Minister to explain this discrepancy.

9.12 In addition to the UK share of the overall CFSP expenditure, the previous Committee also asked what the cost was of the UK's direct and indirect contributions to EUJUST LEX so far.

9.13 In the meantime, the document was retained under scrutiny.⁴⁵

The then Minister's letter of 22 May 2009

9.14 With regard to why the mission was being extended after the previous Minister for Europe stated that it would end in 2009, the then Minister said that her understanding was that it had always been the intention that EUJUST LEX would, depending on developments in-country, continue into 2010 with a view to conducting training activities in Iraq; and suggested that, with the current mandate due to come to an end in June 2009, it had been taken at the time to mean that the mission would cease on that date, which she did not believe to be the case.

9.15 With regard to the remark in her Explanatory Memorandum that, though courses were currently run and hosted by Member States, this might change when the mission

45 See headnote: HC 19–xvii (2008–09), chapter 3 (13 May 2009).

began undertaking activities in country, the then Minister said that, as more training courses were hosted in Iraq, the number hosted in Member States would decrease, though the Mission and national secondees would remain as the lead in running them.

9.16 She also said that the rationale for continuing the mission was that there remained a lot of work still to be done in Iraq; in its four years EUJUST LEX had achieved a great deal but the improved security situation presented an excellent opportunity to move training activities in country where they would have a greater effect and increase the levels of Iraqi ownership. The then Minister supported this move because in-country activities would allow the development of a more strategic approach, targeting a wider range of participants for follow up, and ensuring the sustainability of the mission's work.

9.17 Turning to the 2010 review, the then Minister said that it would “evaluate all aspects of the move of activities in country [...], take into account Iraqi capabilities as well as activities of other international actors [and] inform the decision as to whether EUJUST LEX should continue beyond June 2010 and, if so, in what capacity.” The review would “be the point at which we and other Member States consider again the long term future and direction of the mission”.

9.18 The then Minister then turned to the financial aspects. She explained that the statement in her predecessor's Explanatory Memorandum of 9th June 2008 that the last mandate extension until June 2009 (then under consideration) would be a “no cost” extension was, unfortunately, incorrect: it had been based on a draft version of the Joint Action text which, at the time, did not include the financial reference amount of €7.2 million; and when this was agreed upon in a separate document (the mission's financial statement) it had not been included in the Explanatory Memorandum sent to the previous Committee. Having apologised for the misunderstanding that this caused, the then Minister said that she would endeavour to keep the Committee better informed in the future and provided a note with more detail on the direct and indirect costs to the UK of supporting EUJUST LEX.⁴⁶

The previous Committee's assessment

9.19 The previous Committee thanked the then Minister for this further information, and accepted her explanation, apology and assurances.

9.20 It also looked forward to hearing from her in due course about the outcome of the 2010 review and her views on it, ahead of any fresh Joint Action to extend the mission mandate. In the meantime, it cleared the extension.

The 2010 Council Decision

9.21 This Council Decision altered the mandate of EUJUST LEX-IRAQ in three ways;

— the mission's mandate was extended for two years until 30 June 2012.

⁴⁶ Reproduced at the annex to chapter 15 of the Committee's Report of 22 June 2011.

- the mission’s focus was to shift further towards in-country training activities (although courses held in EU member states would continue).
- the mission’s permanent presence within Iraq was to increase in line with the increased focus on in-country activities:
 - Baghdad: expansion of the mission’s current Baghdad Liaison Office by 5 members;
 - Erbil: a new liaison office in the northern city of Erbil with 15 members of staff who would assist with the co-ordination and planning of the proposed increase of in-country training; and
 - Basra: 4 mission personnel to assist with southern based training activities, operating under the Baghdad office and to look into the possibility of the mission opening a full scale liaison office in Basra in the future, should security conditions allow.

9.22 In his Explanatory Memorandum of 11 June 2010, the Minister for Europe (Mr David Lidington) described establishing effective rule of law as “central to the future stability of Iraq.” He continued as follows:

“Through support to the Iraqi criminal justice system, EUJUST LEX-IRAQ has made an important contribution to building the institutional knowledge necessary to develop the rule of law. EUJUST LEX-IRAQ courses are helping the Iraqi system to work towards meeting international best practice by providing senior Iraqi officials with the skills and techniques to take forward criminal investigations and manage cases more effectively. Since it was deployed in 2005, EUJUST LEX-IRAQ has facilitated 116 EU Member State courses and 22 work experience secondments. It has also conducted three regional thematic seminars, three preliminary in-country events and successfully completed 14 pilot in-country activities with more than 3,100 Iraqis participating. The in-country activities have provided training on key issues such as Effective Crime Scene Management, Domestic Violence (a significant problem in Iraq), and Management of Vulnerable Prisoners. The mission is also working to move the criminal justice system towards evidence rather than confession based forms of investigation which can be open to human rights abuses. As a result, the mission is highly visible with senior officials and Iraqi politicians many of whom are supporters of the mission’s work.”

9.23 The Minister supported a new two year mandate for the mission

“because of the impact the mission has made and because it is a key way of bringing EU engagement together on a UK foreign policy priority which has previously divided the EU. As the US prepares to drawdown its large scale presence in the autumn, EU support will become increasingly important. In addition, there has been a modest but positive improvement in security in Iraq since 2008. Despite a relapse in politically motivated violence in the run up to the March 2010 elections the civilian death toll in Iraq decreased by half between 2008 and 2009 and inter-sectarian violence (a major problem in 2006 and 2007) has also decreased. With the

completion of elections and the improving security situation the timing is right for EUJUST LEX-IRAQ to increase its presence in-country.”

9.24 The Minister went on to say that the UK had consistently called for improvements in the way the mission assessed the impact of its work:

“As a result, an impact assessment will be produced in October in order to target the mission’s future training activities. Increasing EUJUST LEX-IRAQ’s focus on in-country activities should facilitate better assessment. It should also enable the mission to conduct more effective follow up sessions with course participants to check whether learning has been implemented. This will be supplemented with some mentoring of Iraqi officials. Finally, the Iraq based activity will facilitate more effective liaison with the Iraqi authorities so that EUJUST LEX-IRAQ activities can be better planned to support the Iraqi national training programme.”

9.25 The Minister then said that the UK had also argued that the mission should establish a more permanent footprint outside of Baghdad to facilitate training and mentoring activities throughout the country:

“In the northern Kurdistan Region, Erbil was selected as the location for the proposed new office due to the city’s favourable security conditions. It has also been the location for the majority of completed in-country activities with training venues and facilities already established. In order to tackle any suggestion of ethnic bias towards Kurds, the activities run out of Erbil will cover the Iraqi population beyond the Kurdish region.

“The proposed smaller presence in Basra is due to the security conditions there with a number of Member States reluctant to see an expansion to the south before testing whether projects could be effectively delivered. The staff placed in Basra under the new mandate will evaluate the ability for the mission to have an impact.”

9.26 Finally, the Minister said that:

- the estimated total budget for the two year extension was €17,500,000 which would be funded from the EU’s Common Foreign and Security Policy budget;
- the UK contributes 13.6% to the overall EU budget in 2010;
- as the EU budget funds the CFSP budget, the cost to the UK for the two year extension would be €2,380,000 (£2,019,000); and
- this Council Decision was due to be agreed at the Foreign Affairs Council on 14 June 2010.⁴⁷

47 And was indeed adopted by the FAC on that day.

Our assessment

9.27 Although no questions arose from the Council Decision itself, we again reported this extension to the House because of the widespread interest in developments in Iraq, and especially in the area of rule of law.

9.28 We also cleared the document.⁴⁸

The first 2011 Council Decision

9.29 We considered this Council Decision on 2 March 2011. It outlined a proposed increase to EUJUST LEX-IRAQ's budget of €4.8 million, from €17.5 million to €22.3 million. This was required to fund the expansion of the mission's presence in-country in line with the last mandate extension, viz:

- costs incurred by the mission in exchange for increased accommodation and support provided by the British Embassy in Baghdad;
- a new private security contractor who will take over responsibility for EUJUST LEX-IRAQ's mobile security from the British Embassy;
- the transfer of the majority of mission staff from Brussels to Baghdad.

9.30 The Minister for Europe (Mr David Lidington) explained that:

- expanding its presence in-country was designed not only to facilitate more in-country training and mentoring activities but also to address an assessed failing (partly because of its limited presence in country) to capitalise on its otherwise effective work through follow-up activities, but also to evaluate its activity more effectively and improve the mission's impact;
- the October 2010 feasibility study determined that expanding EUJUST LEX-IRAQ's presence at the British Embassy in Baghdad was judged the most cost effective and timely option available.

9.31 The Minister said the proposed budgetary increase should deliver a greater focus on in-country courses, facilitate better assessment, and allow EUJUST LEX-IRAQ to analyse its effectiveness by conducting more follow up activities with past course participants.

9.32 The Committee concluded that on this occasion there was nothing in this Council Decision that warranted a further substantive Report to the House, and cleared it thus.

The second Council Decision

9.33 This Council Decision outlined a new EUJUST LEX budget, for the period of 1 July 2011 to 30 June 2012, of €27.25 million (compared with the 2010–2011 budget of €22.3 million).

⁴⁸ See headnote: (31693) —: HC 428–i (2010–11), chapter 60 (8 September 2011).

9.34 In his Explanatory Memorandum of 10 June 2011, the Minister for Europe (Mr David Lidington) said that this new budget reflected, over the full year, the higher operational, security, and accommodation costs flowing from the expansion finalised in late 2010 and the consequential budget increase of €4.8 million that was approved in March 2011 to cover the three months until the end of the present budget period.

9.35 The Minister said that the UK wanted to see a strong and stable Iraq playing a positive role in the region and beyond, and once more described improving the rule of law in Iraq as central to this goal. EUJUST LEX's activities were aimed at improving the capacity and knowledge of key personnel within the Iraqi criminal justice system, with courses designed to demonstrate international best practice and provide Iraqi officials with the skills required to carry out criminal investigations more effectively. He went on to note that, to date, EUJUST LEX had facilitated 134 courses, 3 regional seminars and 40 in-country activities, with 4,008 Iraqi attendees (1,930 police, 849 judiciary and 1,229 penitentiary including 1,064 from the Kurdistan region and 267 female participants).

9.36 The Minister then recalled that the one of the reasons why the Government supported a two year extension of EUJUST LEX in June 2010 was allowing EUJUST LEX to expand its presence in Iraq and focus on in-country training activities would allow more frequent contact with Iraqi officials and past alumni, and thus more evaluation to assess the impact and sustainability of the training provided.

9.37 The Minister then explained that the new annual budget of €27.25 million was broken down as follows:

- Personnel Costs: €4.83 million
- Mission Costs €538,000
- Running Expenditure: €20.84 million
- Capital Expenditure: €710,000
- Representation/Contingency Fees: €332,000

9.38 The Minister said that, despite being a significant rise, reductions had been made to parts of the budget that had limited the overall increase, and set out the services that the new budget would cover and the areas where reductions had been made. The main item was an €8.6 million increase in the running costs; this was, he explained, required to cover increased costs as a result of the mission's expansion in-country, and included key services such as twelve months rent for office space/staff personnel accommodation in Baghdad, Basra, Erbil and Brussels (€9.3 million) and the services of a new private security contractor to cover the mission's mobile security requirements in Baghdad and Erbil (€10.26 million).

9.39 The Minister said the new budget would allow the mission to continue to deliver in-country training courses, facilitate better impact evaluation of the training and increase Iraqi ownership of the training process. He emphasised that clear evaluation of EUJUST LEX's training courses would be a priority over the next twelve months, to demonstrate the impact of the mission's expansion in-country; and noted that, to reinforce the importance

the UK placed on evaluation and ensure that it remained such a priority, a UK expert had been seconded as EUJUST LEX's head of evaluation.

Our assessment

9.40 We thanked the Minister for having provided such a thorough exposition of the next year's budget, and commended his determination to improve the level and quality of the evaluation of EUJUST LEX's impact.

9.41 We looked forward to hearing more about this as and when any further mandate extension and/or budgetary increase proposals are put forward.

9.42 In the meantime, we cleared the document from scrutiny.⁴⁹

The draft Council Decision

9.43 This Council Decision extends the mandate for 18 months, to 31 December 2013, and proposes a new budget of €27,150,000.

9.44 In his Explanatory Memorandum of 31 May 2012, the Minister of Europe (Mr David Lidington) notes that the mandate will focus on:

- the Federal Investigator Training Programme for the Iraqi Police , so as to reinforce training capacity, capitalise on the Mission's previous work, and unify and give coherence to the instruction of all Police investigators in Iraq;
- in terms of the transition of the Judiciary to Iraqi ownership, in Baghdad, on reinforcing the Iraqi capacity to train its judges in white collar crime, using previously trained judges as trainers, and on enhancing Iraqi knowledge of and links with European and regional judicial institutions and related agencies; and, in Kurdistan, on enhancing the didactic capacity of the Judicial Training Institute's body of trainers in order to underpin the quality of the training delivered, as well as on carrying out MMA activities with the Institute's management to facilitate its establishment;
- activities for the Penitentiary that will include the further extension of the International Standards of Audit Programme, prisoner classification to improve security and conditions for inmates, rehabilitation and reintegration including creation of a Probation Service, Leadership Training and Strategic Advice on the Transfer of Authority from the Ministry of Labour and Social Affairs to the Ministry of Justice;
- continuing the mainstreaming of human rights and gender approaches in all Mission activities, which he says has proved to be an efficient way to advance these topics, while also implementing two specific activities: one on domestic violence and one on trafficking in persons.

49 See headnote: (32849) —: HC 428–xxx (2010–12), chapter 15 (22 June 2011).

The Government's view

9.45 Reiterating the Government's wish to see a strong and stable Iraq playing a positive role in the region and beyond and the centrality of the effective rule of law to the future stability of Iraq, the Minister continues as follows:

“Through support to the Iraqi criminal justice system, EUJL has made an important contribution to building the institutional knowledge necessary to develop the rule of law. EUJL courses are helping the Iraqi system to work towards meeting international best practice by providing senior Iraqi officials with the skills and techniques to take forward criminal investigations and manage cases more effectively. Since it was deployed in 2005, EUJL has facilitated EU Member State courses and work experience secondments. It has also conducted regional thematic seminars, preliminary in-country events and successfully completed pilot in-country activities. The in-country activities have provided training on key issues such as Effective Crime Scene Management, Domestic Violence (a significant problem in Iraq), and Management of Vulnerable Prisoners. The mission is also working to move the criminal justice system towards evidence rather than confession based forms of investigation which can be open to human rights abuses. As a result, the mission is highly visible with senior officials and Iraqi politicians many of whom are supporters of the mission's work.”

9.46 The Minister then recalls the two year extension approved in June 2010 and notes that, as well as allowing an expanded presence in Iraq, increased focus on in-country training activities, more frequent contact with Iraqi officials and past alumni, it would facilitate more evaluation to assess the impact and sustainability of the training provided; and continues as follows.

“Following a Strategic Review of the Mission's activities, a mandate for a further 18 months has been agreed to give it sufficient time to enable it to implement a tighter, refocused mandate and make a positive impact on Rule of Law in Iraq. At the same time EUJL will simultaneously prepare a proper exit strategy, in particular by building relations with the Iraqi Authorities to ensure a smooth transition to Iraqi ownership. This will ensure that the investment and resources deployed to date will be more fully utilised as the mission moves towards closure. The government supports this new mandate which will strengthen efforts to increase local ownership, including with co-funding in order to improve sustainability; and to refocus its efforts on particular aspects of rule of law which are of most interest to the Iraqi authorities and which they wish to continue beyond 2014. Within this period, the mission will report on progress after six months and again after twelve months and following these reviews, will start to reduce the size of its staff as the exit strategy is being implemented and as individual Mission objectives are achieved.

“From an Iraq policy perspective, the extension of the mission will send a positive message to our Iraqi interlocutors, substantially enhance Iraq-EU relations and will increase the visibility of the EU with local and international counterparts. NATO has withdrawn its training mission at short notice. Against this political backdrop, the Government is committed to supporting Iraq in building up a network of sustainable and positive international relations, in particular with Europe and the West.”

9.47 The Minister then outlines the breakdown of the new budget of €27,150,000 as follows:

- Personnel Costs: €4,832,177
- Mission Costs: €436,925
- Running Expenditure: €21,754,486
- Capital Expenditure: €58,990
- Representation / Contingency Fees: €67,422

9.48 The Minister supports the proposed budget because “it will allow the mission to increase Iraqi ownership of the training process and implement an exit strategy.” Noting that it is currently being reviewed at the RELEX working group, the Minister says that he will update the Committee once the budget has been agreed.

Conclusion

9.49 **With this latest budget, the EU will have spent some €118 million on EUJUST LEX. The Minister has previously, and rightly, made much of the scope for more assessment of the Mission’s achievements that would flow from the move to greater in-country training, and how it would facilitate better impact evaluation of the training and increase Iraqi ownership of the training process. A year ago, he emphasised that clear evaluation of EUJUST LEX’s training courses would be a priority over the next twelve months, to demonstrate the impact of the mission’s expansion in-country; and noted that, to reinforce the importance the UK placed on evaluation and ensure that it remained such a priority, a UK expert had been seconded as EUJUST LEX’s head of evaluation. The Committee commended his determination to improve the level and quality of the evaluation of EUJUST LEX’s impact and looked forward to hearing more about this as and when any further mandate extension and/or budgetary increase proposals are put forward (c.f. paragraphs 9.40–41 above).**

9.50 We would therefore have hoped to have seen some concrete indications of such evaluation in the Minister’s Explanatory Memorandum, since we presume that it was reflected in the strategic review to which he refers, and especially as it was requested a year ago. However, there is but a brief description of some of the activity (c.f. paragraph 9.45 above). We should therefore like to hear more of what evaluation has taken place in the past year of the impact and sustainability of the training provided, and about how the findings have been reflected in the strategic review concerning the evaluation.

9.51 We should also like to hear about the cost of the UK’s direct and indirect contribution thus far, especially as a further three years have passed since we first asked for this information (c.f. paragraph 9.12 above).

9.52 We should also like the Minister to explain what NATO training mission has been withdrawn at short notice, and why (c.f. paragraph 9.46 above).

9.53 In the meantime, we shall retain the document under scrutiny.

10 Health for Growth Programme 2014–20

(33360) 16796/11 + ADDs 1–2 COM(11) 709	Draft Regulation of the European Parliament and the Council establishing a Health for Growth Programme, the third multiannual programme of EU action in the field of health for the period 2014–20
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<i>Legal base</i>	Article 168(5) TFEU; co-decision; QMV
<i>Department</i>	Health
<i>Basis of consideration</i>	Minister’s letter of 6 June 2012
<i>Previous Committee Reports</i>	HC 428–li (2010–12), chapter 7 (22 February 2012); HC 428–xlvi (2010–12), chapter 13 (25 January 2012); HC 428–xlv (2010–12), chapter 5 (20 December 2011)
<i>Discussion in Council</i>	22 June 2012
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared, but waiver granted under paragraph (3)(b) of the Scrutiny Reserve Resolution

Background and previous scrutiny

10.1 The draft Regulation would establish the Health for Growth Programme with a proposed budget of €446 million for the period 2014–20 to support a variety of actions in the public health field which encourage innovation in healthcare, increase the sustainability of healthcare systems, improve the health of EU citizens and protect against cross-border health threats.

10.2 The Government broadly supports the Programme but has expressed concern about the size of the budget and the shift in focus from public health and prevention measures to healthcare systems. It told us that the UK stakeholders shared the latter concern, questioned the disproportionate emphasis placed on the economic dimension of investing in health, and highlighted the need for continuity with the current Health Programme in areas such as health information and health inequalities. Our earlier Reports⁵⁰ provide a more detailed overview of the draft Regulation and the Government’s position.

The Minister’s letter of 6 June 2012

10.3 The Parliamentary Under Secretary of State (Anne Milton) informs us that the Danish Presidency intends to seek agreement to a “partial general approach” on all aspects of the draft Regulation except the budget at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on 22 June 2012. She requests a scrutiny waiver to enable the Government to support the partial general approach on the terms set out in her letter.

50 See head note.

10.4 Whilst generally supportive of the proposed Programme, the Minister reiterates the Government's concern to strengthen the focus on public health rather than healthcare. During discussions in the Council Working Group on Public Health, the Government has sought to ensure that:

- health is regarded as important in its own right, not simply as a driver of economic growth;
- health inequalities are addressed;
- appropriate weight is given to different elements of the Programme, including relatively greater prominence to health promotion and disease prevention; and
- there is some degree of continuity between the new Health for Growth Programme and the current Health Programme.⁵¹

10.5 The Minister considers that the latest Presidency compromise text reflects the UK's concerns and contains a number of other changes which the Government broadly endorses.⁵² These include: a slight alteration to the title of the Programme (Health *and* Growth instead of Health for Growth); a reordering of the four specific Programme objectives to make public health and health promotion more prominent; and a greater emphasis on the voluntary nature of cooperation on such matters as e-Health and health technology assessments.

10.6 The Minister identifies three outstanding issues which have yet to be resolved. The first concerns the Commission's proposal to allow a higher rate of EU co-funding (up to 80% instead of 60% of eligible costs) for poorer Member States. The Minister continues:

“We, along with some other Member States, take a different view for a number of reasons, including the need to retain quality as the principal determinant of the co-financing rate and the precedent that this would set. Co-financing helps ensure ownership of programmes and provides incentives to deliver effective programmes with sound financial management. Co-financing also makes it more likely that Member States will interrogate the value for money of the uses to which their receipts are put. This important principle needs to be maintained and current co-financing arrangements should not be eroded. This issue could not be resolved at the last Working Group meeting on 29 May and will now go to Coreper.”

10.7 The second issue concerns the need to maintain some degree of continuity with the current Health Programme. The Government would like the final year of the current Programme (2013) to serve as a transition year to help bridge the gap between it and the new Health and Growth Programme for 2014–20.

10.8 Finally, the Minister notes that the Justice Programme for 2014–20 included references to action to combat drug misuse. However, Member States have agreed that activities related to drug demand reduction should be included within the Health and

51 See also the letter of 1 March 2012 from the Minister of State (Mr Simon Burns) to the Chairman of the European Scrutiny Committee.

52 The Minister provides a copy of the Presidency compromise text. As it is marked *limité*, its contents cannot be made publicly available but may be used to inform our consideration of the latest developments within the Council.

Growth Programme. Funding would therefore be available for action to support the exchange of good practice in order to reduce drug-related health damage.

Conclusion

10.9 We thank the Minister for her assessment of the changes made to the Commission’s original proposal and for sending us the latest Presidency compromise text. We agree that the changes better reflect the division of competences between the EU and Member States, with EU action complementing and supporting national policies and focussing primarily on public health, disease prevention and cross-border health threats. We note that the Government is content with the overall framework for the new Programme and we accept that the proposed partial general approach, which covers the objectives of the Programme and the methodology for implementing it, should not prejudice discussions on the size of the Programme budget. We are therefore willing, in accordance with paragraph (3)(b) of the Scrutiny Reserve Resolution, to waive scrutiny so that the Government may agree to a partial general approach on the terms outlined in the Minister’s letter at the EPSCO Council on 22 June. We remind the Minister that, notwithstanding our scrutiny waiver, the draft Regulation remains under scrutiny, and we ask her to report back to us on the outcome of the Council.

11 Transparent pricing of medicines

(33736) 7315/12 + ADDs 1–3 COM(12) 84	Draft Directive of the European Parliament and of the Council relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of public health insurance systems
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<i>Legal base</i>	Article 114 TFEU; co-decision; QMV
<i>Department</i>	Health
<i>Basis of consideration</i>	Minister’s letter of 1 May 2012
<i>Previous Committee Report</i>	HC 428–lvii (2010–12), chapter 3 (18 April 2012)
<i>Discussion in Council</i>	No date set
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background and previous scrutiny

11.1 All Member States are under pressure to contain health expenditure and have adopted a variety of mechanisms to regulate the pricing of medicines and to determine whether they qualify for public funding (“reimbursement”) through inclusion in their public health insurance systems. These cost-containment measures not only affect domestic

consumption, they can also create barriers to trade by limiting the market for pharmaceutical products.

11.2 The draft Directive seeks to establish effective procedural safeguards which ensure that national cost-containment measures are taken openly and transparently and strengthen the internal market by exposing any unwarranted obstacles to trade in medicinal products. It retains many of the core principles agreed in 1989 and contained in the so-called Transparency Directive, but introduces some new elements. These are described in our Sixty-third Report of 18 April 2012.

11.3 The Government accepted that some changes were needed to update the Transparency Directive but considered that they should be fairly minimal. It suggested that the reduced time limits for reaching decisions on pricing and reimbursement might be insufficient in complex cases and require an increase in administrative resources. Moreover, the Government indicated that the current pricing mechanism for branded medicines (the Pharmaceutical Price Regulation Scheme — PPRS) would be replaced from January 2014 by new pricing arrangements, including Value Based Pricing, and that it was as yet unclear how these new arrangements would mesh with the draft Directive.

11.4 The Government noted that Article 8 of the draft Directive would require Member States to introduce a specific remedies procedure and designate a body to administer it. Its purpose would be to sanction non-compliance with the new, shorter time limits for reimbursement decisions in Article 7 which determine whether a medicinal product will be funded by a public health insurance system. The Government considered Article 8 to be unduly prescriptive and intrusive and, potentially, contrary to the principle of subsidiarity.

11.5 We shared the Government's assessment of Article 8 and identified three concerns: the cost implications of creating or designating a body to administer the new remedies procedure; the nature of the proposed enforcement body (administrative or judicial); and the difficulty of prescribing a system of remedies at EU level which, on the one hand, ensured legal certainty and, on the other, adequately balanced and protected the diversity of interests which Member States may need to take into account when determining whether a medicinal product should be covered by their national health systems.

11.6 In particular, we noted that Article 8 appeared to give Member States the choice of creating an administrative or a judicial body, but then seemed to define its composition in such a way as to suggest that only a judicial body would suffice. We asked the Government to clarify the type of enforcement body envisaged under Article 8 and to indicate whether a similar formulation had been used in other EU legislation to determine the composition and status of a national body responsible for enforcing EU law.

11.7 We noted that one of the reasons given by the Commission for proposing a new Directive was to take account of the increasing complexity of national measures to control pharmaceutical expenditure and the difficulty of reconciling those measures with the rules on procedural transparency set out in the 1989 Directive. We asked the Government to explain how the cost-containment measures which the Government intends to introduce in 2014 would fit into the new scheme proposed by the Commission in the draft Directive.

11.8 Finally, we noted that the Commission's Impact Assessment described the use of Patient Access Schemes (PAS) within the UK as a means of improving access to innovative treatments which would not otherwise meet the cost-effectiveness standard needed to qualify for NHS funding.⁵³ We asked the Government to clarify the scope of the exclusions set out in Article 1 of the draft Directive and the extent to which they would be likely to affect practices within the UK, such as Patient Access Schemes.

The Minister's letter of 1 May 2012

11.9 The Parliamentary Under Secretary of State for Quality (Lord Howe) first addresses the compatibility of the draft Directive with the UK's pricing system for branded medicines.

"The Pharmaceutical Price Regulation Scheme is the main mechanism for controlling the price of branded medicines supplied to the NHS (the prices of generic medicines are set by the market). From January 2014, the Government's intention is to introduce a new system of pricing for innovative medicines which will give patients better access to effective and innovative medicines. The purpose of value-based pricing is to improve NHS patients' access to effective and innovative medicines.

"As you know, we will be seeking significant clarification from the European Commission on the scope of the proposed transparency measures in order to consider how they might affect the UK. I am aware that discussions on the detail of the proposed measures will take place in the Council Working Group on Pharmaceutical and Medical Devices starting with the provisions around pricing of medicinal products (Articles 3, 4, 5, 6).

"As the Committee may be aware, in the UK, pricing decisions are taken at market launch and the average time taken for pricing decisions for branded medicines is 18 days. There is no separate reimbursement mechanism and the great majority of new prescription medicines are granted automatic full reimbursement upon market authorisation from the EMA/MHRA⁵⁴ and pricing approval (for brands) from the Department of Health."

11.10 Turning to the possible impact of the draft Directive on Patient Access Schemes (PAS) in the UK, the Minister says that PAS arrangements are "separate from the arrangements for pricing and reimbursement decisions at launch, as set out in the 2009 Pharmaceutical Price Regulation Scheme." He continues:

"The PAS provisions are an option for pharmaceutical companies to consider, PAS proposals are instigated by companies and there is never any compulsion upon companies to propose a PAS for one of their products. In light of this, whilst we

53 See ADD 3, Annex 7, pp. 52–3. The Impact Assessment notes that the initiative for Patient Access Schemes rests with the manufacturer of a medicinal product which has been authorised for use but which may not meet the cost-effectiveness criterion set by NICE to qualify for NHS funding. Under PAS, the manufacturer offers incentives (such as an initial free treatment cycle) to encourage the take-up of its product.

54 The EMA is the European Medicines Agency, the body responsible for authorising the marketing and use of medicinal products across the EU. The MHRA is the Medicines and Healthcare products Regulatory Agency, a national body responsible for licensing the use of medicines in the UK.

ew is that PAS do not fall within the scope of the Directive as they do not form part of the pricing and reimbursement decision-making process.”

11.11 The Minister concludes:

“We are continuing to work closely with colleagues across Government and stakeholders, including representatives of the pharmaceutical industry to consider how the provisions as drafted might impact on the UK. Until more progress has been made at EU level, I do not believe it is possible to reach definitive conclusions on all the possible policy and operational implications for the UK. I will of course keep the Committees updated as the detail of the Commission’s proposals becomes clearer.”

Conclusion

11.12 **We thank the Minister for his reply. We note that there is no separate reimbursement mechanism in the UK for determining whether newly-authorised prescription drugs qualify for NHS funding and that “the great majority” are granted “automatic full reimbursement” once the price for branded medicines has been approved. This suggests that Article 7 of the draft Directive, which establishes time limits for reimbursement decisions, and the specific remedies and enforcement procedure in Article 8, may not apply to the UK (a point also made in the Government’s Explanatory Memorandum). We also note the Government’s view that Patient Access Schemes fall outside the scope of the Directive.**

11.13 **We understand that the Government will be seeking “significant clarification” from the Commission on the scope of the draft Directive and its impact on the UK, in light of changes to the UK’s pricing system which will take effect in 2014. We ask the Government to keep us informed of the progress of negotiations, particularly with regard to Articles 7 and 8, and the meaning and scope of the exclusions in Article 1 of the draft Directive. We remind the Minister that we have also asked for clarification of the type of enforcement body (administrative or judicial) which is envisaged in Article 8 and whether there is a precedent for determining in an EU instrument the composition and status of a national body responsible for enforcing EU law.**

11.14 **Meanwhile, the draft Directive remains under scrutiny.**

12 A European Cybercrime Centre

(33807) 8543/12 COM(12) 140	Commission Communication: <i>Tackling crime in our Digital Age: Establishing a European Cybercrime Centre</i>
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<i>Legal base</i>	—
<i>Document originated</i>	28 March 2012
<i>Deposited in Parliament</i>	10 April 2012
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 23 April 2012
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	7/8 June 2012
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Do not clear; further information requested

Background

12.1 The Stockholm Programme, which establishes the EU's priorities in the justice and home affairs field for the period 2010–14, called on the Council and Commission to develop a comprehensive EU internal security strategy. In March 2010, the European Council endorsed an EU Internal Security Strategy (“the ISS”), founded on a common set of principles which were designed to preserve the balance between security, on the one hand, and freedom and justice, on the other.

12.2 In its Communication, *The EU Internal Security Strategy in Action: Five steps towards a more secure Europe*, the Commission set out five strategic objectives, including one on cyber security, and proposed the establishment, within existing structures, of a cybercrime centre which would become “the focal point in Europe’s fight against cybercrime” and “through which Member States and EU institutions will be able to build operational and analytical capacity for investigations and cooperation with international partners.”⁵⁵

The Commission Communication

12.3 The Communication explains why the Commission considers that there is a need for a European Cybercrime Centre (also referred to as “EC3”), describes its core functions, location, resource implications, governance arrangements, and its role in relation to other key actors.

The need for a European Cybercrime Centre

12.4 The Communication highlights the scale of online criminal activity, which ranges from the sale of stolen credit cards and identity theft to child sexual abuse and serious cyber

⁵⁵ See (32237); HC 428–x (2010–11), chapter 4 (8 December 2010).

attacks against institutions and infrastructure, and estimates that more one million people worldwide become victims of cybercrime every day. Although the costs to society are difficult to estimate, cybercrime is generally recognised as “a high-profit, low-risk form of criminal activity” which is becoming increasingly prevalent and risks stifling confidence in secure online communication and trade at a time when there is a paramount need to foster economic growth.⁵⁶

12.5 The Commission observes that “no crime is as borderless as cybercrime” and that it is an area in which the EU can add “significant value.” Although the Council of Europe Cybercrime Convention provides an overarching framework for tackling cybercrime, and the EU has introduced specific measures to penalise the use of cybercrime tools and to combat the online sexual exploitation of children and child pornography, the Commission considers that a number of obstacles continue to impede the effective investigation and prosecution of cybercrime offences. These include “jurisdictional boundaries, insufficient intelligence-sharing capabilities, technical difficulties in tracing the origins of cybercrime perpetrators, disparate investigative and forensics capacities, scarcity of trained staff, and inconsistent cooperation with other stakeholders responsible for cyber-security.”⁵⁷ It therefore proposes the establishment of a European Cybercrime Centre which will form part of Europol and act as “the focal point” for tackling cybercrime in the EU by “pooling expertise, supporting criminal investigations and promoting EU-wide solutions, while raising awareness of cybercrime issues across the Union. As such, the Centre would contribute to the safeguarding of an open Internet and the legitimate digital economy, and to the protection of Europe’s online citizens and businesses.”⁵⁸

The core functions of the European Cybercrime Centre

12.6 The Commission proposes that the European Cybercrime Centre should focus on three major strands:

- Cybercrimes committed by organised criminal groups, particularly those generating large criminal profits;
- Cybercrimes which cause serious harm to their victims, such as online child sexual exploitation; and
- Cybercrimes (including cyber-attacks) affecting critical infrastructures and information systems in the EU.

12.7 The Centre would also be able to act in response to Member States’ requirements and to deal with emerging cybercrime threats. It would have four core functions:

- ***servicing as the European cybercrime information focal point:*** the Centre would collect information on cybercrime activities, methods and suspects from “the widest array of public, private and open sources” in order to “broaden the information picture on cybercrime in Europe over time so as to produce high-

⁵⁶ See p. 3 of the Communication.

⁵⁷ See p. 4 of the Communication.

⁵⁸ See p. 9 of the Communication.

quality strategic reports on trends and threats, to become knowledgeable on the basis of comprehensive crime figures and to improve operational intelligence from an information base which draws on a variety of sources.”⁵⁹ The Commission describes this an “information fusion function.”

- ***Pooling European cybercrime expertise to support Member States in capacity building:*** the Centre would provide training for police, prosecutors and judges to strengthen technical expertise and capacity building on cybercrime; establish a cybercrime desk to field inquiries; support and advise expert groups (such as the EU Cybercrime Task Force) and cooperate with other centres of excellence; help Member States to develop and deploy an online cybercrime reporting application; and engage with criminal justice and law enforcement practitioners in order to facilitate the exchange of best practice.
- ***Providing support to Member States’ cybercrime investigations:*** the Centre would provide operational support for cybercrime investigations (for example, by encouraging the establishment of Joint Investigation Teams for cybercrime), facilitate the exchange of operational information in live investigations, and provide high-level forensic assistance and encryption expertise for cybercrime investigations.
- ***Becoming the collective voice of European cybercrime investigators across law enforcement and the judiciary:*** over time, the Centre could act as “a rallying point” and “collective voice” for European cybercrime investigators in discussions with the ICT industry, research community and civil society organisations; serve as the “natural interface” to Interpol’s and other international police cybercrime units; coordinate input into the UN’s open-ended intergovernmental expert group on cybercrime; and collaborate with other organisations delivering public information campaigns.

Location and governance

12.8 The European Cybercrime Centre would be co-located with, and form part of, Europol. Its activities would complement Europol’s role in tackling computer crime and in supporting law enforcement authorities through the exchange and analysis of criminal intelligence. The Commission suggests that a Programme Board for the Centre should be established within the existing Europol governance structures which would be responsible for ensuring appropriate input from other interested stakeholders (such as Eurojust) and be accountable for the activities of the Centre.

Resource implications

12.9 The Commission anticipates that the creation of the Centre will result in a moderate increase in the total cybercrime caseload, but underlines the need for Member States to enhance their own capability to tackle cybercrime and says that secondments from Member States will be required. It suggests that initial steps should be taken to establish the

⁵⁹ See p. 6 of the Communication.

Centre within the EU's current financial framework (which expires at the end of 2013). A more precise assessment of the human and financial resources needed for the Centre beyond 2014 will have to take into account changes to the legal base for Europol (a proposal is expected later this year) which might affect Europol's functions and will form part of discussions on the EU's next Multiannual Financial Framework for 2014–20.

Cooperation with key actors

12.10 The Centre would serve as “a single European point of contact” for cybercrime and work with Member States, other European agencies and actors, international partners, the private sector, research communities and civil society organisations to ensure a coordinated response.

The Government's view

12.11 The Parliamentary Under Secretary for Crime and Security (James Brokenshire) says that the Commission's proposals are broadly in line with UK policy on tackling cybercrime, adding:

“Combating cyber crime through international cooperation on enforcement, investigation and prosecution is a priority for law enforcement and criminal justice agencies.”⁶⁰

12.12 The Government agrees that cybercrime presents a significant threat to a free and open internet and supports the proposed establishment of a European Cybercrime Centre within Europol. The Minister continues:

“The Government supports the broad approach taken to addressing cybercrime, but would welcome greater detail on exactly which crimes will be considered. This is particularly important in terms of financial and human resource planning; avoiding duplication with existing activity at Europol and elsewhere; and, in respect of reporting on offences, which the Government believes should be achieved by using existing Member State statistics.

“The Communication also states that the Commission would like to make it a requirement that all serious cybercrime offences should be reported to national law enforcement agencies. We believe that mandatory reporting of such crimes is not appropriate, and we will oppose any such proposal.”⁶¹

12.13 Turning to the first of the four “core functions” proposed for the Centre (acting as a focal point for cybercrime information), the Minister states:

“The Government broadly supports the principle of sharing information with Europol, as set out in the Directive on attacks on information systems. We also support the proposal to gather information from a wide range of sources. This should however be done on a voluntary basis at a Member State's own initiative. The

60 See paragraph 14 of the Minister's Explanatory Memorandum.

61 See paragraphs 21–2 of the Minister's Explanatory Memorandum.

Government would not support any proposals to develop a new cross-EU technical solution for gathering cybercrime statistics. The detail of any proposals on information exchange, including with private sector and other sources, will need to be considered as part of wider proposals for any future Europol Regulation, anticipated to be published in November 2012.”⁶²

12.14 The Government strongly endorses the second core function, which concerns the pooling of European cybercrime expertise, but considers that support for Member States’ cybercrime investigations (the third core function) should be in line with Europol’s existing mandate. In particular:

“The Government does not believe that Europol should have coercive powers, or have any powers to order a Member State to take action on information it provides.”⁶³

12.15 The Government also supports the fourth core function, with the Centre acting as a mechanism to bring investigators together and providing an interface for contacts with other interested stakeholders. However, the Minister adds:

“Neither Europol nor the Centre, as part of Europol, should have a policy role in representing Member States’ interests.”⁶⁴

12.16 The Government recognises that the Centre should have a role in developing cooperation with other key actors in order to support wider international work to tackle cybercrime, but underlines the need to avoid any duplication of effort.

12.17 The Government supports co-location of the Centre with Europol, but “will be seeking greater clarity on the formal structure in relation to Europol, as we believe that the Centre should be a fully integrated part of Europol, and not simply co-located.”⁶⁵ Similarly, the Government believes that the Centre should be “integrated into the existing governance framework at Europol, under which the Europol Management Board has oversight of [the] Agency’s work programme, its budget and staffing.”⁶⁶

12.18 The Government expresses concern at the lack of clarity on costs and staffing. The Minister continues:

“The Government has maintained that the Centre should be funded from within Europol’s existing budget and we need to understand how that will be done, to ensure Europol properly prioritises its spend to support operational activity. There is no allocation for the EC3 in the 2013 budget, initial set up will use existing resources from Europol. Before we agree to this proposal we will seek greater clarity on any costs and other resource implications from the Commission. We understand that Europol is keen to receive additional funding from the Commission, potentially from

62 See paragraph 25 of the Minister’s Explanatory Memorandum.

63 See paragraph 29 of the Minister’s Explanatory Memorandum.

64 See paragraph 31 of the Minister’s Explanatory Memorandum.

65 See paragraph 33 of the Minister’s Explanatory Memorandum.

66 See paragraph 38 of the Minister’s Explanatory Memorandum.

the proposed Internal Security Fund 2014–2020, bearing in mind the Centre is an objective within the ISS.”⁶⁷

12.19 The Minister notes the linkage between the creation of the Centre and forthcoming proposals (expected in November 2012) for a new Europol Regulation. He continues:

“We understand Europol is keen to access additional EU funding to establish the centre; and unofficial communications point to the centre recruiting up to 100 staff by 2014 to enable full functionality. We need to ensure that Europol prioritises spend around operational engagement, making efficiencies in administrative costs where possible. The Commission has not produced an impact assessment; this is something we have challenged given we need to understand the financial consequences of what is proposed.”⁶⁸

12.20 The Minister notes that the creation of the European Cybercrime Centre is not subject to the UK’s Title V opt-in, as it will form part of Europol, and the UK participated in, and is bound by, the Council Decision governing the work of Europol.

Conclusion

12.21 We note that the Government supports, in principle, the creation of a European Cybercrime Centre located with, and forming part of, Europol but identifies a number of issues on which it intends to seek further information or clarification before endorsing the Communication. We agree that the uncertainty as to the resource implications of the Centre, and the scope of its activities, needs to be resolved before the Commission embarks on further planning for the Centre. We understand that the Justice and Home Affairs Council on 7/8 June may agree Conclusions on the Communication. We ask the Minister to provide us with a copy of the Conclusions and to explain how the concerns highlighted in his Explanatory Memorandum have been, or will be, addressed. Meanwhile, the Communication remains under scrutiny.

67 See paragraph 36 of the Minister’s Explanatory Memorandum.

68 See paragraph 45 of the Minister’s Explanatory Memorandum.

13 The Schengen Information System

(33871) 9485/12 COM(12) 81	Draft Council Regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast)
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<i>Legal base</i>	Article 74 TFEU; QMV; consultation of EP
<i>Document originated</i>	30 April 2012
<i>Deposited in Parliament</i>	10 May 2012
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 17 May 2012
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	7 June 2012
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

13.1 The Schengen Information System (SIS) is a centralised EU database with national interfaces in each participating country. Its purpose is to help maintain public security while also facilitating the free movement of people within the Schengen free movement area. It contains “alerts” which are issued by participating countries in relation to lost or stolen vehicles, documents or firearms, as well as individuals (for example, to identify those for whom there is an arrest warrant or third country nationals who have previously been refused entry).

13.2 Twenty-two EU Member States, plus Iceland and Norway (Schengen associate countries), are connected to the current version of the system (SIS 1+). The Commission has been developing a successor — SIS II — which will enable more Member States to connect to it, increase the volume of data that it can hold, and expand the categories of data that may be included (for example, fingerprints and photographs). The UK is not connected to the current system, but will be connected to SIS II. However, its participation in SIS II will be limited to those elements of the Schengen *acquis* in which the UK takes part and which mainly concern police and judicial cooperation in criminal matters.

13.3 The development of SIS II has been beset by delays, not least because of substantial changes to the specification for the new System. So, for example, original planning was based on the assumption that the number of alerts contained in SIS II would increase from 15 to 22 million over time. This estimate has been revised, with Member States agreeing that the capacity of SIS II when it goes “live” in 2013 should be 70 million, and that it should be possible to expand capacity to 100 million alerts without the need for further technical changes.

The draft Regulation

13.4 Before SIS II can become operational, countries participating in SIS 1+ have to move (“migrate”) data to the new System. A legal framework governing the migration of data from SIS 1+ to SIS II was agreed by the Council in 2008 and is contained in two separate instruments, each containing the same substantive provisions. Two instruments were needed because, before the Lisbon Treaty entered into force on 1 December 2009, different decision-making procedures applied to different elements of the Schengen *acquis*. Those parts of the *acquis* concerned with visas and border controls were subject to the “Community method” of decision-making and covered by a Council Regulation. Those parts concerning police and judicial cooperation in criminal matters were subject to intergovernmental decision-making procedures and covered by a Council Decision. The UK (and Ireland) participated in the Council Decision, but not the Council Regulation.

13.5 The Commission has proposed a new “recast” Regulation which would repeal the 2008 Regulation and Decision while preserving much of their substance and incorporating a number of changes. The recast Regulation is based on Article 74 of the Treaty on the Functioning of the European Union (TFEU) which provides for the adoption of measures “to ensure administrative cooperation between the relevant departments of the Member States [...] as well as between those departments and the Commission” in all areas of justice and home affairs cooperation covered by Title V of Part Three of the TFEU.

13.6 Adoption of the recast Regulation would ensure that a single legal instrument governed the migration of data from SIS 1 to SIS II. According to the Commission:

“Under the Treaty on the Functioning of the European Union, it would not be possible to modify a former third pillar instrument. Therefore, the only one correct legal technique is to incorporate Regulation (EC) No 1104/2008 and Decision 2008/839/ JHA in a single legal act under the same legal base.”⁶⁹

13.7 The recast Regulation would introduce two main changes. First, once countries participating in SIS 1+ have loaded their data and completed their switchover to SIS II, they may make immediate use of SIS II without waiting for all other Member States to complete their switchover. Second, the recast Regulation includes provision for EU co-financing up to a maximum of €750,000 per Member State to cover expenditure related to the migration of data. The Commission observes:

“As the setting up of national systems is the primary obligation of Member States, the Union contribution remains optional and this proposal does not intend to create any obligation for the Union. [...] This proposal does not require any additional appropriations as the appropriations still available in 2011 will be used to cover the difference between the total costs in 2012 and the appropriations entered in SIS II budget line for 2012.”

13.8 Two of the recitals to the recast Regulation address the basis for UK participation in the proposal. Recital 36 provides:

⁶⁹ See p. 4 of the Commission’s explanatory memorandum accompanying the draft Regulation.

“This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom is taking part, in accordance with Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*, to the extent that that article refers to the provisions of the Schengen Convention establishing the SIS with the exception of Article 96 thereof.”⁷⁰

13.9 Recital 38 provides:

“This Regulation is without prejudice to the arrangements for the United Kingdom’s and Ireland’s participation in the Schengen *acquis* as determined by Council Decisions 2000/365/EC and 2002/192/EC respectively.”⁷¹

The Government’s view

13.10 The Parliamentary Under Secretary for Crime and Security (James Brokenshire) says that the Government supports the aim of the draft Regulation, adding that migration of data from SIS I+ is essential to ensure the timely completion of SIS II and to facilitate the UK’s planned connection. He continues:

“Participation in SIS II will deliver a number of key strategic benefits on behalf of the Home Office, police forces and the wider criminal justice sector. These include reduced crime (particularly through the ability to screen for wanted criminals via border controls), greater identity assurance at the border and improved police cooperation.

“As the UK has not put into effect SIS I+, it will not be ‘migrating’ to SIS II. However we have a keen interest in ensuring the transition from SIS I+ to SIS II is completed in a timely manner so that we can connect to SIS II in Q4 2014.”⁷²

13.11 Turning to the basis for UK participation in a Schengen-building measure, the Minister explains:

“This proposed Regulation will repeal and replace two existing instruments: a Council Decision 2008/839/JHA in which the UK was automatically bound due to it relating to Schengen policing and judicial cooperation elements and a Regulation in which the UK did not participate due to it building on Schengen border elements. That being the case, as currently drafted (recital 36), the proposal envisages partial UK participation. However, this approach of seeking to bind us on a partial basis has caused concerns in relation to other measures and we are therefore in discussions with representatives in the Institutions to establish how this might work and what alternative solutions might exist.”⁷³

70 Council Decision 2000/365/EC sets out those elements of the Schengen *acquis* in which the UK participates. It includes the SIS other than “Article 96 alerts” which concern third country nationals who have been refused entry.

71 These Council Decisions establish the extent of the UK’s and Ireland’s participation in elements of the Schengen *acquis*.

72 See paragraphs 17 and 18 of the Minister’s Explanatory Memorandum.

73 See paragraph 19 of the Minister’s Explanatory Memorandum.

13.12 The Minister notes that, under Article 5(2) of Protocol 19 on the Schengen *acquis* integrated into the framework of the European Union, the UK has a three month period in which it may determine whether it wishes to opt out of a proposal which builds on elements of the *acquis* on which the UK already participates. He says that he will inform us of the Government's decision in due course, adding:

“Factors which will influence that decision include the fact that this Regulation is part of the wider arrangements for ensuring implementation of SIS II. Non-participation in SIS II and hence non-access to SIS data would adversely impact on the public security of UK citizens.”⁷⁴

13.13 The Minister does not expect the draft Regulation to have any impact on the cost of developing, operating and maintaining the UK's own SIS II national system.

13.14 Finally, the Minister notes that the draft Regulation was discussed for the first time in May and that the Government entered a Parliamentary scrutiny reserve and a general scrutiny reserve on recital 36 pending clarification of the basis for UK participation. He continues:

“The Presidency envisages an ambitious timetable for agreement to this proposed Regulation and currently intends to seek political agreement at the JHA Council on 7 June 2012. The Government has expressed concern about this timetable.”

Conclusion

13.15 **The draft Regulation is essentially a technical measure which is intended to adjust the legal framework for the migration of data from SIS I+ to its successor, SIS II. As it is a Schengen-building measure and covers an element of the Schengen *acquis* — the Schengen information System — in which the UK is entitled to participate, albeit to a limited extent, recital 36 seeks to make provision for the UK to take part in the draft Regulation in a way that reflects its partial participation in the Schengen *acquis*.**

13.16 **The Minister notes that “this approach of seeking to bind us on a partial basis has caused concerns in relation to other measures”. In light of these concerns, we are astonished that the Presidency intends to seek a political agreement on the draft Regulation at the Justice and Home Affairs Council on 7 June. We understand that updating the framework for migration of data is a priority, if SIS II is to become operational in 2013. However, the basis on which the UK takes part in measures which cover elements of the Schengen *acquis* in which the UK does participate, as well as elements in which it does not, clearly has far wider legal and political ramifications. We therefore ask the Minister to explain:**

- **whether UK participation in this draft Regulation, which concerns the migration of data from a system (SIS I+) in which the UK does not currently participate, is essential to facilitate UK participation in SIS II; and**

74 See paragraph 20 of the Minister's Explanatory Memorandum.

- whether he anticipates that a solution similar to that used for the Regulation establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (including SIS II) might be proposed in this case.⁷⁵ This would require the adoption of a separate Council Decision under Article 4 of Protocol 19 authorising the UK to take part in the Regulation to the extent that it covers elements of the Schengen *acquis* in which the UK does not participate (visas and border controls).

13.17 We also note that the accelerated timetable proposed by the Presidency for adopting the draft Regulation would deprive the UK of its right, under Article 5(2) of Protocol 19, to a period of three months in which to determine whether it wishes to opt out of the draft Regulation. Any reduction in the three month period would set a worrying precedent for the integrity of the scrutiny process. In particular, it would put the Government in breach of the “Ashton undertakings” which expressly envisage that the Scrutiny Committees should have eight weeks in which to express a view on a Title V opt-in or Schengen opt-out decision. It would also run counter to the spirit of Protocol 1 on the role of National Parliaments annexed to the EU Treaties.

13.18 We look forward to receiving the Minister’s response to the issues we have raised and ask him to inform us of the outcome of the Justice and Home Affairs Council. Meanwhile, the draft Regulation remains under scrutiny.

14 European Globalisation Adjustment Fund

(33829) 8844/12 COM(12) 160	Draft Decision on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (EGf/2012/000 TA 2012 — Technical assistance at the initiative of the Commission)
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<i>Legal base</i>	Articles 175 and 178 TFEU; co-decision; QMV
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister’s letter of 25 May 2012
<i>Previous Committee Report</i>	HC 86–i (2012–13), chapter 8 (9 May 2012)
<i>Discussion in Council</i>	Not known
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

75 See (31456) and (32064); HC 428–ix (2010–11), chapter 18 (24 November 2010).

Background

14.1 Regulation (EC) No 1927/2006 established a European Globalisation Adjustment Fund (EGF) designed to counterbalance negative impacts of globalisation. Calls on the fund by Member States can be made where major structural changes in world trade patterns lead to serious economic disruption, notably a substantial increase of imports into the EU or a rapid decline in EU market share in a given sector or a delocalisation to third countries.

14.2 The EGF has an annual ceiling of €500 million (£406.5 million) and sits over and above the Financial Framework ceilings. The legislation allows the Commission to propose that it should be financed from the EGF for “technical assistance”, up to a limit of 0.35%, or €1,750,000 (£1,422,750) of the annual maximum amount of the EGF.

14.3 With this draft Decision the Commission proposed, in April, that it use €1,120,000 (£910,560) from the EGF as follows:

- monitoring — €20,000 (£16,260) for the Commission to collect data on applications received and paid and other monitoring activity;
- information — €200,000 (£162,600) to update the EGF website, produce the EGF annual report, and produce a video of several EGF cases being implemented;
- creation of a knowledge base — €180,000 (£149,400), including €60,000 (£48,780) to standardise procedures and processes for EGF applications, €60,000 (£48,780) to create a database containing EGF case information and €60,000 (£48,780) for the Commission to gather data on the timelines of redundancies in Member States;
- administrative and technical support — €320,000 (£260,160), including €70,000 (£56,910) to hold two meetings of the Expert Group of Contact Persons of the EGF (with one representative from each Member State) and €250,000 (£203,250) for two EGF networking seminars, to share best practice of EGF implementation among Member States; and
- evaluation — €400,000 (£325,200) to cover the first year costs of the final evaluation of the EGF.

14.4 When we considered this proposal last month we heard that the Government believed that much of the proposed expenditure outlined in the document represented poor value for money and duplicated funds provided last year and that it would seek, therefore, to bear down on these costs during negotiation of this proposal in the Council, thereby reducing the total appropriations requested by the Commission for these activities. We commented that we shared the Government’s concern about the apparent unacceptability of the level and purpose of this proposed funding. So before considering the draft Decision further we asked to hear about the outcome of the Government’s efforts to bear down on the costs proposed. Meanwhile the document remained under scrutiny.⁷⁶

76 See headnote.

The Minister's letter

14.5 The Financial Secretary to the Treasury (Mr Mark Hoban) tells us now that:

- the proposal was discussed in the Council's Budget Committee on 23 April and again on 2 May;
- following widespread and sustained dissatisfaction with the level and purpose of funding, the Government led opposition to the proposal, working with other Member States to form a blocking minority against it;
- the Danish Presidency then amended the proposal by deducting €390,000 (£317,070), principally by freezing funding for data collection on EGF cases and by limiting networking activities to one seminar only while protecting funding to evaluate the effectiveness of the EGF;
- this amendment was discussed again in the Budget Committee on 10 May;
- although higher savings were feasible, the Government and most other Member States felt that this represented good progress — the proposal was agreed and the Government abstained on scrutiny grounds;
- this outcome is unusual, as most proposals for the EGF are agreed without amendment, and reflects the strong position and lobbying of the Government; and
- the Presidency will now take this for discussion with the European Parliament — if agreed, it will then go to COREPER and to the Council for approval, in the case of disagreement, trilogue negotiations towards a compromise will occur.

Conclusion

14.6 We are grateful to the Minister for his account of the progress made on this issue. However before considering the draft Decision finally we should like to hear about the outcome of the discussion with the European Parliament. Meanwhile the document remains under scrutiny.

15 EU Programme for Social Change and Innovation

(33229) 15451/11 + ADDs 1-3 COM(11) 609	Draft Regulation of the European Parliament and of the Council on the European Union Programme for Social Change and Innovation
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<i>Legal base</i>	Articles 46(d), 149, 153(2)(a) and 175 TFEU; co-decision; QMV
<i>Department</i>	Work and Pensions
<i>Basis of consideration</i>	Minister's letter of 30 May 2012
<i>Previous Committee Reports</i>	HC 428–liv (2010–12), chapter 4 (14 March 2012); HC 428–xlv (2010–12), chapter 6 (20 December 2011); HC 428–xli (2010–12), chapter 8 (9 November 2011)
<i>Discussion in Council</i>	21 June 2012
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared, but waiver granted under paragraph (3)(b) of the Scrutiny Reserve Resolution

Background and previous scrutiny

15.1 The draft Regulation would establish the Programme for Social Change and Innovation (“PSCI”), a new EU funding instrument bringing together within a single framework three existing EU programmes which support the implementation of EU employment and social policies and legislation. The Programme for Employment and Social Solidarity (PROGRESS) seeks to strengthen the evidence base for policy and promote mutual learning and the exchange of best practice. The EURES Programme provides information and advice to job seekers and workers on employment opportunities across the EU. The European Microfinance Facility encourages the provision of loans to those who would otherwise struggle to obtain credit to set up their own businesses.

15.2 The PSCI would incorporate each of these programmes as a separate but complementary “axis” or strand and establish a set of common objectives, as well as specific objectives for each axis, which are intended to support the implementation of the Europe 2020 Strategy (especially its headline targets on employment and social inclusion). Although the PSCI would carry forward many elements of the three existing programmes, it would place greater emphasis on funding for innovative projects in areas of mutual interest with a view to testing possible solutions, disseminating the results and increasing the efficiency of social expenditure. The Commission has proposed a budget of €958 million for the period 2014–20, with 60% of funding allocated to the PROGRESS axis, 20% to the Microfinance axis, 15% to the EURES axis and 5% to be held as reserve to be allocated annually in accordance with policy priorities. Our Forty-sixth and Fiftieth Reports provide a more detailed overview of the PSCI and the Government's position.

15.3 The Minister for Employment (Chris Grayling) told us that the existing programmes had, in the main, proved to be effective and demonstrated their added value. He expressed broad support for the PSCI and welcomed the stronger focus on social innovation but highlighted the “inflated budget total” proposed by the Commission as a key concern. The Government considered that the PSCI, and the budget heading of which it forms part (growth and competitiveness), should be increased by no more than inflation compared to current payment levels and that the resulting reductions should be distributed proportionally across all strands of the PSCI.

15.4 Our Fifty-ninth Report of 14 March 2012 set out the progress made by the UK on its negotiating priorities. The Minister told us that Member States had agreed to:

- the removal of a 5% contingency reserve;
- the inclusion of a specific cap on administrative spending;
- stronger Member State involvement in the management of PSCI via expert policy committees;
- the inclusion of the principle of co-financing, with EU support for the PROGRESS axis capped at 80% and for the EURES axis at 95% of total expenditure; and
- greater flexibility for the EURES network of public employment services to decide which actions they will participate in under the PSCI.

15.5 The Minister indicated that the Presidency intended to seek agreement to a “partial general approach” on the draft Regulation at the Employment and Social Policy Council on 21 June which would cover all elements except the budget. We requested a further progress report before the Council, setting out any further developments in the negotiations and confirming that the UK’s priorities were adequately reflected in the proposed partial general approach.

The Minister’s letter of 30 May 2012

15.6 The Minister confirms the Presidency’s intention to seek agreement to a partial general approach on the non-budgetary elements of the draft Regulation at the Employment and Social Policy Council on 21 June, adding:

“I regret that we do not yet have a revised formal text to submit to you but, as time is short after recess and we wish to lock-in the gains already made, I hope that you will agree to proceed on the basis of the latest working text which my officials have sent to yours.⁷⁷ This is of course on the understanding that we will not support the final text at Council if it does not carry forward these gains.

“Subject to securing scrutiny clearance, I am very keen to support agreement at Council. This will help a reliable ally to deliver one of the very few legislative objectives of their Presidency of the Employment and Social Policy Council. It will

⁷⁷ As the text is marked “limité”, its contents cannot be made publicly available, but may be used to inform our consideration of the latest developments within Council.

also be useful to signal strong support for the Council position, in anticipation of serious challenge from the European Parliament as co-legislator on this proposal.

“The European Parliament is currently considering the Commission’s original proposal, with their Employment Committee due to vote on proposed amendments — also on 21 June. We are already engaging with key MEPs, and I will report further once firm proposals are brought forward.”

15.7 Turning to the content of the partial general approach, the Minister notes that, with one exception, all of the Government’s negotiating objectives have been achieved. He continues:

“The significant outstanding issue is the overall programme budget figure, which will only be taken forward once the separate negotiations on the next Financial Perspective are settled.

[...]

“That will leave the budget figure (Article 5(3)) and linked areas of audit (Article 12), treatment of future revenues and repayments (Articles 11(3) and 25(3)), and repayments under the current Microfinance Facility (Article 28). These will be settled in subsequent negotiations, and I will write again as these get underway.”

15.8 The Minister describes the improvements to the draft Regulation which have been secured during negotiations:

“In summary, we have: removed the proposed contingency fund; capped administrative spending; improved the level of Member State input to management and strategic direction of the programme; retained co-financing requirements; and secured greater flexibility in the support for public employment services (EURES).”

15.9 In addition, the Minister notes that “we and fellow budget disciplinarians have now secured a cap on administrative spending of 2% (Article 5(3)), which carries forward the current PROGRESS limit.”

Conclusion

15.10 We thank the Minister for his latest progress report and note that the changes so far agreed meet the Government’s negotiating objectives. We accept that, in this case, the content of the Programme can be considered separately from the overall budget provision proposed by the Commission for 2014–20, not least because the Government anticipates that the significant budgetary reduction which it is seeking should be apportioned across the Programme as a whole. We wish to retain the draft Regulation under scrutiny until a satisfactory outcome has been reached on the Programme budget. We are, however, willing to waive scrutiny, in accordance with paragraph (3)(b) of the Scrutiny Reserve Resolution, so that the Government may agree to a partial general approach on the terms outlined in the Minister’s letter at the Employment and Social Council on 21 June.

16 Reform of the CAP: Direct payments to farmers in 2013

(33260) 15398/11 COM(11) 630	Draft Regulation amending Council Regulation (EC) No 73/2009 as regards the application of direct payments to farmers in respect of the year 2013
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<i>Legal base</i>	Article 43(2) TFEU; co-decision; QMV
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	Minister's letter of 30 May 2012
<i>Previous Committee Report</i>	HC 428–xlii (2010–12), chapter 20 (23 November 2011)
<i>Discussion in Council</i>	See para 16.5 below
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared (decision reported on 23 November 2011)

Background

16.1 In light of its proposal for the Multi-annual Financial Framework for 2014–2020, in which the Commission established the budgetary framework and main orientations for the CAP, it has put forward in October 2011 a number of draft Regulations which contain detailed proposals dealing with specific aspects of the CAP. These included a proposal to amend the system of direct payments to farmers established under Council Regulation (EC) No. 73/2009, but, as the reform proposals are not due to take effect until 2014, that Regulation will continue to apply in 2013. However, there are some financial provisions within it which only run until the end of 2012, and this proposal has therefore been produced to deal with these during 2013.

16.2 More specifically, the proposal would:

- set the level of reductions to be applied to farmers' direct payments in 2013, equivalent to the existing compulsory modulation⁷⁸ applicable in 2012, though these would be set at a lower level — in most cases 0% — in the new Member States than in the old Member States.
- set net ceilings for the total amount of direct payments each Member State can grant in 2013, which would largely carry forward the 2012 ceilings, whereas the UK ceiling has been increased to reflect the fact that the legal basis for voluntary modulation⁷⁹ expires in 2012;
- amend the existing provision — which requires reductions to be made to farmers' direct payments when the budget for Pillar 1 of the CAP, less a margin of €300

⁷⁸ The scaling back of farmers' direct payments to help fund CAP rural development programmes applicable.

⁷⁹ The further scaling back of farmers' direct payments, in addition to compulsory modulation, to provide additional resources for rural development programmes — an option only used by the UK.

million, is forecast to be exceeded — by removing the €300 million margin (in other words, increasing by that amount the threshold which triggers those reductions).

16.3 As we noted in our Report of 23 November 2011, the Government was concerned that the proposal does not allow for the continuation of the present system of voluntary modulation in 2013, since this has been important in enabling the UK to fund its CAP rural development programmes and meet its commitment to agri-environment schemes (accounting in 2012 for over 40% of all rural development funding in the UK). It was also concerned that the 2013 adjustments to farmers' direct payments are, for the most part, set at 0% for the new Member States, pointing out that, whilst this could be justified in previous years when direct payments were still being phased-in in those Member States, that process will have concluded in 2013: and it noted that the removal of the €300 million margin for applying financial discipline would give the Commission greater discretion, and could result in the budget for Pillar 1 of the CAP being controlled less rigorously.

16.4 We commented that, insofar as the proposal would prevent the continuation of voluntary modulation in 2013, it would have an impact in the UK (as the only Member State in which this arrangement currently applies). However, as the proposal was but one relatively small element in the wider package of measures on the table for reforming the CAP, and the Government expected the level of funding for rural development programmes to be considered within the wider context of the budget for 2014–2020, we took the view that the issues it raises could be raised in the context of the debate we had recommended on the reform package as a whole. We therefore cleared the document.

Minister's letter of 30 May 2012

16.5 We have now received from the Minister of State for Agriculture and Food at the Department for Environment, Food & Rural Affairs (Mr James Paice) a letter of 30 May 2012, reporting that good progress has been made in the negotiations, and that a first reading deal is expected to be reached, possibly in July. He says that the Presidency has produced a compromise text, which now forms the basis of negotiations between the Council, European Parliament and Commission, and which, in the case of voluntary modulation, would allow those Member States applying it — in practice, only the UK — to continue to do so. However, the other two points of concern — on the adjustment to direct payments in the new Member States, and the €300 million margin — remain, and, whilst the UK would still prefer these to be withdrawn, the Minister's assessment is that the proposal will only be agreed if they are included in the package (which he notes is in any case a time-limited transitional measure). He also says that there is a qualified majority support from Member States for the Presidency's approach as a whole, and that, since there do not appear to be any major stumbling blocks from the European Parliament, negotiations on the draft Regulation could be concluded rapidly.

Conclusion

16.6 We are grateful to the Minister for this further information, from which we note that the point of principal concern to the UK over the treatment of voluntary

modulation appears to have been resolved to the Government's satisfaction. Whilst we think it right to report this development to the House, it does not affect our earlier clearance of this proposal.

17 European Security and Defence Policy and South Sudan

(33893)	Council Decision on the European Union Aviation Security Mission in South Sudan (EUAVSEC-South Sudan)
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<i>Legal base</i>	Articles 28,42(4) and 43(2) TFEU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 23 May 2012
<i>Previous Committee Report</i>	None; but see (33885) 9947/12: HC 86–iii (2012–13), chapter 12 (23 May 2012)
<i>Discussion in Council</i>	June 2012
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

17.1 South Sudan gained independence from Sudan on 9 July 2011. Prior to that, in Africa's longest-running civil war, at least 1.5 million people are thought to have lost their lives and more than four million were displaced in 22 years of guerrilla warfare. Large numbers of South Sudanese fled the fighting, either to the north or to neighbouring countries, where many remain.

17.2 The conflict was finally ended with the 2005 Comprehensive Peace Agreement, under which the south was granted regional autonomy along with guaranteed representation in a national power-sharing government.

17.3 The agreement also provided for a referendum in the south on independence in 2011, in which 99% of southern Sudanese voted to separate from Sudan.

17.4 The new nation stands to benefit from inheriting the bulk of Sudan's oil wealth, but continuing disputes with Khartoum and a lack of economic development cloud its immediate future.

17.5 Formed from the ten southern-most states of Sudan, South Sudan is a land of expansive grassland, swamps and tropical rain forest straddling both banks of the White Nile. It is highly diverse ethnically and linguistically. Unlike the predominantly Muslim

population of Sudan, the South Sudanese follow traditional religions, while a minority are Christians.⁸⁰

17.6 The Foreign Affairs Council conclusions on 1 December 2011 noted ongoing work for a CSDP mission in South Sudan.⁸¹

The Minister's letter of 11 January 2012

17.7 The Minister of Europe's (Mr David Lidington) letter focussed on the proposed CSDP Regional Maritime Capacity Building (RMCB) mission to the Horn of Africa, which was being considered as part of the EU's continuing response to piracy off the Horn of Africa.

17.8 He also noted that a Crisis Management Concept had been agreed for a possible mission to improve security at Juba International Airport in South Sudan: an EU Technical Assessment Mission to the region would begin later that month; its report would provide further details of the scale and practicalities of the mission.

The Minister's letter of 20 March 2012

17.9 The Minister's letter provided a round-up of live issues prior to the Easter recess. *Inter alia*, he noted that assessments had confirmed a strong need for a CSDP mission designed to strengthen the capability of the South Sudanese authorities to provide security at Juba International Airport, due to its security vulnerabilities and its strategic role as the main gateway to this new nation. He said that he was examining reports to ensure that a mission would achieve sustainable outcomes and provide value for money.

17.10 At our meeting on 23 May we considered a Council Decision that will enable South Sudan formally to accede to the Cotonou Agreement.⁸² In his Explanatory Memorandum of 21 May 2012, the Parliamentary Under-Secretary at the Department for International Development (Mr Stephen O'Brien) noted that, though South Sudan had already been allocated €285 million (£232 million) of "de-committed" funds from the 9th and previous rounds of the European Development Fund, and there was accordingly no immediate requirement for further funds, as an independent State South Sudan needed to accede formally to the Cotonou Agreement to be eligible for any further funds from current and future EDFs.

17.11 He also noted how bad the political situation was, highlighting disputes unresolved at the time of southern independence, including on the line of the border, citizenship and management of oil transit and revenues, having led to direct conflict between the two States in recent months. He pointed to UN Security Council Resolution 2046 of 2 May, building on a Road Map set out by the African Union, which he described as an ambitious three-month deadline for the two countries to stop fighting, implement joint security arrangements at the border, and resolve their remaining differences, including over oil.

80 See <http://www.bbc.co.uk/news/world-africa-14069082>.

81 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/126504.pdf

82 The Cotonou Agreement, signed in 2000, provides the latest framework for a 20-year partnership for development aid to the 77 African, Caribbean and Pacific countries, funded mainly by the European Development Fund (EDF).

The UK and EU were, he said, fully supporting the African Union's mediation efforts to ensure implementation of this roadmap.

17.12 The Minister also highlighted South Sudan's decision in February 2012 to switch off oil production, thereby depriving it of 98% of government revenue; a decision that had, he said, made it a more problematic partner for development. In common with other donors, DFID had, he said, responded by readjusting the focus of its bilateral programme so that it placed greater emphasis on interventions that directly affected the lives of poor people and less on the longer-term institution and capacity-building that South Sudan badly needed, but which was impossible where the government could no longer afford to take on the relevant responsibilities. Both the UK and the EU had made it clear that development assistance would not be used to substitute for revenue that the South Sudanese government had chosen to forego through its decision on oil production. However, bringing South Sudan under Cotonou would bring an important political dimension to the European Union's existing development and other assistance in South Sudan, provide the EU with a strong framework for political dialogue on these and other issues, and allow the EU to hold out the prospect of future funding under EDF11 (2014–2010) as an incentive for making peace with Sudan and progress on internal good governance.

Our assessment

17.13 Bad as the political situation is, we agreed that accession was nonetheless necessary — not only to continue to support a country in dire need but also to give the EU a degree of leverage on good governance, democracy, human rights and the rule of law when, it is to be hoped, the situation had been sufficiently stabilised for the focus to shift from the purely humanitarian onto longer-term institution and capacity-building.

17.14 We also cleared the document.⁸³

The Council Decision

17.15 This draft Council decision will establish an EU civilian Common Security and Defence (CSDP) Mission for South Sudan. The mission will be time-limited to 19 months and consist of up to 64 people (at full operational capability), in the following categories:

Head of Mission	1
Seconded staff (part-funded by member states)	24
International staff	18
Locally-recruited staff	21
TOTAL	64

17.16 The aim of the mission is to contribute to strengthening aviation security, border control and law enforcement at Juba International Airport (JIA) under local ownership, in order to raise it to internationally accepted standards based on International Civil Aviation Organisation (ICAO) principles and best practice.

⁸³ See headnote: (33885) 9947/12: HC 86–iii (2012–13), chapter 12 (23 May 2012).

17.17 The mission will have four key tasks:

- assisting and advising the Government of South Sudan (GoSS) and other relevant South Sudanese services with the establishment of the aviation security organisation at the Ministry of Transport and at JIA.
- helping the GoSS and other relevant services to develop, adopt and implement aviation security programmes and plans by the civil aviation authority and at JIA.
- improving the effective performance of officials involved in aviation security operations, according to ICAO best practice through training and mentoring, monitoring and advising.
- supporting the promotion of security awareness amongst the commercial and private operators at JIA.

17.18 In his Explanatory Memorandum of 23 May 2012, the Minister of Europe (Mr David Lidington) points out that EUAVSECT South Sudan — whose headquarters will be located within the UN compound in Juba — will be amongst the smallest CSDP missions, although Juba is a relatively expensive place to operate due to the security environment.

The Government's view

17.19 The Minister continues his comments as follows:

“Now that South Sudan is independent, there is a clear and pressing need for JIA to be upgraded. It was designed as a small, regional airport, and has grown fast, from an air strip degraded by two decades of conflict and under-development, to an international airport handling up to 7,000 passengers each week. Infrastructure and staffing have not grown at the same pace. A better airport is crucial for the free passage of people and goods from both a humanitarian and trade perspective.

“It is also in the UK national interest to see security improved as a priority. JIA lacks facilities, trained staff and procedures both to ensure the security of passengers and cargo and to implement proper immigration controls. With regional insecurity, particularly emanating from Somalia, it risks being seen as a target for terrorist attacks using or involving aircraft. British nationals frequently use JIA.

“All of these arguments have, if anything, grown stronger since planning for the Mission began: South Sudan's oil dispute with Sudan leaves it in dire need of alternative sources of trade and investment and a serious humanitarian crisis is looming which could see an increase of NGOs and food aid entering the country.

“In this context, the European External Action Service's (EAS) Crisis Management and Planning Directorate carried out a mission to South Sudan in July last year which led to a concept note providing advice, training and monitoring and coordinating aviation security activities.”

17.20 With regard to buy-in from the host Government, the Minister says:

“the TAM held senior-level meetings with five Ministries which confirmed that the initiative was in line with their own current prioritisation. Construction work on a new terminal building at the JIA, which includes the provision of security equipment, has been allowed to continue by the Government despite the country’s economic hardship. The GoSS has asked for the EU Mission to start as soon as possible — the Government is keen to have a secure airport as a positive visiting card of their new nation.

17.21 Turning to the UK’s role, the Minister says:

“The UK engaged heavily at the planning stage for both the concept document and the subsequent TAM, which presented its findings in March. The UK funded a senior management expert to the TAM and he has played a key role in defining mission objectives and methodology. The UK’s priority was to embed better business planning from the start. Specifically this included: revised planning documents focussed on specific, limited goals; joined up action with the Commission and other donors; and a realistic exit strategy.

“In assessing UK support for this Mission, a key criterion for the UK was to identify why such work should be undertaken by the EU and how this work fits in with the work of other donors. We are satisfied that the current planning shows evidence of meeting such criteria. Specifically, the TAM involved extensive consultation with other donors. The UN Mission in South Sudan (UNMISS) welcome the proposal and have pledged important political and logistical support. There is no other donor waiting to step in. A CSDP mission complements the UK’s own bilateral work on a number of fronts, including training experts to run the International Organisation for Migration’s border control project to build capacity in South Sudan’s border control mechanisms.

“Regarding value for money, UK efforts have focused on ensuring that the mission has a well-defined mandate with clear deliverables (such as adoption and implementation of the JIA Security Programme), is time-bound and has a robust exit strategy. Ensuring sustainability is also a key consideration. The mission will train key personnel at the Ministry of Transport and JIA, assist in the development of a permanent local aviation security training facility and adopt a “train the trainer” approach. An early expectation will be the successful certification of an initial core team of aviation security trainers and inspectors according to ICAO standards. Following the end of the CSDP mission, the GoSS will be responsible for sustainability, with support from the EU.”

17.22 Turning to the oil export issue, the Minister says:

“The fiscal contraction following South Sudan’s decision to halt oil exports does point to an increased risk that the Government is unable to deliver on its commitment to this project. The UK and the EU are supporting the African Union’s roadmap for a resumption of negotiations on all outstanding issues between Sudan and South Sudan, including an agreement on sharing oil revenues, which would allow production to restart. An agreement during the lifetime of this mission would significantly improve South Sudan’s economy and its ability to continue the legacy of

this mission. This is an area that we will be asking the mission to keep under close review.”

17.23 The Minister also sees the ongoing tensions and conflict between Sudan and South Sudan as also posing a risk to this mission’s success:

“However, so far the conflict has only affected the border region between the two countries and is likely to continue do so, having no impact on JIA. If a war were to break out between the two nations, then the JIA might be seen as a high priority target for Sudan but as the CSDP mission is based in the UN compound, its personnel would become part of the established UN security plan.

“We will continue to engage with the GoSS to ensure that they take ownership and encourage the mission to do the same directly. This mission is also strongly supported by the EU Special Representative for South Sudan, former UK Ambassador Rosalind Marsden, and has spurred coordination between different parts of the EU (i.e. different parts of the Commission and EAS met Juba interlocutors as part of the TAM).”

17.24 The Minister also provides the following “Other Observations”:

“Conflict between Sudan and South Sudan continues in the border region between the two countries. Last month saw an increase in activity with South Sudan taking control of an oil field in Sudan before the International Community encouraged them to leave. We continue to receive reports of aerial bombardments in the region by Sudan on a weekly basis. However, progress has been made to decrease tensions between the two countries.

“The signing by both governments of the AU roadmap is a significant step in the right direction and the South’s intentions to work towards peace are evident in their decision to withdraw troops from the disputed area of Abyei. The Senior Management expert who worked on the TAM and planning document for this mission believes that if conflict were to continue between Sudan and South Sudan, it would remain immaterial to security conditions at the airport.”

17.25 In CSDP terms, the Minister says that the mission now has a number of elements that he would like to see replicated more broadly through the planning for all CSDP work:

“The December FAC also adopted language which recognised the need to improve benchmarking, impact assessment and the development of best practice. Separately, the Political and Security Committee has agreed guidelines on benchmarking civilian CSDP missions. We will continue to engage closely with the new missions to ensure that these are implemented.”

17.26 With regard to the *Financial Implications*, the Minister says:

“The mission will cost the CFSP budget €12.5 million with the majority of spend occurring in the first 13 months of the mission. Operational staff will reduce significantly after the first phase of the mission. 48% of the budget is allocated to personnel costs, which includes a significant cost element for trainers and experts”.

17.27 The Minister provides the following breakdown:

Budget Heading	Budget (Millions of Euros)
Personnel costs	5.946
Mission buildings	0.204
Running expenditure	3.129
Capital expenditure	2.579
Representation	0.023
Projects	0.308
Contingencies	0.311
TOTAL	12.500

17.28 The Minister also notes that, as well as contributing to the common costs that will be funded by the CFSP budget (via the UK contribution to the EU budget as a whole):

“The UK will be asked to recommend staff to be seconded to this mission. If a UK national was employed by the EEAS, we would be required to bear all costs relating to that member of staff, including travel expenses to and from the place of deployment, salaries, medical coverage and certain allowances. Before making a decision as to whether to support a UK national’s application for any available position, we would assess our priorities for this mission against other EU missions and calls for contributions. If we were to provide personnel for this mission, we would look to fund their costs from the Africa Conflict Prevention Pool.”

17.29 Finally, the Minister notes that the Council Decision is expected to be agreed by mid- June and that, if approved, the mission plans to deploy within two months — pointing out that he is keen to see the mission deploy ahead of the launch of a new airport terminal and the adoption of new civil aviation legislation.

Conclusion

17.30 **We are grateful to the Minister for having kept the Committee up-to-date. Given the highly unpropitious circumstances, this mission seems to have been as thoroughly planned as could have been expected. The Minister is to be commended for having gone to notable lengths to ensure a substantial UK contribution, especially in defining mission objectives and methodology; embedding better business planning from the start; focussing on specific, limited goals; and what he describes as “joined up action with the Commission and other donors” and “a realistic exit strategy.” Even if all goes well, the challenge will be to ensure that these proper processes are implemented in practice — especially given that, as the Minister explains, there is scope for wider application in the CSDP as a whole.**

17.31 **There are plainly risks of failure: but the need is clearly demonstrated, not only as a building block in creating the sort of stability necessary for South Sudan to participate appropriately in the Cotonou Agreement and more widely in the international economic community, but also in addressing an immediate potential danger to UK nationals.**

17.32 **We now clear the draft Council Decision.**

18 EU Special Representative for Central Asia

(33905)	Council Decision extending the mandate of the European Union
—	Special Representative for Central Asia
—	

<i>Legal base</i>	Articles 31(2) and 33 TEU; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 29 May 2012
<i>Previous Committee Report</i>	None; but see (32932) —: HC 428–xxxii (2010–12), chapter 15 (6 July 2011) and (31860)—: HC 428–i (2010–11), chapter 66 (8 September 2010)
<i>Discussion in Council</i>	25 June 2012 Foreign Affairs Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; further information requested

Background

18.1 EU Special Representatives (EUSRs) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They are established under Article 33 of the Treaty on European Union and are appointed by the Council. Their purpose is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

18.2 An EUSR is appointed by Council through the legal act of a Council Decision. The substance of his or her mandate depends on the political context of the deployment.⁸⁴ Some provide, *inter alia*, a political backing to an ESDP operation; others focus on carrying out or contribute to developing an EU policy. Some EUSRs are resident in their country or region of activity; others work on a travelling basis from Brussels.

18.3 All EUSRs carry out their duties under the authority and operational direction of the High Representative of the Union for Foreign Affairs and Security Policy (HR; Baroness Catherine Ashton). Each is financed out of the CFSP budget. In addition, Member states also contribute regularly through, e.g., seconding some of the EUSR’s staff members.

18.4 . In February 2010, the mandates were extended, not for the usual twelve months, but only until 31 August 2010, or until the establishment of the European External Action

⁸⁴ Article 33 TEU says that “The Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the High Representative.” Article 31(2) TEU provides for his or her appointment to be adopted, not by unanimity as is normally the case with decisions relating to the EU’s external action and common foreign and security policy, but by QMV.

Service (EEAS), whichever was the earlier; the HR intended to revert to the matter in the light of further work on the EEAS.⁸⁵

18.5 The European Union currently has EUSRs covering the following countries or regions: Afghanistan, the African Union, Bosnia and Herzegovina, Central Asia, Kosovo, the South Caucasus and the crisis in Georgia, the Southern Mediterranean region and Sudan.⁸⁶

18.6 At our meeting on 8 September 2010 we considered Council Decisions concerning the mandates of all the then EUSRs. Some of the history, mandate and activities of each one was helpfully summarised by the Minister for Europe (Mr David Lidington) in his Explanatory Memorandum of 2 August 2010 with his comments on each one beneath the summary.⁸⁷

Central Asia

18.7 The EU established an EUSR for Central Asia in September 2005 to ensure coordination and consistency of external EU actions in the region.

18.8 The EUSR's mandate focuses on enhancing EU effectiveness and visibility in the region. It also aims to contribute to the strengthening of democracy, rule of law, good governance and respect for human rights and fundamental freedoms in Central Asia. It was amended by a Joint Action on 15 February 2007 to allow the Special Representative to contribute to wider Common Foreign and Security Policy work on energy security, and to help develop bilateral energy cooperation with important producer and transit partners in Central Asia. It was refined further by Joint Action 2007/113/CFSP of September 2007 following the adoption of a new EU Strategy for Central Asia at the June 2007 European Council, which assigned to the EUSR an enhanced role in monitoring the implementation of the Strategy. It also added a specific tasking for the EUSR to contribute to the formulation of counter-narcotics aspects of the Common Foreign and Security Policy. Joint Action 2008/900/CFSP of 2 December 2008 added water management aspects to his responsibilities.

18.9 The Council Decision that we considered in July 2011 did not introduce any changes to the scope of the mandate but extended it until 30 June 2012.

18.10 In his Explanatory Memorandum of 22 June 2011, the Minister for Europe (Mr David Lidington) described Central Asia as a region of strategic importance to the UK and the EU, with the UK's main interests broadly falling under three strands: energy/commerce; regional stability; and governance/human rights (with the first two relating directly to HMG's foreign policy priorities on prosperity and national security, and the third to HMG's commitment to a foreign policy that has the practical promotion of human rights at its core).

18.11 He notes that the EUSR had:

85 For further details, see (31290-1) —, (31295-99) — and (31300-04) — (2009-10): HC 5-x (2009-10), chapter 8 (9 February 2010).

86 For full information, see http://eeas.europa.eu/policies/eu-special-representatives/index_en.htm.

87 For further details, see (31844), (31856-66) and (31884) —: HC 428-i (2010-11), chapter 66 (8 September 2010).

- travelled extensively and contributed to EU discussions on policy towards the region, including on energy security and counter-narcotics;
- played a valuable role during last year’s unrest in Kyrgyzstan, working closely with the UN and OSCE to encourage a co-ordinated international response to the violence;
- pushed the EU’s Central Asia Strategy forward, including work streams on governance, rule of law, human rights, democratisation, regional security/stability and energy issues, all of which complement UK policy priorities in Central Asia.

18.12 The Minister also noted that the Strategy, which he said continued to provide a sound framework for EU engagement in the region, would need to be refreshed during the course of the next year. In the meantime, he expected that the EUSR would continue to provide a common focus for delivering EU objectives not just on key human rights issues, but also on the benefits of regional co-operation and on potential EU assistance in helping the region to address some of its shared socio-economic difficulties.

18.13 The Minister went on to describe the EUSR Central Asia role as one that that did not readily fold into any single European External Action Service delegation, which he said was particularly relevant in the case of the EUSR’s cross-border and regional co-ordination responsibilities:

“As the EEAS develops, this could change, in which case the mandate allows for its early termination. Ambassador Morel has indicated that he would prefer to focus on his Central Asia remit and hand over responsibility for the Georgia Crisis to a new EUSR. We and EU partners have every reason to believe that this will enable him to devote his full attention to Central Asia, and to continue to deliver progress against the objectives set out in his mandate. The Government therefore supports the extension.”

Our assessment

18.14 Although this mandate extension raised no questions, in clearing the document we reported it to the House nonetheless because of the importance of Central Asia to UK interests and the importance of EUSR activity in EU external action.⁸⁸

The Minister’s letter of 2 April 2012

18.15 In his letter, the Minister of Europe (Mr David Lidington) noted that, since the adoption of “The EU and Central Asia: Strategy for a New Partnership” by the June 2007 European Council, the EU had strengthened its relationship with the Central Asian countries⁸⁹ in all areas of cooperation, including through the reinforcement of EU-Central Asia political dialogue with regular meetings of EU and Central Asian Foreign Ministers, reinforcement of dialogue on human rights, cooperation in the areas of education, rule of law, energy and transport, environment and water, common threats and challenges (including border management and combating drug trafficking , and trade and economic

⁸⁸ See headnote: (32932) —: HC 428–xxxii (2010–12), chapter 15 (6 July 2011).

⁸⁹ Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan, Uzbekistan.

relations. The strategy is supported by a significant EU assistance. There are EU official representative offices in Kazakhstan, Kyrgyz Republic and Tajikistan, and a Central Asia EU Special Representative.

18.16 The Minister said that the review process was still at an early stage, and that he would write again as it became clearer; in the meantime he sought to provide “a general orientation at this stage on the current UK and EU approach to Central Asia”, and on the areas covered by the Strategy. It was lengthy, essentially narrative and contained nothing surprising or untoward (e.g., “Governance: there are serious deficiencies in the region, and more progress is needed on human rights reform”).

18.17 The Strategy’s work streams were, he said, consistent with the UK’s objectives in and for the region. Progress on implementing the Strategy — driven by Ambassador Morel — had been steady. Work continued on the Rule of Law Initiative, through technical training and the exchange and seconding of international expertise. The Educational Initiative had set up a coordination mechanism among EU donors to support the further modernisation of the education and vocational training sectors. Human rights dialogues continued to take place with all five Central Asian countries; the Minister’s objective was to make these more results oriented. The Strategy having highlighted the importance to regional and global energy security of further diversification of export routes, demand and supply structures and energy sources, the INOGATE (Interstate Oil & Gas Transport to Europe) programme remained a key vehicle, including an intensified dialogue on energy co-operation between the EU and the Littoral States of the Black and Caspian Seas and their neighbouring countries. Cooperation was also intensifying on an integrated water management policy, including agreement by all the Central Asian countries to engage on National Water Policy Dialogues, to improve domestic water management.

18.18 Looking ahead, the Minister said that the current proposed timetable was: discussion with Central Asian national co-ordinators in March-April; internal EU drafting in April-May; and adoption of a revised EU Central Asia strategy by a subsequent European Council. The Minister would be looking to achieve greater impact and a clearer focus on the areas where it could produce most benefit for the region’s people and for UK/EU interests. One important area to consider would be the need for a greater focus on security issues, given the significance of the ISAF drawdown and political transition process in Afghanistan over coming years. As work was taken forward, the Minister said that he would ensure that the competence boundaries between the EU and its Member States are properly respected. He undertook to write again as this process evolved.

The Committee’s response

18.19 In its response of 18 April 2012, the Committee noted the areas covered by the Minister and said that, in due course, it expected to receive a deposited copy of the Strategy and an Explanatory Memorandum outlining its essence and his views on it in good time before whichever European Council it is submitted to — and sooner if, as would be normal, it was first submitted to the Foreign Affairs Council.

The Minister's letter of 22 May to the House of Lords Committee

18.20 On 22 May, in a letter to the House of Lords Select Committee on the European Union, the Minister wrote that, since his letter of 2 April, the EEAS and Member States had agreed that:

- rather than conduct a full-scale review of the EU Central Asia Strategy during 2012 they should focus on “a lighter-touch implementation review and agree a future orientation to guide the EU in its engagement”;
- this “Strategy Review” was agreed under silence procedure on 15 May;
- the text would now be shared with Central Asian partners during the week beginning 21 May and could be reviewed again by Member States in Brussels if need be;
- the aim was to have it approved by the Foreign Affairs Council in June or July, possibly with short conclusions that would be circulated in due course.

18.21 The Minister then responds to a number of questions, as follows:

a) **“What is the Government's assessment of the EU Central Asia Strategy, especially the effectiveness of each work stream?”**

“We believe that, overall, the EU Central Asia Strategy provides a useful framework for EU engagement in the region. The work streams it has generated are all important in terms of building the regional stability, greater rule of law and economic growth we wish to see (although arguably — see below — there is scope for the EU to prioritise better and to spread itself less thinly). While there is still clear room for improvement, the Strategy together with the active engagement of the EU Special Representative for Central Asia over the last five years, have helped the EU raise its profile and impact in a region of growing strategic importance, from what was a low base in 2007. The EU response to the 2010 Kyrgyz crisis is one example of improved engagement.

“My comments below on the individual work streams need to be caveated by the fact we and our (modestly-resourced) missions in the region have been more actively involved in some EU programmes than others. The EU Central Asia Monitoring (EUCAM) project has provided a useful evaluation function since 2008, but we have used the implementation review to argue for more formal (ideally external) review and evaluation to be structured into the EU Strategy going forward.

“The **rule of law** initiative aims to promote legal and administrative reform underpinning both economic development and human rights. We judge that it has contributed to enhanced EU support to reform in several of the Central Asian countries and broader engagement by the Venice Commission. However we believe it is too early properly to judge results: this engagement will need to be sustained over a longer period to really deliver. EUCAM has called for development of clearer benchmarks to evaluate progress, which we would support. The establishment of EU Human Rights Dialogues with all five Central Asian countries has been a real success although, as noted in my 2 April letter, we see scope for these dialogues to become

more results focussed. On **Energy**, the EU's work to promote energy efficiency and renewable; to develop an energy dialogue with Caspian Sea littoral states (under the Baku Initiative, which covers the whole of the Eastern Europe and Central Asian region), and — in particular — to facilitate negotiations between Turkmenistan and Azerbaijan on a Trans-Caspian pipeline (TCP), has been of real importance. However in our judgement the EU has been slow to progress the TCP dossier: we are keen to improve momentum and engagement. We are less clear what value the EU adds in its energy dialogues with Kazakhstan, where the private sector is well-placed to lead developments. However the EU has supported us when lobbying on issues such as local content rules and shift rosters that penalise foreign investors. Work on **Education** (including reform of educational structures; policy dialogue; and support for vocational training) has, with its uplift in funding, begun to deliver some valuable work. For example in Uzbekistan the EU's development programme has been quite successful, particularly through its continued higher education cooperation programme, TEMPUS, which offers grants for partnership with EU higher education institutions; and its university scholarship programme linked to ERASMUS: and its inclusive education programme for children with special needs. We would be keen to see it continue (and extended to countries like Tajikistan), ensuring that programmes are fully adapted to Central Asian realities. On **Security**, we judge that the flagship programmes of BOMCA (Border Management in Central Asia); CADAP (Central Asia Drugs Action Programme) and the co-ordination provided by CABS (Central Asia Border Security Initiative) have all made useful contributions. We would be keen to see the EU build on them further, including through greater co-operation with other players such as the OSCE. It is less clear with some of the other work streams (including economic development and transport) what real impact the EU has had to date. The EU acknowledges that it has yet to deliver under the economic work-stream, but partners who have been more involved than us in the environment and water dossier point to useful engagement. We will be encouraging the EU to build evaluation mechanisms into its work in these areas and to look critically at what the EU can achieve in future interventions.

b) “What does the Government consider as the main weaknesses of the present strategy?”

“Our main concern is that EU assistance is spread too thinly and lacks visibility. We have been using the ‘implementation review and future orientation’ discussions to ensure a clearer focus on priority areas going forward. We are encouraging the EEAS to open (and fully staff) Delegation Offices in all Central Asian states as a key element of improving EU visibility: there is currently no office in Ashgabat. This would be without prejudice to the Multi-Annual Financial Framework for 2014–2020; and we have shown with the FCO's own network shift that it is possible to add a network of Posts despite budget cuts, by rigorous attention to priorities (including opening an Embassy in Bishkek). We will continue to encourage the EU to think carefully about how best to work with partners in the region to maximise impact, while ensuring the EU's own contribution is fully recognised. We have underlined the importance of personal, high-level engagement with senior leaders in the five

countries and thus the need for regular visits by senior EU officials. We are supporting the renewal of the mandate of the EU Special Representative on Central Asia when it expires at the end of June, and will submit an Explanatory Memorandum on this in the usual way.

c) “How does the Strategy fit in with the EU’s conditionality requirements on human rights and democracy?”

“The Strategy itself states that, ‘human rights issues are not confined to annual human rights dialogues. The EU raises human rights concerns at all levels, including at the highest level and in the context of meetings held under the Partnership and Cooperation Agreements. Individual cases of concern have benefited from these efforts. Supporting human rights protection and promoting reform and modernisation in the areas of the rule of law, good governance and democratisation are key priorities in EU relations with Central Asia. Long term stability, development and prosperity depend on progressive implementation of policies in these areas’. We are active supporters of the promotion of human rights and governance in the full range of EU work in the region.

d) “How does the Government intend to ensure that the EU Central Asia Strategy will become more focused and result orientated in the future?”

“We believe that — particularly in light of transition in Afghanistan — it will be important for the EU to focus on regional security issues in the mid-term. We are also arguing that the EU’s focus needs to remain on promoting rule of law/human rights and economic development. Despite the difficulties, it also has an important role to play in promoting regional co-operation.

“The current version of the ‘Strategy Review’ has taken on board many of our concerns, with explicit recognition of the need for the EU to target its efforts more narrowly; recognition of the growing importance of regional security issues and a prioritisation of a number of useful areas for action; stress on the importance of promoting and protecting human rights; stress on the importance of quick advancement of the TCP; a focus on education, rule of law, key economic issues (including Kazakhstan and others’ WTO accession); and consolidation of the network of EU Delegations in Central Asia.

“We will continue to promote this more focussed approach as the review process continues. We are additionally looking at two possible ways in which the UK could contribute to more effective EU engagement in the region. Following recent news of the current EUSR’s decision to retire, we are keen to see an able and effective successor appointed and — to this end — will be running a UK candidate (Sir Anthony Brenton KCMB, former Ambassador to Moscow) for this position. We are additionally considering whether the UK should take a more formal role in the ‘chef de file’ system by which the EU is delivering much of its regional engagement, although have yet to reach a firm conclusion on whether this would be the best use of our resources.

“My understanding is that, now that the EU has decided to take its Strategy review work forward through an internal working document which will not be published, there are no longer formal Scrutiny requirements. However I would of course be glad to provide any further information which you require on UK or EU engagement in Central Asia.”

The Council Decision

18.22 The draft Council Decision extends the mandate for the European Union Special Representative (EUSR) for Central Asia for the period from 1 July 2012 to 30 June 2013.

18.23 In his Explanatory Memorandum of 31 May 2012, the Minister of Europe (Mr David Lidington) says that a political agreement was reached at working level on 15 May 2012 to update the mandate so as to include border security, environment and climate change and regional security within Central Asian borders as ISAF troops begin to draw down.

The Government's view

18.24 The Minister rehearses the strategic importance of Central Asia to the UK and the EU in the same terms as he did a year ago, and says:

“These interests are substantial and growing, but the UK has only limited resources to put into our national network. We need the continuation of the EUSR mandate to help make things happen in the region and to leverage the EU's vastly larger resources.”

18.25 The Minister notes that, as EU Special Representative, Mr Morel:

- has travelled extensively and contributed to EU discussions on policy towards the region, including on energy security and counter-narcotics;
- has been effective in ensuring that the EU is a significant player in Central Asia;
- by reacting proactively “to the event in the Kyrgyz Republic in 2010 ensured a visible and effective EU response, which in turn has enabled him to enjoy better access in Bishkek.”

18.26 Noting that Mr Morel is retiring at the end of his current mandate on 30 June 2012, the Minister says:

“we are keen to see an able and effective successor appointed and — to this end — will be running a UK candidate (Sir Anthony Brenton KCMG, former ambassador to Moscow).”

18.27 With regard to the job, the Minister says:

“We expect that the EU Special Representative will continue to provide a common focus for delivering EU messages not just on key human rights issues, but also on the benefits of regional co-operation and on potential EU assistance in helping the region to address some of its shared socio-economic difficulties.

“The EU needs to be perceived as a significant player in the region, particularly as we engage the Central Asian states on Afghanistan transition. Appointment of an EUSR is important to enable continued personal, high-level engagement with the leaders of the five Central Asia States. It is particularly important as there are not yet EU Delegations in all five countries, and there are relatively few other senior EU visitors to the region. The Government therefore supports the appointment of an EUSR for Central Asia.”

18.28 With regard to the proposed legal basis for the appointment, the Minister says:

“Article 28 has been dropped but we will be raising this at the working group meeting for clarification given that it has been cited in previous amendments to mandates.”

18.29 Finally, the Minister says that the Council Decision is expected to be adopted at the Foreign Affairs Council on 25 June.

Conclusion

18.30 **No questions arise from the extension of the EUSR’s mandate for a further 12 months or from the slight amendment to it.**

18.31 **However, what will be equally important, and arguably more so, is who will replace Ambassador Morel. That will, of course, require a separate Council Decision. We have no knowledge of who else might be a candidate; however, we have no doubt that the individual named by the Minister would be a good choice. We look forward to hearing more about the process when the Council Decision is submitted for scrutiny.**

18.32 **For now, we share the Minister’s puzzlement about the removal of Article 28 from the legal bases to be used with regard to this mandate extension. Article 28(1) TEU says:**

“Where the international situation requires operational action by the Union, the Council shall adopt the necessary decisions. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.”

18.33 **As the Minister notes, it has been cited in previous amendments to mandates; like him, we can see no reason for not citing it now, and in future, since it provides the framework within which any EUSR appointment is made. We should accordingly like to hear from the Minister when he has obtained clarification.**

18.34 **We also draw the Minister’s attention to our expectations with regard to the updated Central Asia Strategy (c.f. paragraph 18.19 above). Against that background, we do not understand why, as seems to be the case, he regards a copy to the Committee of a letter to its House of Lords counterparts as a suitable response. Letters of this nature, especially via copies directed to other interested parties, are no substitute for proper scrutiny. Even if the substance would have been similar, the Minister would have been obliged to explain properly why it was decided — seemingly out of sight and for no apparent good reason — to substitute a procedure that provides proper scrutiny of the framework for all EU external action relating to Central Asia, and a great deal of**

expenditure — i.e., via a deposited document and an Explanatory Memorandum from the Government — with one that downgrades it to “an internal working document which will not be published” and which may, in public terms, be explained in no more than short Council Conclusions (which are, of course, also not the subject of parliamentary scrutiny). We therefore ask the Minister to explain what has been going on, and why, especially given his professed commitment to enhanced scrutiny.

18.35 We now clear the Council Decision, which we are again reporting to the House for the same reasons as before.

19 EU Special Representative for Sudan and South Sudan

(33910)	Council Decision extending the mandate of the European Union
—	Special Representative for Sudan and South Sudan
—	

<i>Legal base</i>	Articles 31(2) and 33 TEU; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 31 May 2012
<i>Previous Committee Report</i>	None; but see (31866)—: HC 428–i (2010–12), chapter 66 (8 September 2010)
<i>Discussion in Council</i>	25 June 2012 Foreign Affairs Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

19.1 EU Special Representatives (EUSRs) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They were established under Article 33 of the Treaty on European Union and are appointed by the Council. Their purpose is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

19.2 An EUSR is appointed by Council through the legal act of a Council Decision. The substance of his or her mandate depends on the political context of the deployment.⁹⁰ Some provide, *inter alia*, a political backing to an ESDP operation; others focus on carrying

⁹⁰ Article 33 TEU says that “The Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the High Representative.” Article 31(2) TEU provides for his or her appointment to be adopted, not by unanimity as is normally the case with decisions relating to the EU’s external action and common foreign and security policy, but by QMV.

out or contribute to developing an EU policy. Some EUSRs are resident in their country or region of activity; others work on a travelling basis from Brussels.

19.3 All EUSRs carry out their duties under the authority and operational direction of the High Representative of the Union for Foreign Affairs and Security Policy (HR; Baroness Catherine Ashton). Each is financed out of the CFSP budget. In addition, Member States also contribute regularly through, for example, seconding some of the EUSR's staff members.

19.4 . In February 2010, the mandates were extended, not for the usual twelve months, but only until 31 August 2010, or until the establishment of the European External Action Service (EEAS), whichever was the earlier; the HR intended to revert to the matter in the light of further work on the EEAS.⁹¹

19.5 The European Union currently has EUSRs covering the following countries or regions: Afghanistan, the African Union, Bosnia and Herzegovina, Central Asia, Kosovo, the South Caucasus and the crisis in Georgia, the Southern Mediterranean region and Sudan.⁹²

19.6 At our meeting on 8 September 2010 we considered Council Decisions concerning the mandates of all the then EUSRs. Some of the history, mandate and activities of each one was helpfully summarised by the Minister for Europe (Mr David Lidington) in his Explanatory Memorandum of 2 August 2010 with his comments on each one beneath the summary.⁹³

Sudan and South Sudan

19.7 South Sudan gained independence from Sudan on 9 July 2011. Prior to that, in Africa's longest-running civil war, at least 1.5 million people are thought to have lost their lives and more than four million were displaced in 22 years of guerrilla warfare. Large numbers of South Sudanese fled the fighting, either to the north or to neighbouring countries, where many remain.

19.8 The conflict was finally ended with the 2005 Comprehensive Peace Agreement, under which the south was granted regional autonomy along with guaranteed representation in a national power-sharing government.

19.9 The agreement also provided for a referendum in the south on independence in 2011, in which 99% of southern Sudanese voted to separate from Sudan.

19.10 Formed from the ten southern-most states of Sudan, South Sudan is a land of expansive grassland, swamps and tropical rain forest straddling both banks of the White Nile. It is highly diverse ethnically and linguistically. Unlike the predominantly Muslim population of Sudan, the South Sudanese follow traditional religions, while a minority are Christians.

91 For further details, see (31290-1) —, (31295-99) — and (31300-04) — (2009-10): HC 5-x (2009-10), chapter 8 (9 February 2010).

92 For full information, see http://eeas.europa.eu/policies/eu-special-representatives/index_en.htm.

93 For further details, see (31844), (31856-66) and (31884) —: HC 428-i (2010-11), chapter 66 (8 September 2010).

19.11 The new nation stands to benefit from inheriting the bulk of Sudan's oil wealth, but continuing disputes with Khartoum and a lack of economic development cloud its immediate future.⁹⁴

EUSR Sudan

19.12 Dame Rosalind Marsden was appointed EU Special Representative for Sudan on 11 August 2010.⁹⁵ Her mandate runs from 1 September 2010 until 30 June 2012. It involves working with the Sudanese parties, the African Union (AU) and the United Nations and other national, regional and international stakeholders to achieve a peaceful transition under the CPA, including the organisation of a credible referendum on self-determination of South Sudan in January 2011; actively contributing to the full and timely implementation of the CPA and post-referendum arrangements; supporting institution building and fostering stability, security and development in South Sudan; improving security and facilitating a political solution to the conflict in Darfur; promoting justice, reconciliation and respect for human rights, including full cooperation with the International Criminal Court; and improving humanitarian access throughout Sudan.

The Council Decision

19.13 This Council Decision extends the appointment of Dame Rosalind Marsden as the EUSR in Sudan and South Sudan from until 30 June 2013.

19.14 The proposed mandate reflects EU policy objectives in relation to Sudan and South Sudan. It requires the EUSR to work with EU governments, the AU, the UN and other national, regional and international stakeholders, to achieve a peaceful co-existence between Sudan and South Sudan, based on the principle of two viable, peaceful, and prosperous States. This remains unaltered from the EUSR's exiting role, but the detail has been updated to reflect recent developments, including most importantly South Sudan's independence in July 2011 and to ensure consistency between the mandates given to different EU Special Representatives.

19.15 In full, the EUSR's mandate shall be to:

- a) liaise with the Government of Sudan, the Government of South Sudan, Sudanese and South Sudanese political parties, the armed and rebel movements in Sudan and South Sudan, as well as civil society and non-governmental organisations, with the aim of pursuing the EU's policy objectives;
- b) maintain close cooperation with the United Nations, including the UN Mission in South Sudan (UNMISS) the UN Interim Security Force for Abyei (UNISFA) and the UN Special Envoy, the African Union and in particular the AU High-Level Implementation Panel for Sudan (AUHIP), the AU/UN hybrid operation in Darfur (UNAMID), the League of Arab States (LAS), the Inter-Governmental Agency for Development (IGAD) and other leading regional and international stakeholders;

⁹⁴ See <http://www.bbc.co.uk/news/world-africa-14069082>.

⁹⁵ Prior to this appointment she had been British Ambassador to Sudan for three years until May 2010.

- c) represent the EU and promote its policy objectives and positions in international and public fora, as appropriate;
- d) contribute to furthering the coherence and effectiveness of EU policy towards Sudan and South Sudan while promoting a consistent international approach towards the two countries;
- e) contribute to international mediation efforts led by AUHIP to facilitate agreement between Sudan and South Sudan on outstanding post-CPA issues and to find an inclusive political solution to the ongoing conflict in Southern Kordofan and Blue Nile states;
- f) support the implementation of issues agreed under the CPA and eventual implementation of agreements on post-CPA issues;
- g) promote institution-building inside South Sudan;
- h) contribute to international efforts to facilitate a comprehensive, inclusive and durable peace agreement for Darfur and to promote the implementation of the Doha Document, working closely with the UN, the AU, the Government of Qatar and other international stakeholders, as appropriate;
- i) promote respect for human rights by maintaining regular contacts with the relevant authorities in Sudan and South Sudan, the Office of the Prosecutor of the International Criminal Court, the Office of the High Commissioner for Human Rights and the human rights observers active in the region;
- j) contribute to the implementation of the EU human rights policy, including EU Guidelines on human rights, in particular the EU Guidelines on Children and Armed Conflict as well as on violence against women and girls and combating all forms of discrimination against them, and the EU policy regarding UNSCR 1325 (2000) on Women, Peace and Security, including by monitoring and reporting on developments as well as formulating recommendations in this regard;
- k) contribute to the implementation of a comprehensive EU approach to Sudan and South Sudan as agreed by the Foreign Affairs Council on 20 June 2011;
- l) in close cooperation with the European External Action Service, contribute to EU engagement with all relevant stakeholders to support efforts to mitigate and eliminate the threat to civilians and stability in South Sudan and the wider region posed by the LRA;
- m) follow up and report on compliance by the Sudanese and South Sudanese parties with the relevant UN Security Council Resolutions.⁹⁶

⁹⁶ In particular: 1556 (2004), 1564 (2004), 1590 (2005), 1591 (2005), 1593 (2005), 1612 (2005), 1663 (2006), 1672 (2006), 1679 (2006), 1769 (2007), 1778 (2007), 1881 (2009), 1882 (2009), 1891 (2009), 1919 (2010), 1990 (2011), 1996 (2011), 2024 (2011), 2046 (2012).

The Government's view

19.16 In his Explanatory Memorandum of 31 May 2012, the Minister of Europe (Mr David Lidington) welcomes the extension of Dame Rosalind Marsden's appointment, noting her valuable role in maintaining a high level of EU involvement, particularly in implementing the CPA leading to South Sudan's independence; supporting and expanding the Darfur political process; and supporting mediation efforts between Sudan and South Sudan.

19.17 Noting that she has kept EU Member States informed of developments in both countries which has helped to ensure consistency of EU policy in line with UK objectives, the Minister continues as follows:

“The last twelve months have presented significant challenges for the Governments of Sudan and South Sudan and the international community. Many outstanding issues from the CPA have yet to be resolved which has caused further conflict between the two states. South Sudan's decision to switch off its oil production has left both countries with substantial deficits in their economies and a humanitarian crisis is looming in Darfur, Southern Kordofan, Blue Nile and refugee camps in South Sudan.

“There is therefore a strong case for maintaining the high level of commitment represented by the EUSR over the next twelve months. We are expecting a period of intensive negotiations surrounding a roadmap for peace between Sudan and South Sudan, which the EUSR can play an important role alongside the UK's own Special Representative, the African Union and other key partners including the US and China.”

19.18 Turning to the CSDP mission to Juba International Airport, South Sudan, that is due to commence later this year,⁹⁷ the Minister says:

“The EUSR has been instructed to provide local political guidance to the Head of this Mission as well as consult the Civilian Operation Commander as required. This mission will contribute to strengthening aviation security, border control and law enforcement at JIA, under public oversight and in accordance with human rights standards. We view the role of the EUSR in this mission to be important to help it succeed in its objectives.

“The UK has regular communication with the EUSR and her staff are like-minded in analysis and approach. We are expecting the extension of Dame Rosalind Marsden's appointment as EUSR to be supported by all Member States. If we support this extension, we would be encouraging the EU to further support negotiations between Sudan and South Sudan as well as the success of the CSDP mission. Not supporting it, would risk sending a signal to the Governments of Sudan and South Sudan and international partners that the EU has lessened its commitment to conflict prevention and the long-term future of the two counties.”

97 See (33893) — at chapter 17 of this Report.

19.19 With regard to the legal bases for the extension of the mandate, the Minister comments as follows:

“We accept that Article 33 and 31(2) are the appropriate substantive and procedural legal bases for an EUSR appointment with a mandate that does not provide for new operational action by the EU or establish any new Union positions within the CFSP. But we expect that new EU operational action or new Union positions within the CFSP should be dealt with in a separate Council Decision, with a legal base of Article 26 or 28 TEU as appropriate, alongside Article 31(1) TEU.”

19.20 Turning to the financial implications, the Minister says:

- funding for Common Costs (office, in-country transport, office equipment etc) is met from the Common Foreign and Security Policy budget, of which the UK currently contributes 17%;
- the budget allocation has yet to be agreed;
- he will write to the Committees to confirm the budget once he has received this information.

19.21 Finally, the Minister notes that the date for the Foreign Affairs Council to discuss this Council Decision has yet to be agreed but the decision will need to be adopted before the current mandate lapses at the end of June; and that he will write to the Committee to confirm the date once he has received this information too.

Conclusion

19.22 We look forward to receiving this further information in due course, but see no need to hold up clearance of this Council Decision in the meantime.

19.23 Though it raises no questions, we are reporting it to the House because of the degree of interest in developments in Sudan, both north and south.

19.24 We now clear the Council Decision.

20 EU Special Representative for the Southern Mediterranean region

(33915)	Council Decision extending the mandate of the European Union Special Representative for the Southern Mediterranean region
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<i>Legal base</i>	Articles 31(2) and 33 TEU; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 31 May 2012
<i>Previous Committee Report</i>	None; but see (32981) —: HC 428–xxxiii (2010–12), chapter 12 (13 July 2011); (32588) 7592/11: HC 428–xxiii (2010–11), chapter 9 (5 April 2011) and (32815) 10794/11: HC 428–xxix (2010–12), chapter 2 (8 June 2011)
<i>Discussion in Council</i>	25 June Foreign Affairs Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; further information requested

Background

20.1 EU Special Representatives (EUSRs) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They are established under Article 33 of the Treaty on the European Union and are appointed by the Council. Their purpose is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

20.2 An EUSR is appointed by Council through the legal act of a Council Decision. The substance of his or her mandate depends on the political context of the deployment.⁹⁸ Some provide, *inter alia*, a political backing to an ESDP operation; others focus on carrying out or contribute to developing an EU policy. Some EUSRs are resident in their country or region of activity; others work on a travelling basis from Brussels.

20.3 All EUSRs carry out their duties under the authority and operational direction of the High Representative of the Union for Foreign Affairs and Security Policy (HR; Baroness Catherine Ashton). Each is financed out of the CFSP budget. In addition, Member states also contribute regularly through, e.g., seconding some of the EUSR’s staff members.

⁹⁸ Article 33 TEU says that “The Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the High Representative.” Article 31(2) TEU provides for his or her appointment to be adopted, not by unanimity as is normally the case with decisions relating to the EU’s external action and common foreign and security policy, but by QMV.

20.4 The European Union currently has EUSRs covering the following countries or regions: Afghanistan, the African Union, Bosnia and Herzegovina, Central Asia, Kosovo, the South Caucasus and the crisis in Georgia, the Southern Mediterranean region and Sudan.⁹⁹

The Southern Mediterranean region

20.5 At our meeting on 5 April 2011, we considered, and cleared, a joint Commission/HR Communication, “A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean”, which was born out of the crisis in North Africa. Following the 11 March Extraordinary European Council, the Council issued a Declaration in which it broadly welcomed the Communication and called for the Council rapidly to examine its proposals.

20.6 The Communication sets out the steps taken so far and the instruments available to the EU to respond immediately to ongoing events, such as helping prevent a humanitarian crisis in Libya. The central notion of the Partnership is an incentive-based approach based on greater differentiation — “more for more” — in which those that go “further and faster” in their reforms would receive greater support. A commitment to adequately monitored, free and fair elections would be the entry qualification. Progress in human rights and governance would have minimum benchmarks against which performance would be assessed. Those who do not follow agreed reform plans would have their support reallocated. The Partnership should be underpinned by enhanced political dialogue, with a strong focus on human rights and political accountability. Partner countries carrying out the necessary reforms can expect to resume negotiations on Association Agreements with the aim of achieving “advanced status”, viz., significantly strengthened political dialogue, increased links between the partner country and EU institutions, deeper engagement on mobility and improved market access to the EU. A “Civil Society Neighbourhood Facility” would develop the advocacy capacity of civil society organisations and increase their ability to monitor reform, and the EU would continue its work on supporting capacity building to strengthen government institutions. Capacity building would also be employed to strengthen borders and migration, asylum and law-enforcement co-operation to improve security. The 25 measures or initiatives include expanding the EBRD mandate to enable it to join the EIB in this area, new pan-Euro-Mediterranean rules of origin which would facilitate economic integration in the region, and working towards an EU-Southern Mediterranean Energy Community. The ENPI Regulation would be refocused accordingly.¹⁰⁰

20.7 Then, on 8 June 2011, we considered a further such joint Commission/HR Communication, “A New Response to a Changing Neighbourhood”. This was the outcome of the review of the European Neighbourhood Policy (ENP) that was initiated in summer 2010. Subsequent events in the Southern Neighbourhood underlined the need to review current ENP policy, six years after its inception and on the back of dissatisfaction over the impact and effectiveness of its major manifestations — the Euro-Med Process and, latterly, the Union for the Mediterranean and the Eastern Partnership. The central notion in this further joint Communication remained that of the Southern Neighbourhood Joint

99 For full information, see http://eeas.europa.eu/policies/eu-special-representatives/index_en.htm.

100 For full information, see (32588) 7592/11: HC 428–xxiii (2010–11), chapter 9 (5 April 2011).

Communication, which would be applied equally to the Eastern Partnership: a more incentive-based approach based on greater differentiation. This new approach aims to: provide greater support to partners engaged in building deep democracy — described as “the kind that lasts because the right to vote is accompanied by rights to exercise free speech, form competing political parties, receive impartial justice from independent judges, security from accountable police and army forces, access to a competent and non-corrupt civil service — and other civil and human rights that many Europeans take for granted, such as the freedom of thought, conscience and religion”; support inclusive economic development; work out consistent regional initiatives in areas such as trade, energy, transport or migration and mobility, complementing and strengthening bilateral co-operation; and provide the mechanisms and instruments fit to deliver these objectives. It proposes to increase ENP funding by €1.24 billion, in addition to the €5,700 million already provided for 2011–2013.

20.8 The Minister for Europe (Mr David Lidington) said that: the UK had taken a leading role in arguing for an ambitious new EU policy towards the EU’s neighbourhood; the Communication reflected UK interests well; the language had been heavily shaped by UK lobbying and incorporated most of the UK’s arguments; UK Ministers had lobbied hard for the ENP reform to include a bold, ambitious offer, centred around trade liberalisation and economic integration. He noted that the UK had also argued strongly and repeatedly in favour of the principle of conditionality in the ENP, and successfully made the case (against some opposition) for “negative” conditionality — that for those countries that failed to achieve benchmarks for political as well as economic reform, the EU should scale back its cooperation and even reduce its funding (or redirect funding towards civil society partners as opposed to state organisations). This, he said, went further than the EU had ever gone before, and was in his view a welcome change, providing additional incentives to partners in both the East and the South to implement meaningful reforms.

Our assessment

20.9 Though we recognised the desire to press on, we did not see that responding to events in the Southern Neighbourhood required precipitate consideration of this important document. Several questions raised by the earlier Joint Communication remained unanswered, both with regard to the basis of the increased funding and the practicalities of the new approach. The Minister had said nothing about the inter-relationship with the UMed, which remained as marooned as ever; nor about the Eastern Partnership, which some other Member States were likely to see as every bit as important as the Southern Neighbourhood, and which had already demonstrated the many slips twixt the cup of concept and the lip of implementation. Indeed, within the expanded EU itself, as we had noted on many occasions, both Bulgaria and Romania remained notably short of meeting some of the criteria that were now to be applied to countries for whom they were likely to pose significantly greater challenges. The EU had been reluctant, Bulgaria and Romania’s continued failings notwithstanding, to adopt the “negative” conditionality being proposed here — where, when countries fail to achieve benchmarks for political or economic reform, cooperation is scaled back and funding reduced. Given that, as the Minister noted, there was opposition by at least some Member States to this approach, we felt bound to wonder how well it would survive the test of reality.

20.10 We saw no reason why the Government should not continue to take an active role in the Council debate. But before it could properly expect to enjoy the support of the House, we felt that the issues raised in this important document needed to be discussed and debated in the European Committee. We so recommended.¹⁰¹

20.11 At its meeting on 20 June 2011, the Foreign Affairs Council adopted conclusions that welcomed the approach set out in these two joint Commission/HR Communications. With regard to the Southern Neighbourhood, the Council said:

“The ENP will have to live up to the new challenges in the Southern Neighbourhood. Transitions may be long and difficult, nonetheless the Council underlines the strong commitment of the EU and Member States to accompany and support concrete efforts by the governments genuinely engaged in political and economic reforms, as well as the civil societies. In this respect, the Council encourages the High Representative and the Commission to ensure that the ongoing implementation of the 8 March Communication on a Partnership for democracy and shared prosperity with the Southern Mediterranean, in line with the related European Council Conclusions, takes into account the new approach set out in the new response to a changing Neighbourhood. The Council welcomes the setting up of the Task Force for the Southern Mediterranean by the High Representative which will enhance the EU’s efforts to foster coherent international support for the strengthening of democracy and inclusive economic development in the Mediterranean region. It also welcomes the High Representative’s proposal for an EUSR for the Southern Mediterranean region and stresses that the EUSR should start working as soon as possible. The Council welcomes the Deauville Partnership and the G8 support to the countries in democratic transition.”¹⁰²

The EUSR for the Southern Mediterranean

20.12 In his Explanatory Memorandum of 4 July 2011, the Minister for Europe (Mr David Lidington) noted that the High Representative had recommended Mr Bernardino Leon as her candidate for this position.

20.13 The Minister began his comments as follows:

“The Arab Spring matters to the security and prosperity of the UK and the EU: if it brings more open and democratic societies in the countries of the Southern Mediterranean, it will be the greatest gain for human rights and freedom since the end of the Cold War. If it falters, it will risk dangerous instability on Europe’s doorstep, collapse back into more authoritarian regimes, conflict and terrorism. The UK Government supports the proposed mandate of the EUSR for the Southern Mediterranean region as an important element of the EU’s response to the Arab Spring.”

20.14 The Minister then explained that the EUSR would:

101 See headnote: (32815) 10794/11: HC 428–xxix (2010–12), chapter 2 (8 June 2011).

102 The full text of the Council conclusions is available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/122917.pdf.

- engage in dialogue with governments, international and regional organisations (the United Nations, the Arab League, the African Union, The Islamic Conference Organisation and the Gulf Cooperation Council), civil society and other relevant interlocutors, maintaining close contact with all parties involved in the process of democratic transformation in order to promote stabilisation and, where relevant, reconciliation;
- help to ensure more coherent and consistent policies towards the region on the part of the EU, Member-States and international organisations;
- also help to implement EU human rights policy in the region.

20.15 Turning to the geographic focus of the proposed mandate, the Minister then said:

“Given the reference to the Arab World (and the explicit requirement to avoid overlap with other EUSRs, including that working on the MEPP), the role will focus on the Mashrek and Maghreb countries except for Israel. We argued strongly and successfully against a proposal to include the Arabian Peninsula as part of the geographic mandate on the grounds that this would spread the EUSR too thinly and reduce his/her effectiveness. The mandate states that the geographic mandate can be extended to other countries if events in the region warrant it, but at our insistence this can only be done by consensus.”

20.16 The Minister went on to describe the mandate as consistent with the political track of the G8’s Deauville Partnership with the people of the MENA region, which he said aimed to support democratic transformation and foster governance reforms. He also described it as being in line with the UK’s Arab Partnership, which was “working with those in the region that want to put in place the building blocks of more open, free societies underpinned by vibrant economies”, and noted that the UK was committing £110 million over the next four years to support political and economic reform across the Middle East and North Africa region.

20.17 The Minister then explained that, as with other EUSRs, the EUSR for the Southern Mediterranean region would:

- act under the authority of the High Representative, with the Political and Security Committee (PSC) as the EUSR’s primary point of contact with the European Council and provider of strategic guidance and political direction;
- provide regular oral and written reports to the High Representative and the PSC and, if they so recommend, also to the Foreign Affairs Council; and
- in the region, liaise closely with the Heads of Union Delegations and Member-States’ Heads of Mission.

20.18 Turning to the High Representative’s candidate for this post, the Minister explained that Mr Bernardino Leon:

- was a Spanish diplomat of more than 20 years experience who has devoted much of his career to the Arab world;

- had worked in Libya and Algeria and been personal adviser to the EU Special Representative for the Middle East Peace Process;
- had also been Spain’s Secretary of State for Foreign Affairs (PUS-equivalent), Secretary-General at the Spanish Prime Minister’s Office and the Spanish G20 Sherpa.

20.19 He added that Mr Leon was known to his UK counterparts and, in his estimation, had the skills, experience and credibility to be an effective EUSR for the Southern Mediterranean region.

20.20 In sum, the Minister said that appointing an EUSR for the Southern Mediterranean region would improve the EU’s visibility in a region where the EU spends significant sums of money through the European Neighbourhood Policy and other instruments (in 2010 he estimated that the EU allocated about £1.18 billion to the Southern Neighbourhood) and also lead to more coordinated and consistent EU policy towards the region and enhance the EU’s ability to promote human rights in the Southern Mediterranean.

20.21 With regard to the Financial Aspects, the Minister said that the budget for this position had not yet been agreed, and commented thus:

“At this time of austerity and budget cuts, we are working to ensure that the EUSR gives maximum value for money so we are arguing for a reduction in the proposed total budget of 830,000 EUR. In any case the budget will be found from within the existing CFSP allocation, and will not therefore entail additional costs for the UK. As an indicative guide, the UK’s current contribution to the EU budget in 2011 is estimated at 15%. The UK contributes to the EU budget as a whole, not to individual programmes within it.”

20.22 Finally, the Minister noted that the draft Decision would be tabled for agreement at a Ministerial Council by the end of July 2011.

Our assessment

20.23 Although the debate on the review of the European Neighbourhood Policy as a whole had yet to take place, we felt that the appointment of this new EUSR made obvious sense, and that the proposed incumbent also appeared to be well-suited to the challenges that go with the job.

20.24 We accordingly cleared the document and, given the political importance of the job and the context, reported it to the House.¹⁰³

The draft Council Decision

20.25 On 18 July 2011 the Council adopted the proposal to appoint Mr Bernardino Leon as EU Special Representative of the Southern Mediterranean, with a mandate until 30 June 2012. The draft Council Decision seeks approval to extend the mandate for a one year period.

¹⁰³ See headnote: (32981) —: HC 428–xxxiii (2010–12), chapter 12 (13 July 2011).

The Government's view

20.26 In his Explanatory Memorandum of 31 May 2012, the Minister of Europe (Mr David Lidington) says that, over the past eleven months, Mr Leon and his team have made good progress towards achieving the primary objectives of enhancing the EU's political dialogue with the countries of the Southern Mediterranean and improving the EU's effectiveness, presence and visibility in the region in the wake of the Arab Spring. Noting that one of the complaints of the region had previously had been around the complex network of EU interlocutors, he says that the EUSR role has provided a single point of contact and, more importantly, has played a key role in the development of the EU political relationship in Tunisia, Egypt, Jordan and, increasingly, in Libya.

20.27 The Minister then continues his comments as follows:

“The role of the EUSR was intended to engage in dialogue with governments, international and regional organisations (the United Nations, the Arab League, the African Union, the Islamic Conference Organisation and the Gulf Cooperation Council), civil society and other relevant interlocutors, maintaining close contact with all parties involved in the process of democratic transformation in order to promote stabilisation and, where relevant, reconciliation. The EUSR was also tasked to help ensure more coherent and consistent policies towards the region on the part of the EU, Member-States and international organisations. Finally he was to help implement EU human rights policy in the region.

“In considering whether the mandate should be extended this note will set out what steps Bernardino Leon has taken in his first year in post to achieve these objectives. A priority objective from the UK perspective has been for the EU to raise the profile of its engagement in the Middle East and North Africa and from this secure greater engagement and interest in the EU and its policies/programmes. Leon has travelled frequently to the region to build effective relationships in the region. Sustaining this momentum with key decision makers is essential, change of the magnitude demanded by citizens of the MENA region the region takes time and requires long-term commitment. The European Neighbourhood Policy is one of the best tools the UK has at its disposal to support this change in the region, but it will only be successful with continued political pressure and profile.

“Enhancing the EU political dialogue with the Southern Mediterranean was a priority objective for the EUSR role. Recognising the very different political context of the countries of the region Leon has varied his approach to each country. In Tunisia and Jordan, Leon was responsible for the planning and preparation for the first in a series of high level EU Task Forces — co-chaired by Baroness Ashton and the Head of State of the partner country. The Task force offered a public forum for the partner country to set out its reform agenda/plan, following which the EU announced what bilateral support it would provide and also acted as a donor co-ordination platform to leverage offers of support from the International Financial Institutions (IFIs). In the build-up and during these Task Forces Leon has shown himself to be an effective operator who has built up good relationships. While there is room for the task forces to be more effective, Leon has taken a very consultative

approach — affording the UK greater opportunity to influence EU political engagement.

“In Egypt the political context has been more challenging. Here the EU has not historically had a strong bilateral relationship. Since January 2012 Egypt has been led by a transitional government which has a shorter term political imperative. Most of the benefits of the revised EU offer to Egypt are medium to long-term. The transitional government has not expressed any real interest in engaging on the EU offer.

“Leon has devoted a significant amount of time and effort to developing the EU-Egypt relationship. He has been able to gain good access and has continued to push strong messages around NGOs. In the absence of Leon as EUSR it would take a long time to rebuild political relationships at a time when swift action is required to shore up EU support for the political transition.

“Building co-operation with the EU and regional organisations. Leon has used the Task Forces in Tunisia and Jordan as one of the mechanisms for improving EU co-operation and co-ordination with other key actors in the region. As an example the Jordan Task force Leon brought together 100 representatives from industry and 43 from civil society. In Tunisia Leon has been active in promoting private investment involving influential European CEOs and in June he will lead the Tunisia Investment Forum. Leon has also been active working with the major International Financial Institutions (IFIs) specifically the European Investment Bank (EIB), European Bank of Reconstruction and Development (EBRD) and the International Monetary Fund (IMF).

“The UK has secured agreement that the EUSR mandate shall include an additional provision towards promoting regional co-operation. The UK sees enhanced regional co-operation as an essential ingredient for promoting economic growth in the Maghreb. The inclusion of this element within the mandate for the EUSR will be useful to complement and act as a multiplier for UK efforts in this area.

20.28 Finally, the Minister says that the mandate of the EUSR remains consistent with the objectives of the Deauville Partnership for Countries in Transition and in line with the UK’s Arab Partnership (“which is working with those in the region that want to put in place the building blocks of more open, free societies underpinned by vibrant economies”), and reiterates that the Government is committing £110 million over the next four years to support political and economic reform across the Middle East and North Africa region.

20.29 With regard to the financial aspects of the mandate extension, the Minister comments much as he did a year ago, viz:

“The budget for this proposal has not yet been agreed. At this time of austerity and budget cuts, we are working to ensure that the EUSR gives maximum value for money so we are arguing for a reduction in the proposed total budget of 1,070,000 EUR. However, the budget will be found from within the existing CFSP allocation, and will not therefore entail additional costs for the UK.”

Conclusion

20.30 We have no wish to hold up agreement to this extension, which is required before the end of this month.

20.31 However, we are concerned that, again, the Minister provides no information about the outcome last year and does not offer to provide any about the outcome this year either.

20.32 We clear the draft Council Decision, but accordingly ask the Minister to provide information about last year's finally agreed budget; the finally agreed budget for the next 12 months; and his views on the justification for what is likely, austerity notwithstanding, to involve a significant percentage increase — €830,000 being the “ballpark” figure that the Minister mentioned last year. There are no doubt good reasons, but we think that we should know what they are.

21 EU Special Representative for Afghanistan

(33916)	Council Decision extending the mandate of the European Union
—	Special Representative for Afghanistan
—	

<i>Legal base</i>	Articles 31(2) and 33 TEU; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 31 May 2012
<i>Previous Committee Report</i>	None; but see (32941) —: HC 428–xxxii (2010–12), chapter 16 (6 July 2011); also see (31425)—: HC 5–xv (2009–10), chapter 7 (24 March 2010) and HC 428–i (2010–11), chapter 51 (8 September 2010); and (31856): HC 428–i (2010–11), chapter 66 (8 September 2010) and HC 428–xxvi (2010–12), chapter 4 (11 May 2011)
<i>Discussion in Council</i>	To be determined
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

21.1 EU Special Representatives (EUSRs) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They are established under Article 33 of the Treaty on European Union and are appointed by the Council. Their purpose is to

represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

21.2 An EUSR is appointed by Council through the legal act of a Council Decision (formerly a Joint Action). The substance of his or her mandate depends on the political context of the deployment. Some provide, *inter alia*, a political backing to an ESDP operation; others focus on carrying out or contribute to developing an EU policy. Some EUSRs are resident in their country or region of activity; others work on a travelling basis from Brussels.

21.3 All EUSRs carry out their duties under the authority and operational direction of the High Representative of the Union for Foreign Affairs and Security Policy (HR; Baroness Catherine Ashton). Each is financed out of the CFSP budget. In addition, Member States also contribute regularly through, e.g., seconding some of the EUSR's staff members.

21.4 In February 2010, the mandates were extended, not for the usual twelve months, but only until 31 August 2010, or until the establishment of the European External Action Service (EEAS), whichever was the earlier; the HR intended to revert to the matter in the light of further work on the EEAS.¹⁰⁴

21.5 The European Union currently has EUSRs covering the following countries or regions: Afghanistan, the African Union, Bosnia and Herzegovina, Central Asia, Kosovo, the South Caucasus and the crisis in Georgia, the Southern Mediterranean region and Sudan.¹⁰⁵

21.6 At our meeting on 8 September 2010 we considered Council Decisions concerning the mandates of all the then EUSRs.¹⁰⁶ Some of the history, mandate and activities of each one was helpfully summarised by the Minister for Europe (Mr David Lidington) in his Explanatory Memorandum of 2 August 2010 with his comments on each one beneath the summary.¹⁰⁷

Afghanistan

21.7 The EU established a Special Representative for Afghanistan in 2002. The mandate focuses on enhancing EU effectiveness and visibility in Afghanistan. It aims to contribute to the strengthening of democracy, rule of law, good governance, civilian capacity building, economic growth and respect for human rights in Afghanistan. The mandate was amended in July 2009 to include Pakistan to reflect the direction on international debate on Afghanistan and broader regional challenges.

21.8 As noted in earlier Reports, the EU is a major partner in Afghanistan, having disbursed or pledged \$7.5 billion between 2002 and 2011; EU member states also provide

104 For further details, see (31290-1) —, (31295-99) — and (31300-04) — (2009-10): HC 5-x (2009-10), chapter 8 (9 February 2010).

105 For full information, see http://eeas.europa.eu/policies/eu-special-representatives/index_en.htm.

106 The European Union originally had 11 EUSRs dealing with 12 areas (one EUSR carries out two functions): the functions of those who formerly dealt with the Former Yugoslav Republic of Macedonia, the Middle East and Moldova have now been absorbed into the EEAS.

107 For further details, see (31844), (31856-66) and (31884) —: HC 428-i (2010-11), chapter 66 (8 September 2010).

approximately 16,000 troops to the International Security Assistance Force; and the EU has launched an ongoing Police Mission to Afghanistan (EUPOL) since June 2007.

21.9 It was announced on 22 February 2010 that Vygaudas Ušackas — the foreign minister of Lithuania until his resignation in January — had been appointed as the European Union’s next special representative for Afghanistan and head of its delegation in Kabul.

21.10 The previous Committee cleared the Council Decision setting out Mr Ušackas’ mandate at its meeting on 24 March 2010;¹⁰⁸ and, on 8 September 2010, the Committee reported some further information from the Minister for Europe (Mr David Lidington) concerning Mr Ušackas’ credentials for the job and confirming the new Government’s support for his appointment.¹⁰⁹

21.11 At that same meeting, the Committee also cleared a Council Decision further extending Mr Ušackas’ mandate until 31 August 2011.

21.12 Then, in the Report of its meeting on 11 May 2011, the Committee reported some further information from the Minister for Europe (Mr David Lidington), in his letter of 14 April 2011, which its predecessor had originally asked for a year earlier, concerning the Pakistan aspect of the EUSR Afghanistan’s position and the non-EUSR component of Mr. Ušackas’ “double-hatted” role. The Minister for Europe responded as follows:

“The regional dimension of policy on Afghanistan is crucial to our efforts there. Accordingly, the EUSR’s mandate includes engagement with Pakistan, in so far as it concerns Afghanistan. The EUSR can undertake his mandate most effectively by ensuring his activities are coordinated with the bilateral activities of EU Member States as well as with the other key players who lead on Afghanistan-Pakistan engagement, such as the UN and the United States.

“Regarding the non-EUSR component of Mr Usackas’ job, as head of the EU delegation in Kabul, Mr Usackas has oversight of all of its activities, including areas such as economic cooperation, EU-Afghanistan trade and political relations, and public relations. Mr Usackas also has oversight of all European Commission (EC) managed assistance programmes. The EC has increased the allocation for the National Indicative Programme for 2011–2013, from €150 million per year to €200 million per year for the Afghanistan DCI country programme. Projects will focus on rural development; governance and rule of law, including justice and police reform; and health. EC assistance will also be channelled into programmes for vulnerable groups such as street children, orphans and abandoned women; continuing the EC de-mining programme in partnership with the UN; and supporting initiatives to build regional cooperation in trade, border management, and counter-narcotics.”¹¹⁰

21.13 The Council Decision that the Committee cleared on 8 July 2011 did not introduce any changes to the scope Mr Ušackas’ mandate and extended it until 30 June 2012.

108 See headnote: (31425) —: HC 5–xv (2009–10), chapter 7 (24 March 2010).

109 See headnote: (31425) —: HC 428–i (2010–11), chapter 51 (8 September 2010).

110 See headnote: (31856) —: HC 428–xxvi (2010–12), chapter 4 (11 May 2011).

21.14 The Minister of Europe (Mr David Lidington) described Afghanistan as one of the UK's top foreign policy priorities and fully supported the work of the EUSR in Afghanistan and the extension of the mandate as key to achieving EU objectives.

21.15 The Minister noted that:

- the EUSR's "double hatted" role, as EUSR and Head of the European Commission delegation, resulted in a unified CFSP/Commission delegation, which he said enable the EUSR to have oversight of all of the EU delegation's activities (which include areas such as economic cooperation, EU-Afghanistan trade and political relations, press and information activities) and of the European Commission-managed assistance programme, and was as a signal that the EU was increasing its focus in Afghanistan;
- this appointment was key to enhancing the international civilian effort, following the appointment of heavyweight figures for the role of NATO Senior Civilian Representative and the UN Special Representative for the Secretary General;
- as a senior political figure, Mr Ušackas had significantly enhanced the profile of the EU in Afghanistan, worked effectively with UN and NATO counterparts to coordinate the international civilian effort, and had been instrumental in driving forward the 2009 EU Action Plan for Afghanistan (a roadmap for a better coordinated, more focussed EU civilian effort in Afghanistan and for unified EU support to the Afghan Government for the implementation of commitments made at the Kabul Conference;
- Mr Ušackas had also been working more closely with the EU Police Mission to help it secure better political leverage and access in country, which had contributed to an enhanced reputation and better delivery of its objectives.

21.16 The Minister also welcomed the EUSR's efforts to increase the visibility of the EU in Afghanistan and his work with the international community and wider region. He noted the EUSR's responsibilities with Pakistan, including coordinating his activities with the bilateral initiatives of EU member states, as well as with other key players on Afghanistan-Pakistan engagement, such as the UN and the United States; and as co-chair of the International Contact Group's working group on Long Term Engagement as part of the preparations for the December Bonn Conference, which he described as being aligned to UK objectives to support the emergence of a stable and durable Afghan state beyond 2014.

21.17 The Minister concluded by explaining that the budget for this extension was not yet available, but expected it to be consistent with the sum allocated in the current mandate.

Our assessment

21.18 Although the mandate extension raised no questions, we reported it to the House nonetheless because of the widespread interest in EU activity in Afghanistan, and cleared the document.¹¹¹

¹¹¹ See headnote: (32941) —: HC 428–xxxii (2010–12), chapter 16 (6 July 2011).

The draft Council Decision

21.19 The current document, proposing the extension of the mandate until 30 June 2013, does not introduce any changes to the scope of the mandate from last year.

The Government's view

21.20 In his Explanatory Memorandum of 31 May 2012, the Minister of Europe (Mr David Lidington) reiterates most of what he said last July, adding only that the EUSR has:

- also led efforts to agree the establishment for a long term partnership agreement between the EU and Afghanistan, known as the “Cooperation Agreement on Partnership and Development”, which the Minister strongly supports as an important signal of the EU’s and international community’s long term commitment to Afghanistan;
- ensured the EU provides a useful and substantive role contributing to key international conferences, most notably the International Bonn Conference on Afghanistan (5 December 2011), the NATO summit in Chicago which discussed Afghanistan’s long term security needs (20/21 May) and the forthcoming conference on development in Tokyo (8 July).

21.21 The Minister believes that extending the EUSR’s mandate will enable him to build on the progress achieved so far and to continue to deliver progress against the objectives set out in his mandate, and therefore supports the extension.

21.22 With regard to the *Financial Implications*, the Minister says:

- the budget for this extension is not yet available;
- he has urged the EU to provide the figures immediately and will pass this information to the Committee as soon as it is available.

Conclusion

21.23 **We are not happy about the way in which the financial aspects have been handled again this year. As with the Minister’s comments, there is a disconcertingly “pro forma” air about what he has to say, which essentially replicates what he said last July. While we have no doubt that Mr Ušackas has been doing a good job, we would have expected some illustrations of what he has achieved in the past 12 months, as have been provided in other cases, rather than this somewhat superficial report. This inconsistency suggests both a certain lack of “quality assurance” in the Foreign and Commonwealth Office, and an attitude on the part of the European External Action Service that is reminiscent of its predecessors in the Council secretariat — that even when matters are straightforward, they can be left until the last moment indicating a view that Parliamentary scrutiny does not need to be factored into the relevant timeline.**

21.24 The extension of this mandate for a further 12 months raises no questions, and we accordingly clear the Council Decision. We are reporting it to the House for the same reasons as hitherto.

21.25 However, when the Minister furnishes the relevant financial information on this and the other relevant EUSR mandates, we would like to know what he is doing to ensure that, in future:

- his Explanatory Memoranda on EUSR mandates contain a proper report on the incumbent’s performance in the preceding year;
- the EEAS provide draft EUSR Council Decisions and the relevant financial information in good time so that, if any questions do arise, they can be answered without unnecessary pressure of time.

22 EU Special Representative for the South Caucasus

(33954)	Council Decision extend the mandate of the European Union Special Representative for the South Caucasus
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<i>Legal base</i>	Articles 31 (2) and 33 TEU; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 31 May 2012
<i>Previous Committee Reports</i>	None; but see (32778) —: HC 428–xxxvi (2010–12), chapter 20 (14 September 2011)
<i>Discussion in Council</i>	25 June 2012 Foreign Affairs Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; further information requested

Background

22.1 EU Special Representatives (EUSRs) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They were established under Article 33 of the Treaty on European Union and are appointed by the Council. Their purpose is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

22.2 An EUSR is appointed by Council through the legal act of a Council Decision. The substance of his or her mandate depends on the political context of the deployment.¹¹²

¹¹² Article 33 TEU says that “The Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the High Representative.” Article 31(2) TEU provides for his or her appointment to be adopted, not by unanimity as is normally the case with decisions relating to the EU’s external action and common foreign and security policy, but by QMV.

Some provide, *inter alia*, a political backing to an ESDP operation; others focus on carrying out or contribute to developing an EU policy. Some EUSRs are resident in their country or region of activity; others work on a travelling basis from Brussels.

22.3 All EUSRs carry out their duties under the authority and operational direction of the High Representative of the Union for Foreign Affairs and Security Policy (HR; Baroness Catherine Ashton). Each is financed out of the CFSP budget. In addition, Member States also contribute regularly through, e.g., seconding some of the EUSR's staff members.

22.4 . In February 2010, the mandates were extended, not for the usual 12 months, but only until 31 August 2010, or until the establishment of the European External Action Service (EEAS), whichever was the earlier; the HR intended to revert to the matter in the light of further work on the EEAS.¹¹³

22.5 The European Union currently has EUSRs covering the following countries or regions: Afghanistan, the African Union, Bosnia and Herzegovina, Central Asia, Kosovo, the South Caucasus and the crisis in Georgia, the Southern Mediterranean region and Sudan.¹¹⁴

22.6 At our meeting on 8 September 2010 we considered Council Decisions concerning the mandates of all the then EUSRs. Some of the history, mandate and activities of each one was helpfully summarised by the Minister for Europe (Mr David Lidington) in his Explanatory Memorandum of 2 August 2010 with his comments on each one beneath the summary.¹¹⁵

South Caucasus

22.7 The EUSR for the South Caucasus was first appointed on 20 February 2006. He was tasked with supporting the HR and the Council in: assisting Armenia, Azerbaijan and Georgia in carrying out political and economic reforms; preventing conflicts in the region and contributing to the peaceful settlement of conflicts, including through promoting the return of refugees and internally displaced persons; engaging constructively with main interested actors concerning the region; encouraging and supporting further cooperation between States of the region, including on economic, energy and transport issues; and enhancing EU effectiveness and visibility in the region.

22.8 In September 2011, when the Committee cleared a mandate extension until 28 February 2011, the Minister for Europe (Mr David Lidington) said that these objectives remained relevant in a region of strategic importance to the UK and the EU: but also agreed that much of the mandate could be taken on by the EU delegations in Tbilisi, Baku and Yerevan under the EEAS — except for “functions relating to conflict resolution and prevention, which need to be undertaken by someone based outside the region.” This could potentially be a senior member of the EEAS based in Brussels; the UK would seek to ensure whoever filled the position would have “sufficient seniority and experience

113 For further details, see (31290–91) —, (31295–99) — and (31300–04) — (2009–10): HC 5–x (2009–10), chapter 8 (9 February 2010).

114 For full information, see http://eeas.europa.eu/policies/eu-special-representatives/index_en.htm.

115 For further details, see (31844), (31856–66) and (31884) —: HC 428–i (2010–11), chapter 66 (8 September 2010).

to establish the level of access and influence necessary to have an impact on key players.” The Committee noted in press reports that the July 2010 Foreign Affairs Council had already decided to end this mandate on 28 February 2011, and wondered how the Minister would ensure that these conditions for the new job-holder would be met.

22.9 As our earlier Report on the present mandate recalls in detail, the Committee initially retained under scrutiny a new, extended mandate, which incorporated not only the original brief but also the “Georgia Crisis” mandate (which the EUSR to Central Asia, Ambassador Pierre Morel, had been persuaded to take on in the wake of the Russia/Georgia conflict, and who was keen to jettison it and concentrate on his long-standing Central Asia brief). This was not because the Committee had any concerns over the mandate or the proposed budget and staffing arrangements, as it had said in its exchanges with the Minister. Though he had asked if, in the light of all that the Committee then knew, it would agree to clear the draft Council Decision appointing a combined South Caucasus/South Georgia EUSR, and had said that he would otherwise need to override scrutiny so that the EUSR could be appointed in time to hand over with Mr Morel and take office on 1 September 2011, the Committee felt that it would not be appropriate when the Minister himself could offer no information on the key consideration, i.e., the job-holder.

22.10 The further letter that the Committee considered last September finally completed the picture. The Minister wrote to inform the Committee that the appointment of Mr Philippe Lefort had been confirmed by Member States, by written procedure, on 25 August 2011; that Mr Lefort would take up his duties on 1 September 2011 for an initial period of ten months; and that the details of the budget and his mandate remained unchanged from those set out in his previous letter. The Minister noted that Mr Lefort was a French career diplomat with more than 20 years of experience, highlighting his qualifications thus:

“He has dedicated most of his career to the Caucasus and Russia. He was French Ambassador to Georgia (2004–2007), deputy head of mission of the French Embassy in Russia (2007–2010) and has been the head of the French Foreign Ministry’s General Directorate for Continental Europe since 2010.”

22.11 The Minister expected that many staff from the teams of the former EUSRs for the South Caucasus and Crisis in Georgia would transfer to EUSR Lefort’s team to ensure continuity of expertise and contacts, and that decisions on these appointments will be finalised soon.

Our assessment

22.12 Though the Minister again did not refer to his long-standing concerns, we could but presume that he judged that Mr Lefort did indeed have “sufficient seniority and experience to establish the level of access and influence necessary to have an impact on key players”; was someone with strong relations with the other international organisations working in the region; and was capable of gaining easy access to the separatist regions of Abkhazia and South Ossetia — which certainly seemed so from the *curriculum vitae*, and letter of support from the HR, enclosed with the Minister’s letter.

22.13 We accordingly cleared the Council Decision, and reported it to the House because of the degree of interest in developments in this troubled part of the EU's "near neighbourhood".¹¹⁶

The Council Decision

22.14 This draft Council Decision sets out a proposal to extend the mandate of the current EUSR for the South Caucasus and the crisis in Georgia, Mr Philippe Lefort, until 30 June 2013.

22.15 In his Explanatory Memorandum of 31 May 2012, the Minister of Europe (Mr David Lidington) says that this mandate extension will further contribute to the settlement of conflicts in the South Caucasus and encourage increased regional cooperation on common security threats. He notes that the EUSR will continue to participate in the Geneva Talks on the Georgia crisis, and monitor human rights developments in the region.

The Government's view

22.16 The Minister says that Mr Lefort's regional mandate avoids the sensitivities that would arise if an EU representative was based in one of the three South Caucasus countries, and continues his comments as follows:

"The UK supports the extension of the mandate for the EUSR for the South Caucasus and the crisis in Georgia. The region is of strategic importance to the UK and the EU.

"The EU has been effective in the 'non-recognition' element of its non-recognition and engagement policy towards Abkhazia and South Ossetia. Engagement with Abkhazia and South Ossetia is much more challenging. Lefort has made significant efforts to further this engagement and prevent the isolation and dependence on Russia of these two entities.

"The EUSR will continue to contribute to efforts to resolve conflicts and facilitate the implementation of any settlements in coordination with the United Nations, the OSCE (Organisation for Security and Cooperation in Europe), and the OSCE Minsk Group which aims to promote a settlement of the conflict in Nagorno-Karabakh. The EUSR represents the EU in the 'Geneva Talks' process, the mechanism for seeking a resolution to the conflicts in Georgia (Abkhazia, South Ossetia). We strongly support the continuation of the Talks: the regularity of meetings, combined with local level Incident Prevention and Response Mechanism (IPRM) meetings, help manage tensions between Georgia, Russia and the separatist regions.

"The EUSR will continue to have an advisory role to the EU Monitoring Mission (EUMM). This is important as it continues to be the only major international conflict mission present on the ground in Georgia.

¹¹⁶ See headnote: (32778) —: HC 428–xxxvii (2010–12), chapter 20 (14 September 2011).

“Bilateral matters between the European Union and Armenia, Azerbaijan, and Georgia respectively will continue to be handled by the European External Action Service and the EU delegations in the three South Caucasus capitals. These include matters such as negotiations on Association Agreements, human rights, media freedom, and domestic electoral reform.

“The next year promises to be a challenging time for the South Caucasus. Parliamentary elections took place in Armenia in May, and will take place in Georgia in October. Presidential elections will be held in all three South Caucasus countries in 2013. The election period will probably see an increase in unhelpful rhetoric over Nagorno-Karabakh.

“Instability related to the Georgian breakaway regions (Abkhazia and South Ossetia) remains a threat and Russia continues to consolidate its military presence there. There has been a real increase in violent incidents in Abkhazia. The most recent IPRM meeting for Abkhazia due to take place in April was postponed by the UN co-chair following the Abkhaz refusal to allow the EUMM Head of Mission access. The Abkhaz IPRM is now unlikely to take place until this impasse is resolved. Russia has announced that it will conduct its ‘Caucasus 2012’ military exercise in September. It has claimed that ‘Caucasus 2012’ will be a command HQ exercise, with the emphasis on HQ elements rather than troop manoeuvres. The reality remains unclear, and the concurrent CSTO (Collective Security Treaty Organisation) military exercise in Armenia adds to Georgia’s anxiety. Given the proximity of Abkhazia to Sochi, Russia can also be expected to take an activist approach on security issues in the region in the run-up to the 2014 Winter Olympics. There is a need for stability and continuity which Phillippe Lefort in his role as EUSR can provide.

“There has been little recent progress on the OSCE-led Minsk group peace process over Nagorno-Karabakh for a variety of reasons, including elections in all the Minsk Group Co-chair countries (France, Russia, US — which all have important Armenian Diasporas) and upcoming elections in Armenia in 2013. But the main reason remains mutual antagonism between the populations in both countries and the absence of high-level political commitment needed to make mutual concessions, and real progress possible. Against such a background, supporting civil society and people to people contact is a key tool for the international community. The EUSR has been instrumental in getting agreement from the Armenian and Azerbaijani Presidents to increase such engagement.”

22.17 With regard to the financial aspects of Mr Lefort’s mandate, the Minister has nothing to say other than that he “is paid for through the CFSP budget, RELEX is yet to consider this.”

Conclusion

22.18 **The proposed mandate raises no questions. We are reporting it to the House nonetheless, for the same reasons as before.**

22.19 We are disappointed that not only does the Minister provide no information about the present budget; he also offers no undertaking to provide any future information about the next year's.

22.20 We have no wish to hold up the proposed mandate renewal. But we would like to have this information from the Minister as soon as it is available to him, and his views on its appropriateness in relation to the EUSR's responsibilities.

22.21 In the meantime, we now clear the document.

23 EU Special Representative in Bosnia and Herzegovina

(33960)	Council Decision amending Decision 2011/426/CFSP appointing the
—	European Union Special Representative in Bosnia and Herzegovina
—	

<i>Legal base</i>	Articles 28, 31 (2) and 33 TEU; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 11 June 2012
<i>Previous Committee Report</i>	None; but see (32951) —: HC 428–xxxii (2010–12), chapter 17 (6 July 2011); (32579) —: HC 428–xx (2010–11), chapter 8 (16 March 2011); and (31844), (31856–66) and (31884) —: HC 428–i (2010–11), chapter 66 (8 September 2010)
<i>Discussion in Council</i>	To be determined
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

23.1 EU Special Representatives (EUSRs) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They are established under Article 33 of the Treaty on European Union and are appointed by the Council. Their purpose is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

23.2 An EUSR is appointed by Council through the legal act of a Council Decision. The substance of his or her mandate depends on the political context of the deployment. Some provide, *inter alia*, a political backing to an ESDP operation; others focus on carrying out or contribute to developing an EU policy. Some EUSRs are resident in their country or region of activity; others work on a travelling basis from Brussels.

23.3 All EUSRs carry out their duties under the authority and operational direction of the High Representative of the Union for Foreign Affairs and Security Policy (HR; Baroness Catherine Ashton). Each is financed out of the CFSP budget. In addition, Member States also contribute regularly through, for example, seconding some of the EUSR's staff members.

23.4 In February 2010, the mandates were extended, not for the usual twelve months, but only until 31 August 2010, or until the establishment of the European External Action Service (EEAS), whichever was the earlier; the HR intended to revert to the matter in the light of further work on the EEAS.¹¹⁷

23.5 At our meeting on 8 September 2010 we considered Council Decisions concerning the mandates of all the then EUSRs. Some of the history, mandate and activities of each one was helpfully summarised by the Minister for Europe (Mr David Lidington) in his Explanatory Memorandum of 2 August 2010 with his comments on each one beneath the summary.¹¹⁸

23.6 The European Union currently has EUSRs covering the following countries or regions: Afghanistan, the African Union, Bosnia and Herzegovina, Central Asia, Kosovo, the South Caucasus and the crisis in Georgia, the Southern Mediterranean region and Sudan.¹¹⁹

The EUSR to Bosnia and Herzegovina

23.7 The EU has appointed a EUSR to Bosnia and Herzegovina (BiH) since 2002. Valentin Inzko was appointed on 11 March 2009, and on 22 February 2010 his mandate was extended until 31 August 2010. The objective of the EUSR is to assist in the creation of a stable, viable, peaceful and multi-ethnic Bosnia and Herzegovina (BiH), co-operating peacefully with its neighbours and irreversibly on track towards EU membership. To this end, the EUSR offers advice and facilitation in the local political progress, co-ordinates the activities of EU actors in BiH and provides EU actors and EU Heads of Mission with regular reporting on the local political situation. The EUSR also undertakes significant outreach work, aimed at communicating to the BiH population the benefits of EU integration and why certain reforms are necessary to realise them.

23.8 At the time of that mandate renewal, the Minister for Europe (Mr David Lidington) expressed full support for maintaining the Office of the EUSR in BiH, and professed himself very concerned about the situation in BiH, where he said reform progress had been slow and there were high levels of ethnic nationalist rhetoric. With elections scheduled that autumn, the EUSR would have a key role over the next twelve months. He would work to focus pre-election debate on the reforms necessary for further EU integration and to encourage BiH's political leaders to work constructively together on achieving these reforms. The EUSR would then be at the centre of the EU's crucial early engagement with a new government after the elections. The EUSR would also continue his outreach and

117 For further details, see (31290-1) —, (31295-99) — and (31300-04) — (2009-10): HC 5-x (2009-10), chapter 8 (9 February 2010).

118 See headnote: (31844), (31856-66) and (31884) —: HC 428-i (2010-11), chapter 66 (8 September 2010).

119 For full information, see http://eeas.europa.eu/policies/eu-special-representatives/index_en.htm.

communication programme, in order further to communicate the benefits of EU accession and the nature of the accession process to the general public in BiH; the Government strongly supported this work.

The wider context

23.9 The internationally brokered Dayton Peace Agreement of November 1995 established BiH as a State comprising two Entities, each with a high degree of autonomy: the Republika Srpska (RS) and the Federation (FBiH). The Agreement also designated the Office of the High Representative (OHR) as the chief civilian peace implementation agency, to oversee the implementation of the civilian aspects of the Agreement and co-ordinate the activities of the civilian organisations and agencies operating in BiH.

23.10 The Peace Implementation Council (PIC) — 55 countries and international organisations that sponsor and direct the peace implementation process — provides strategic direction and oversight. The Steering Board provides the High Representative with political guidance. The Steering Board members are Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, the Presidency of the European Union, the European Commission, and the Organisation of the Islamic Conference (OIC), which is represented by Turkey. In Sarajevo, the High Representative chairs weekly meetings of the Ambassadors to BiH of the Steering Board members. In addition, the Steering Board meets at the level of political directors three times a year.¹²⁰ From the outset the HR was “double-hatted” as EU Special Representative.

23.11 The longstanding goal has always been for BiH to work its way towards EU accession. The most recent step was the signing in June 2008 of BiH’s Stabilisation and Association Agreement. Then, according to plan, the OHR would have been wound up and there would then be only the EUSR, acting in his normal capacity, working with the local community in implementing the SAA. But things have not gone according to plan. Prior to transition, the BiH authorities need to deliver five objectives (well established, approved by the PIC SB and all previously recognized by BiH authorities as obligations) revolving around creating a sustainable, multi-ethnic, democratic, law-based State, and to fulfil two conditions — signing of the SAA and a positive assessment of the situation in BiH by the PIC SB based on full compliance with the Dayton Agreement. These are known as the “Five Objectives and Two Conditions”; their delivery or fulfilment has been elusive.

23.12 Against this background, the Minister noted that the PIC had concluded in June 2010 that the 5 objectives and 2 conditions (agreed as the criteria for closure of the Office of the High Representative (OHR)) had not yet been completed; that the PIC would accordingly continue to review progress against those objectives and conditions at its forthcoming meetings; and that this EUSR mandate renewal did not prejudge a future PIC decision regarding closure of the OHR.

¹²⁰ For full information about the Office of the High Representative, see <http://www.ohr.int/>.

The Minister's letter of 14 February 2011

23.13 The Minister remained very concerned about the situation: coalition negotiations following the previous autumn's elections had so far failed to deliver new governments at the State and Federation-entity levels; there had been almost complete lack of progress on EU-related and other important reforms; and provocative and nationalist rhetoric was on the rise. A more proactive EU role was needed to continue to press clearly and firmly for progress. However, with stability not firmly embedded, now was, he said, not the time to give up the internationally-mandated executive powers at the disposal of the international community (i.e., the ICR and the EU military force EUFOR Operation Althea).¹²¹ His approach at the forthcoming Foreign Affairs Council would therefore be as follows:

- **the EU presence in BiH to be reinvigorated and reinforced** — EUSR and Commission Head of Delegation roles to be combined, and the EUSR mandate reinforced to include the ability to make use of both the incentives provided by the EU accession process and certain restrictive measures, such as travel restrictions and asset or funding freezes (yet to be defined but the Government would press for the strongest possible “EU toolbox”);
- **the High Representative and his executive powers to be maintained** in an ongoing OHR, separate (or “decoupled”) from the EU presence and perhaps eventually located outside BiH. PIC conditionality for the eventual closure of the OHR would continue to apply. Close co-ordination mechanisms would be needed to ensure that the EU and OHR worked together and co-ordinated the application of their respective powers. The Government would press firmly for this in negotiation;
- **the executive (Chapter VII) mandate of EUFOR Operation Althea to be maintained**, even if EU troop draw-downs meant that this executive mandate needed to be serviced by fewer troops on the ground.

23.14 The Minister concluded by saying that he understood that such a package would be tabled by the High Representative (Baroness Ashton) and Enlargement Commissioner Füle, which the UK had “very proactively shaped”, working closely within the PIC to maintain the conditionality in respect of the eventual closure of the OHR, and of which he would “therefore be strongly supportive.”

23.15 The Committee looked forward to scrutinising the Explanatory Memorandum and draft Council Decision that would emerge in due course, and in the meantime asked only that it should fully explain the background to and the approach agreed at the Foreign Affairs Council, and be submitted in good time for proper scrutiny.

¹²¹ On 2 December 2004 the European Union (EU) launched an EU-led military operation in BiH — Operation EUFOR Althea, as part of the Common Security and Defence Policy in support of BiH. The UN Security Council authorized EUFOR Althea as a legal successor to SFOR, the previous NATO led operation. UN Security Council Resolution 1948 (2010) extended the mandate of EUFOR Althea until November 2011. Operation Althea's job is to provide a military presence in order to contribute to the safe and secure environment, deny conditions for a resumption of violence and manage any residual aspect of the General Framework Agreement for Peace in BiH (also known as Dayton/Paris Agreement). At the moment, EUFOR deploys around 1,600 troops in theatre that can be reinforced by troops from the NATO Mission in Kosovo (KFOR) and additional “Over the Horizon Forces”. See <http://www.euforbih.org/> for full information on EUFOR Althea.

The Council Decision of March 2011

23.16 The preamble to the draft Council Decision noted that:

- on 14 December 2010, the Council confirmed its determination to support the Dayton/Paris General Framework Agreement for Peace and its readiness to consider proposals to strengthen the EU's ability to engage effectively with Bosnia and Herzegovina in this regard;
- in this context, restrictive measures should be imposed against certain natural and legal persons whose activities undermine the sovereignty, territorial integrity, constitutional order and international personality of Bosnia and Herzegovina, seriously threaten the security situation or undermine the General Framework Agreement for Peace and the Annexes thereto.

23.17 The Council Decision obliges Member States to take the necessary measures to prevent the entry into, or transit through, their territories of such persons, and provides the basis for all funds and economic resources belonging to, owned, held or controlled by such persons and natural or legal persons and bodies associated with them, as listed in the Annex, to be frozen.

23.18 In his Explanatory Memorandum of 11 March 2011, the Minister for Europe reiterated his concern over the failure of coalition negotiations following the previous autumn's elections to deliver new governments at the State and Federation-entity levels; an almost complete lack of progress on EU-related and other important reforms; and a rise of provocative and nationalist rhetoric, especially during last year's election campaign.

23.19 He went on to say that:

“A clear and united international community voice is needed to press clearly and firmly for progress. To this end, the EU needs to take on a more proactive role in BiH. This will allow it to maximise the incentives provided by BiH's EU perspective and future accession process and — where necessary — to use deterrents and take decisive action to address blockages and threats to stability.

“In addition to the EU policy instruments already in place or being considered to address the potential risks and challenges that BiH might face, restrictive measures are being developed.

[...]

“The possibility of imposing restrictive measures is part of a broader comprehensive EU strategy, alongside other EU instruments such as political facilitation, IPA financing, the monitoring and support of reform progress through bodies established by the SAA/IA and the two EU missions on the ground, namely EUFOR Operation Althea and the EU Police Mission.

“The proposals received broad support from Ministers at the February FAC, with plans for a more detailed discussion at the March FAC. In line with this approach, in our subsequent discussions since the February FAC, the Government has pressed for the strongest possible restrictive measures and incentives for progress.”

Our assessment

23.20 We reported this development to the House because of the degree of interest in developments in the western Balkans.

23.21 Given that these restrictive measures were but part of a wider package of changes to the longstanding arrangements, the outline of which was not entirely clear and the details of which had yet to be negotiated, we asked the Minister to continue to keep the Committee informed, and again looked forward to his Explanatory Memorandum on the proposed new EUSR mandate broadly outlined in his letter.

23.22 In the meantime, we cleared the document.¹²²

Council Decision 2011/426/CFSP

23.23 This Council Decision of 18 July 2011 appointed Mr Peter Sorensen as the EUSR in BiH from 1 September 2011, with a mandate until 30 June 2015.

23.24 In his Explanatory Memorandum of 27 June 2011, the Minister for Europe (Mr David Lidington) confirmed that the proposed mandate would end the current practice of combining (or “double hatting”) the EUSR role with that of the ICR in BiH. The role of EUSR would instead, he said, be combined with that of the European Union’s Head of Delegation in BiH, with Mr Sorensen being concurrently appointed as both EUSR and Head of the EU Delegation. Although EUSRs were usually appointed for one year terms, the Minister said that, in order to synchronise Mr Sorensen’s two roles, both positions would be contracted for a period of four years.

23.25 Mr Valentin Inzko, the current EUSR and High Representative, would remain in BiH in his capacity as High Representative.

23.26 The Minister described the EUSR’s functions as outlined in the proposed mandate as:

- focusing on the realisation of the EU’s high-level policy objectives and include facilitating the political process;
- ensuring overall EU consistency and coherence;
- facilitating progress on economic priorities;
- liaising, consulting and coordinating with EU actors and the wider international community;
- monitoring, advising on and facilitating BiH constitutional reform, compliance with the Dayton/Paris Peace Agreements, Rule of Law and security-related matters;
- contributing to the consolidation of the respect of human rights and fundamental freedoms in BiH;

¹²² See headnote: (32579) —: HC 428–xx (2010–11), chapter 8 (16 March 2011).

- encouraging full BiH cooperation with ICTY; and
- providing advice on the use of EU restrictive measures.

23.27 The Minister continued to remain “very concerned about the stagnant reform progress and corrosive political environment in BiH”, which he describes thus:

“A state level government has not been formed almost nine months after elections on 3 October 2010, divisive ethnic rhetoric is rife and attempts to undermine the Dayton Peace Agreement and State level institutions continue.”

23.28 The Minister went on to say that he had “long championed the need for the international community to present a clear and united front in BiH” and “argued that the EU must take a more proactive and leading role in country.” He saw the reinforcement of the EU’s presence through “a single EUSR/Head of EU Delegation figurehead, with the ability to make greater and more effective use of the incentives offered by the EU, as well as to advise on possible recourse to restrictive measures” as “an important and welcome part of this process”, and therefore supported the appointment of Peter Sorensen (then Head of the EU Delegation in Macedonia) as EUSR and Head of EU Delegation.

23.29 This institutional transition, he said, formed part of the EU’s strengthened policy approach to BiH agreed at the 21 March 2011 Foreign Affairs Council, as foreshadowed in his letter of 14 February 2011, and was closely in line with UK policy.

23.30 He continued as follows:

“The EUSR/Head of EU Delegation role will be challenging but pivotal over the coming months: the post-holder will be responsible for driving forward the EU’s wider strategy, enhancing awareness and understanding of the EU perspective among the Bosnian people, and engaging BiH’s executive and legislative authorities including the new state-level government (once it is formed) to deliver long overdue reforms.

“In line with the EU strategy adopted in March 2011, the new EU presence will coexist with the High Representative, who will remain in place (or potentially ‘off-shored’ in the future if the new EU presence is effective) until the set of conditions and objectives (known as the ‘the 5+2’) agreed by the international community for the closure of the Office of the High Representative is met. The Peace Implementation Council, which advises the High Representative, concluded in June 2010 that the ‘5+2’ had not yet been completed. The Peace Implementation Council will continue to review progress against those objectives and conditions at its regular meetings. This EUSR mandate renewal does not prejudge a future PIC decision regarding closure of the Office of the High Representative.

“I believe that maximum clarity and coordination between the two international community representatives in BiH — the EUSR/Head of EU Delegation and the High Representative — is crucial. To this end, the draft EUSR mandate includes an explicit reference to the need for the EUSR to maintain close coordination with the OHR.”

Our assessment

23.31 The challenges facing the new EUSR and Head of Delegation, and the new International Civilian Representative, spoke for themselves. As the Minister suggested, the need for them to work in close coordination was essential.

23.32 We cleared the Council Decision. In so doing, we noted that earlier representations by the Minister to the High Representative about the timely presentation of proposals, so as to facilitate proper parliamentary scrutiny, had apparently fallen on deaf ears. We therefore asked the Minister again to point out to the High Representative that proper, and timely, Parliamentary scrutiny was central to what remained an inter-governmental process, and that this — and not simply what might seem to be administratively convenient to her officials — must be built in to the timetable. We looked forward to receiving a copy of the Minister’s letter.¹²³

The draft Council Decision

23.33 Council Decision 2011/426/CFSP established a budget from 1 September 2011 until 30 June 2012. The new Council sets out the budget for the EUSR from 1 July 2012 to 30 June 2013.

23.34 In his Explanatory Memorandum of 11 June 2012, the Minister for Europe (Mr David Lidington) notes that, as well as covering the existing tasks of the EUSR for the next 12 month period, the proposed budget reflects an increase in resources to cover a transfer of some rule of law tasks from the EU Police Mission (EUPM) in Bosnia and Herzegovina and a geographically reinforced presence for the EUSR.

23.35 He summarises the EUSR’s mandate as follows:

- a) “offer the Union’s advice and facilitate the political process;
- b) “ensure consistency and coherence of Union action;
- c) “facilitate progress on political, economic and European priorities;
- d) “monitor and advise the executive and legislative authorities at all levels of government in BiH and liaise with BiH authorities and political parties;
- e) “ensure the implementation of the Union’s efforts in the whole range of activities in the field of the rule of law and the security sector reform promote overall Union coordination of, and give local political direction to Union efforts in tackling organised crime and corruption, and in this context, provide the HR and the Commission with assessments and advice as necessary;
- f) “without prejudice to the military chain of command, offer the EU Force Commander political guidance on military issues with a local political dimension, in particular concerning sensitive operations, relations with local authorities and

¹²³ See headnote: (32951) —: HC 428–xxxii (2010–12), chapter 17 (6 July 2011).

with the local media. Consult with the EU Force Commander before taking political action that may have an impact on the security situation;

- g) “coordinate and implement the Union’s communication efforts on EU issues towards the public in BiH;
- h) “promote the process of EU integration through targeted public diplomacy and EU outreach activities designed to ensure a broader understanding and support from the BiH public on EU related matters, including by means of engagement of local civil society actors;
- i) “contribute to the development and consolidation of respect for human rights and fundamental freedoms in BiH, in accordance with the EU human rights policy and EU Guidelines on Human Rights;
- j) “engage with relevant BiH authorities on their full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY);
- k) “in line with the EU integration process, advise, assist, facilitate and monitor political dialogue on the necessary constitutional changes;
- l) “maintain close contacts and consultations with the High Representative in Bosnia and Herzegovina and other relevant international organisations working in the country;
- m) “provide advice to the HR as necessary concerning natural or legal persons on whom restrictive measures could be imposed in view of the situation in BiH;
- n) “without prejudice to the applicable chains of command, help to ensure that all Union instruments in the field are applied coherently to attain the Union’s policy objectives.”

The Government’s view

23.36 The Minister recalls that the March 2011 strategy for BiH set out, in broad terms, an enhanced EU presence in BiH, led by the EUSR, with a focus on moving BiH further towards her EU future; the three conditions for BiH’s Stabilisation and Association Agreement (SAA) to come into force; and at the same time retained the important safeguards of the executive civilian mandate of the Office of the High Representative and the military executive mandate of the EU’s peacekeeping troops in Operation EUFOR Althea.

23.37 The Minister continues his comments as follows:

“Following the appointment of Peter Sorensen as EUSR on 1 September, the EUSR has strengthened the EU’s visibility and political impact in BiH, taking the lead in supporting BiH in EU-related matters. Peter Sorensen has now established himself as a respected and trusted interlocutor who carries real weight with key Bosnian politicians from all three constituent parties (Bosniak, Bosnian Serb and Bosnian Croat). The presence of the EUSR has also contributed to a renewed debate and

actions on key EU-related issues; facilitated a dialogue on the state-level budgets; and supported and further developed the EU-BiH Structured Dialogue on Justice.

“This strategy, with concerted effort from key partners in support, for example the US, has begun to bear fruit. Since the start of 2012, the political climate in BiH has been moving broadly in the right direction with BiH politicians showing a greater willingness to compromise. A Council of Ministers was finally formed on 10 February 2012 (after 14 months without a state-level government). By enacting Census and State Aid laws BiH has removed two of the three obstacles that were preventing its SAA from entering into force, although further efforts are required in meeting compliance with an ECtHR ruling. In addition, BiH has also made recent progress towards NATO membership by reaching a political agreement on the registration of immovable defence property, which is the sole condition preventing activation of its NATO Membership Action Plan. However, despite this recent progress, there remains an undercurrent of political, social and economic tension that continues to threaten the stability of the country. It is for this reason that the UK believes the Office of the High Representative (OHR) and EU-led peacekeeping force, EUFOR, remain important elements of the EU’s strategy until the environment is sufficiently stable and conditions for their removal are met.

“The mandate for the EUSR for the period 1 July 2012 to 30 June 2013 will continue as set out in the original Council Decision. The UK strongly supports the proposal in the original Council Decision to strengthen the EU presence in BiH, which involves the EU moving progressively into the foreground. We believe it is important to maintain a balance of incentives and deterrents by retaining international safeguards such as the OHR, while at the same time strengthening and increasing the level of EU engagement in line with progress on the ground. In order to reinforce this mandate, the EUSR will have an increased budget to cover extra activity in support of existing objectives:

- The EUSR’s office will increase its strategic rule of law activity following the closure of the EU Police Mission (EUPM) in BiH, with an additional staff of four international officers. EUPM, a civilian Common Security & Defence Policy (CSDP) mission aimed at supporting the development of BiH policing in line with EU standards, closes on 30 June 2012. Activity such as facilitating implementation of reforms to the law enforcement sector and providing strategic advice to BiH authorities on combating organised crime and corruption will be carried out by a new Rule of Law team within the EUSR’s office. We believe that closure of EUPM, following successful completion of its mandate and enhancing the EUSR’s activity on rule of law issues will ensure that the EU continues to focus on this important area and concentrates on assisting with reform of the law enforcement sector.
- The EUSR will establish new field presences in Banja Luka (in Republika Srpska) and Mostar (in the Federation) to facilitate stronger engagement with and understanding of dynamics in the two Entities as part of the BiH state. This approach recognises the need to engage with reforms at

different levels of government in BiH, in support of a sovereign BiH state enjoying full territorial integrity. The EUSR will also establish a new field presence in Brcko to engage with the district and act as one of a number of safeguards against instability following the 23 May decision at the Peace Implementation Council to close the OHR office in Brcko. This approach is in line with UK policy to increase EU activity in certain areas as the international presence in BiH evolves once conditions on the ground are met. Ensuring an increased EU presence in Brcko will be an important part of this transition.

“We are therefore supportive of an expansion in the EUSR’s budget. In this context the Committee will wish to note that, with the closure of EUPM on 30 June 2012, the CFSP budget will no longer be funding EUPM (the budget for which was €5.2 million for its last mandate of six months). We will of course look to ensure that negotiations on the budget are fully cogniscent (sic) of HMG’s policy of opposing any overall increase in the EU’s Common Foreign and Security Policy (CFSP) budget. We will push for a budget which is efficient, with savings on budget lines where possible, to ensure value for money for the UK taxpayer.

“In line with the EU strategy adopted in March 2011, the new EU presence has, to date, coexisted successfully with the High Representative. The UK will continue to insist that the Office of the High Representative (OHR) will remain in place (or potentially ‘off-shored’ — located outside BiH with the Bonn Powers¹²⁴ retained — in the future if the security situation becomes sufficiently stable) until the set of conditions and objectives (known as ‘the 5+2’) agreed by the international community for the closure of the OHR are met. The Peace Implementation Council (PIC) will continue to review progress against 5+2 at its regular meetings. An expansion of the EUSR’s activity and resources does not prejudice a future PIC decision regarding closure of the OHR. Both the OHR and EUSR continue to work together effectively on the ground and focus on complementary tasks.”

23.38 With regard to the Financial Implications, the Minister says:

- the proposed financial reference amount to cover expenditure related to the mandate from 1 July 2012 to 30 June 2013 is €5.25 million;
- the increase, from the 11 September 2011 to 30 June 2012 budget of €3.74 million, covers extra staffing on the rule of law side, and the field presences, as well as increased outreach to the BiH population;
- the budget is subject to negotiation in Brussels;
- he will update the Committees once the costs of this extension have been agreed.

¹²⁴ At its December 1997 meeting in Bonn, the Peace Implementation Council granted further substantial powers to the OHR, in order to avoid the implementation of the Dayton agreement being delayed or obstructed by local politicians. The OHR was requested to: adopt binding decisions when local parties seemed unable or unwilling to act; and remove from office public officials who violated legal commitments or, in general, the Dayton agreement.

Conclusion

23.39 The case for an increased budget is well made, especially when, at last, the Minister is able to report some relatively positive developments.

23.40 We note that we have yet to hear from the Minister about his discussions with the HR about the timely submission of Council Decisions relating to EUSR mandates (c.f. paragraph 23.32 above). Though we have no such concern in this instance, we do have with regard to various aspects of the Council Decisions concerning other mandates that we consider elsewhere in this Report. We accordingly take this opportunity to reinforce our wish to hear from the Minister, when he furnishes the relevant financial information on the other relevant EUSR mandates, about what he is doing to ensure that, in future:

- his Explanatory Memoranda on EUSR mandates contain a proper report on the incumbent's performance in the preceding year;
- the EEAS provide draft EUSR Council Decisions and the relevant financial information in good time so that, if any questions do arise, there is time for them to be answered without unnecessary pressure of time.

23.41 In the meantime, although we look forward to hearing from the Minister when it has been finalised, we are content to clear the Council Decision on the basis of this draft budget, on the assumption that the final budget will contain no major changes — an assumption that seems reasonable, given the amount of information provided thus far.

24 An EU Special Representative (EUSR) for the Horn of Africa

(33961)	Council Decision extending the mandate of the European Union Special Representative for the Horn of Africa
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<i>Legal base</i>	Articles 28, 31 (2) and 33 TEU; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 11 June 2012
<i>Previous Committee Report</i>	None; but see (33367) —: HC 428–xliii (2010–12), chapter 21 (7 December 2011) and (33288) —: HC 428–xl (2010–12), chapter 11 (2 November 2011)
<i>Discussion in Council</i>	25 June 2012 Foreign Affairs Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

24.1 In December 2009, under the Swedish EU Presidency, the EU adopted “An EU policy on the Horn of Africa — towards a comprehensive strategy”. Member States then called on the EU to build on this and ensure that its responses to the various threats from the region (particularly piracy) are coherent, cohesive and tackle the root causes of the issues.

The Council Secretariat Paper

24.2 At our meeting on 2 November 2011, we considered a Council Secretariat paper that was the outcome of this process thus far. For the purpose of this paper, the Horn of Africa is defined as the countries belonging to the Inter-Governmental Authority on Development (IGAD)¹²⁵ — Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, South Sudan and Uganda.

24.3 As the Executive Summary noted, the political evolution of the Horn of Africa over the past 50 years has been unusually turbulent; the EU needed, therefore, to support the people of the region in achieving greater peace, stability, security, prosperity and accountable government. The annex to the paper analysed the manifold challenges affecting the IGAD member countries:

- unaccountable governance and/or corruption mixed with societal tensions or grievance have been violently manifested in some parts of the Horn;
- the absence of the rule of law or an administrative vacuum has permitted piracy and terrorism, for example, to flourish in Somalia, and armed groups such as the Lord’s Resistance Army to subsist in remote border areas, with the former having now reached a scale that threatens international security and, directly, the interests of EU Member States;
- inter-state rivalry, often over disputed borders, use of water resources or as a result of forced movements of people, also risks breaking into conflict between states as well as within them;
- persistent poverty, often the result of conflict, which destroys the stability on which economic growth and investment depend;
- the livelihoods of large numbers of people affected by extreme poverty and food insecurity in the Horn is made worse by erratic rainfall and crop yields, a mix of the effects of climate change and inadequate policy interventions;

¹²⁵ The Intergovernmental Authority on Development (IGAD) in Eastern Africa was created in 1996 to supersede the Intergovernmental Authority on Drought and Development (IGADD) which was founded in 1986. The IGAD mission is to assist and complement the efforts of the Member States to achieve, through increased cooperation: Food Security and environmental protection; promotion and maintenance of peace and security and humanitarian affairs; and economic cooperation and integration. For full information on IGAD, see <http://www.africa-union.org/root/au/recs/igad.htm>.

- migration, resulting from dwindling resources, growing population pressure from high birth rates, and refugee flows in response to political unrest, as well as traditional nomadism across modern borders, is a challenge strongly felt in the region and beyond;
- small arms proliferation, resulting from conflicts within the region and beyond makes previous disputes over resources more violent and more difficult to mediate by peaceful means;
- lack of employment for young people, encouraging political radicalisation or criminality that, in the case of piracy, threatens not just regional but world-wide economic activity;
- the absence of a regional organisation effective enough to mediate disputes and foster cooperation: IGAD has been slowly building its capacity, but must continue to develop the capacities of its Secretariat to resolve political problems and regional conflict.

24.4 The paper set out a Strategic Framework for the EU to achieve its objectives of peace, stability, security, prosperity and accountable government in the Horn of Africa, through:

- assisting all countries in the region to build robust and accountable political structures; working with the countries of the region and with international organisations to resolve conflicts and avoid future potential conflicts between or within countries;
- ensuring that, until that is achieved, the insecurity in the region does not threaten the security of others beyond its borders;
- supporting efforts to promote economic growth of all countries; and
- supporting political and economic regional co-operation.

24.5 The High Representative and the European External Action Service, a new EU Special Representative (EUSR), EU Delegations in the region, the European Commission and Member States would work together to implement this Framework (see our previous Report for further details).¹²⁶

24.6 Specific actions, in the form of sub-strategies and action plans, would be subject to subsequent decisions by the Commission, Council and Member States.

24.7 The Minister for Europe supported the Strategic Framework, which he believed would help the EU engage more effectively in the Horn of Africa, and which he said was in line with the UK's own priorities for the region. Rather than proposing a radically new approach, the Minister said the strategy would enable the EU to make its engagement in the Horn of Africa more effective through consistent, coherent and complementary use of its instruments, re-enforcing its political co-ordination, and focusing more clearly on the underlying challenges of the region. Noting that Somalia's continuing need for considerable attention was reflected in the Strategic Framework, the Minister said that one of its key aims was to address the adverse effects of piracy through the full range of relevant EU instruments. He fully supported this, saying that the UK had consistently pushed for

¹²⁶ See headnote: (33288) —: HC 428–xl (2010–12), chapter 11 (2 November 2011).

the EU to adopt a more comprehensive response to piracy that dealt with the root causes of the problem, and that the Strategic Framework would contribute to this through implementing a more cohesive approach that included doing more on judicial treatment of pirates, driving forward projects on land to contribute to the rule of law and economic development as well as building up the maritime security capacities of countries and other partners in the region.

24.8 The Minister also supported the proposed new EU Special Representative, which he said would enhance the coherence, quality, impact and visibility of the EU's action in the Horn of Africa. The EUSR would work closely with the extant EUSR for Sudan and South Sudan.

UN Security Council Resolution 2015 (2011)

24.9 On 24 October 2011, gravely concerned by the growing threat of piracy and armed robbery at sea off the coast of Somalia, and by the increased violence employed by pirates, and also strongly condemning the practice of hostage-taking by suspected pirates, the UN Security Council unanimously adopted resolution 2015 (2011). This resolution requests that the Secretary-General, in conjunction with the United Nations Office on Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP), further consults with Somalia and regional States on the kind of international assistance required to help make specialized anti-piracy courts in Somalia and other States in the region operational, as well as the procedural arrangements required for the transfer of apprehended pirates; and to provide to the Council within 90 days detailed implementation proposals for the establishment of such courts. The Council underlined the importance of such courts having jurisdiction to be exercised over not only suspects captured at sea, but also anyone inciting or intentionally facilitating piracy operations; this would include key figures of criminal networks involved in piracy who illicitly plan, organize, facilitate, or finance and profit from such attacks. Recognizing that any increase in prosecution capacity must necessarily be accompanied by a related increase in prison capacity, the Council called upon both Somali authorities, UNODC, UNDP and other international partners to support the construction and responsible operation of prisons in Somalia in accordance with international law. The Council also called upon Member States, regional organizations and other appropriate partners to support efforts to establish specialized anti-piracy courts in the region by making or facilitating arrangements for the provision of international experts, including those from the Somali diaspora.¹²⁷

24.10 On 28 October 2011, the European Union issued the following statement:

“The European Union High Representative for Foreign Affairs and Security Policy Catherine Ashton and The Australian Minister for Foreign Affairs Kevin Rudd co-chaired a forum on piracy in the margins of the Commonwealth Heads of Government Meeting in Perth, Australia, attended by Indian Ocean Rim countries and stakeholders promoting security in Somalia and off the Horn of Africa.

¹²⁷ See <http://www.un.org/News/Press/docs/2011/sc10419.doc.htm> for the text of UN Security Council resolution 2015 (2011).

“The forum underlined its deep concern at the threat posed by piracy and armed robbery against ships in the Indian Ocean. Somali piracy raised the costs of international trade and harmed the fishing and tourist industries of East African and Indian Ocean coastal and island states.

“Noting United Nations Security Council Resolution 2015 passed on 24 October 2011, the forum endorsed the international efforts to restore peace and stability in Somalia. Diplomatic efforts to address the drivers of Somali piracy through initiatives to build governance, security and economic livelihoods on land in Somalia were one crucial way to address the root causes of piracy off the Horn of Africa. The forum also endorsed the targeted international and regional approaches to tackling piracy.

“Participants welcomed the work of the Commonwealth, the EU, regional and international organisations, notably the UN and its contact group on piracy, coalitions of countries and individual states in countering piracy in the Indian Ocean region. Participants agreed that regional ownership and burden sharing was essential and therefore attached great importance to support the regional anti-piracy strategy and action plan adopted in Mauritius in October 2010 by the Eastern and Southern African and the Indian Ocean regions.

“The meeting also noted the opportunities offered by the significant number of countries who shared a common legal heritage and the opportunities this presented to the Commonwealth, other international organisations and states in the delivery of legal assistance and support to criminal justice systems. Noting the forum was held in the margins of CHOGM 2011, the participants encouraged common law countries to work together in support of criminal justice approaches to countering piracy and urged the Commonwealth Secretariat to keep this work under active consideration.

“Australia agreed to host a larger follow-up event in 2012 in Perth designed to deepen and broaden the international community’s understanding of the drivers of piracy and to explore options to reduce piracy in Somalia. The Perth 2012 event could also compare Indian Ocean piracy with piracy in the Gulf of Guinea and South-East Asia.

“Forum on Indian Ocean Piracy participants: Antigua & Barbuda, Australia, Bangladesh, Brunei Darussalam, Canada, Cyprus, European Union, India, Kenya, Malaysia, Maldives, Mauritius, Mozambique, New Zealand, Nigeria, Pakistan, Seychelles, Singapore, South Africa, Sri Lanka, Tanzania, Uganda, UK and UAE.”¹²⁸

Our assessment

24.11 Given the timeliness of the EU Strategy and its evident political importance, we drew it to the attention of the House.

24.12 The only point about which we asked for further information was the proposal for a new EUSR for the Horn of Africa. It was not immediately apparent to us why, with an EUSR for Sudan and South Sudan, and for the African Union (AU) in Ethiopia, such a

¹²⁸ The statement is available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/125719.pdf.

further EUSR was necessary in order to “enhance the coherence, quality, impact and visibility of the EU’s action”. We therefore asked the Minister, when he submitted his Explanatory Memorandum on the Council Decision that would be required to appoint this new EUSR, and which would set out his or her mandate, to provide the explanation that the paper did not, along with details of the proposed budget (and a reminder of the costs of the EUSRs for Sudan and South Sudan and for the AU).

24.13 In the meantime, we cleared the Council Secretariat paper from scrutiny.¹²⁹

Council Decision 2011/819/CFSP

24.14 EUSRs are appointed by the Council through a Council Decision (formerly a Joint Action) where the Council agrees with the High Representative that an additional EU presence on the ground is needed to deliver the political objectives of the Union.

24.15 This Council Decision set out to maximise the impact of EU activity in the Horn of Africa by appointing a new EUSR to bring coherence to the various strands of EU work in the region. The new EUSR was tasked with ensuring that the EU played a full role in regional stability and Somalia’s Djibouti Peace Process by enhancing the quality, intensity and impact of the EU’s multi-faceted engagement in the Horn of Africa. Initial priority was to be given to Somalia, including the regional dimension of the conflict and piracy, with its root causes in the instability of that country. Regarding piracy, the EUSR was to contribute to developing and implementing a coherent, effective and balanced EU approach, encompassing all strands of EU action, political, security and development and to be the EU’s key interlocutor with the international community, including the Indian Ocean region.

24.16 In his Explanatory Memorandum of 18 November 2011, the Minister of Europe (Mr David Lidington) recalled that, ahead of the March 2011 meeting of the EU Foreign Affairs Council, the Foreign Secretary and then Italian Foreign Minister Frattini had written a joint letter to the High Representative, Baroness Ashton, in which they said that the EU needed to step up its political efforts to deliver a comprehensive EU approach to the Horn of Africa and Somalia that brought together the EU’s political, development and security work to maximum effect, and that one instrument might be an EU Special Representative.

24.17 The Minister judged that such a new EUSR for the Horn of Africa would add significant value to the EU’s work by:

- a) “Providing coherence and coordination to the EU’s Brussels — and regionally-based machinery, in order to maximise the EU’s leverage on political, security and defence work in the region. This would include a particular focus on Somalia, coordinating the various strands of EU’s work, including on: the EU Training Mission (EUTM); coordinating donor support to areas most affected by piracy; wider support to the military efforts on piracy where EUNAVFOR is the key player; and EU support for the African Union Mission in Somalia (AMISOM);

¹²⁹ See headnote: (33288) —: HC 428–xl (2010–12), chapter 11 (2 November 2011).

- b) “Providing the EU with a regional perspective/approach to the Horn of Africa (particularly important for Somalia where the regional stakeholders hold a lot of influence);
- c) “Adding impetus to the EU’s Horn of Africa strategic framework;
- d) “Lobbying key international actors, including non-traditional partners in the Gulf region and countries that are active on, for example, counter-piracy (India, China, South Korea); and,
- e) “Coordinating the EU response to any future crises in the region.”

24.18 The Minister then referred to the question that the Committee posed in its Report of 2 November report on the EU Strategic Framework, and said that:

“The post of EUSR for Sudan and South Sudan is already stretched after its mandate was expanded to include work on the Lord’s Resistance Army, as a result of the proposal for an EUSR for the Great Lakes being scrapped. The EUSR for the AU has a similarly extensive mandate. We judge that existing EUSRs for Sudan and South Sudan and for the AU do not have the capacity to be able to focus and deliver the wide range of objectives set out in the mandate and a new EUSR is therefore required. Furthermore, we believe that the urgency of the political, security and humanitarian situation in Somalia and the Horn of Africa necessitates a dedicated EUSR to drive EU engagement forward.

“The EUSR would be located in Brussels, where they would be able to actively manage the EU’s work on the Horn of Africa and improve co-ordination between different EU bodies.

“An EUSR would be able to direct and facilitate the delivery of EU money available for work on Somalia (including approximately €25m for counter-piracy work on land), on which progress so far has been slow.

“The EUSR role would complement that of the EU Head of Delegation in Nairobi, who provides regional co-ordination on Somalia issues. Basing the EUSR role in Brussels would avoid any overlap of responsibility between the two roles.

“All partners support the appointment of an EUSR for the Horn of Africa.”

24.19 With regard to the *Financial Implications*, the Minister said that the current proposal met his pre-condition that it had to be funded from the EU’s existing external spend budget.

24.20 Regarding the Committee’s request in its 2 November report on the EU Strategic Framework to be reminded of the costs of the EUSRs for Sudan and South Sudan and for the AU, the Minister said that the overall situation was:

- EUSR for the Horn of Africa = €670,000 (for 6 months);
- EUSR for the African Union = €1,280,000 per annum; and
- EUSR for Sudan and South Sudan = €1,820,000 per annum

24.21 With regard to the prospective job-holder, the Minister detailed the four candidates then being interviewed. They included Mr Alexander Rondos (a Greek diplomat with extensive experience in the Greek Prime Minister's office, Ministry of Foreign Affairs and international organisations, including the World Bank, with experience in African matters and who had worked in East Africa during his career), who was subsequently appointed to the new position.

Our assessment

24.22 We reported these developments to the House because of the importance of the issues that the new EUSR was being appointed to tackle.

24.23 We also cleared the Council Decision.¹³⁰

The draft Council Decision

24.24 The draft Council Decision sets out a proposal to renew the mandate of the EUSR for the Horn of Africa, which expires on 30 June, for twelve months.

The Government's view

24.25 In his Explanatory Memorandum of 11 June 2012, the Minister for Europe (Mr David Lidington) says that, as EUSR for the Horn, Mr Rondos has so far fully met his mandate to ensure the EU plays a full role in regional stability and Somalia's Djibouti Peace Process by enhancing the quality, intensity and impact of the EU's multi-faceted engagement in the Horn of Africa.

24.26 The Minister notes that the only significant change to the new mandate is that which requires the EUSR to establish a presence in Mogadishu. The Minister regards this as politically important in order to maximise the EUSR's impact with Somali interlocutors, explaining that establishing an EUSR's office will be a precursor to establishing a full European External Action Service compound in Mogadishu International Airport in due course.

24.27 With regard to the *Financial Implications*, the Minister is able only to say:

“RELEX is yet to discuss the budget for the extended mandate. Further details will be forwarded to the Committee once received.”

Conclusion

24.28 We have no wish to hold up this straightforward extension of an important mandate, and clear the draft Council Decision.

24.29 But we do so reluctantly. Once again, we are presented with only a partial picture, since we are provided with no financial information. The budget for the first six months was €670,000; presumably, carrying out the existing mandate and setting up an

¹³⁰ See headnote: (33367) —: HC 428–xliv (2010–12), chapter 21 (7 December 2011).

office will require an annual budget of somewhat more than twice this figure. Yet only three weeks before the expiry of this mandate, the Minister can provide no information whatsoever. As we have said with other EUSR mandate renewals that are similarly deficient, this suggests both a certain lack of “quality assurance” in the Foreign and Commonwealth Office, and an attitude on the part of the European External Action Service that is reminiscent of its predecessors in the Council secretariat — that even when matters are straightforward, they can be left until the last moment because Parliamentary scrutiny does not need to be factored into the relevant timeline. This is unsatisfactory, and should not continue.

24.30 We therefore again ask the Minister to inform us, when he furnishes the relevant financial information on this and the other relevant EUSR mandates, about what he is doing to ensure that, in future, the EEAS provide draft EUSR Council Decisions and the relevant financial information in good time so that they can be properly scrutinised and, if any questions do arise, they can be answered without unnecessary pressure of time.

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

Department for Business, Innovation and Skills

(33832) Special Report No 2/2012: Financial instruments for SMEs co-financed
8427/12 by the European Regional Development Fund.

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(33860) Special report No 4/2012: Using Structural and Cohesion Funds to co-
9431/12 finance transport infrastructures in seaports: an effective investment?

–

(33872) COMMISSION REGULATION (EU) No .../.. of 25.4.2012 on the
9364/12 application of Articles 107 and 108 of the Treaty on the Functioning
– of the European Union to *de minimis* aid granted to undertakings
providing services of general economic interest.

(33880) Draft Council Decision on the position to be taken by the European
9864/12 Union in the EEA Joint Committee concerning an amendment to
COM(12) 208 Annex II (Technical regulations, standards, testing and certification)
to the EEA Agreement.

Cabinet Office

(33764) Commission Report on the application of Directive 94/80/EC on the
7656/12 right to vote and to stand as a candidate in municipal elections by
COM(12) 99 citizens of the Union residing in a Member State of which they are
not nationals.

Department for Culture, Media and Sport

(33859) Draft Council Decision on the position to be taken by the European
9388/12 Union in the EEA Joint Committee concerning an amendment to
COM(12) 180 Annex XXI (Statistics).

Department for Environment, Food and Rural Affairs

(33878) Draft Council Decision establishing the position to be adopted on
9294/12 behalf of the EU with regard to certain resolutions to be voted in the
COM(12) 192 framework of the International Organisation for Vine and Wine
(OIV).

Foreign and Commonwealth Office

- (33891) Council Implementing Regulation (EU) No.410/2012 of 14 May 2012
– implementing Article 32(1) of Regulation (EU) No 36/2012 concerning
– restrictive measures in view of the situation in Syria.
- (33892) Council Implementing Regulation (EU) No.410/2012 of 14 May 2012
– implementing Article 32(1) of Regulation (EU) No 36/2012 concerning
– restrictive measures in view of the situation in Syria.

Department of Health

- (33806) Commission Staff Working Document on Mid-term evaluation of the
8481/12 Health Programme 2008–2013.
SWD(12) 83

Department for Transport

- (33881) Draft Council Decision on the position to be taken by the European
9868/12 Union in the EEA Joint Committee concerning an amendment to
COM(12) 210 Annex XIII (Transport) to the EEA Agreement.

HM Treasury

- (33816) European Central Bank Opinion on the coordination of laws,
8604/12 regulations and administrative provisions relating to undertakings of
– collective investment in transferable securities (UCITS) and directive
2011/61/EU on Alternative Investment Funds Managers in respect of
the excessive reliance on credit ratings.
- (33838) Commission Delegated Regulation with regard to regulatory
8275/12 technical standards for the presentation of the information that
– credit rating agencies shall make available in a central repository
established by the European Securities and Markets Authority.
- (33839) Commission Delegated Regulation on credit rating agencies by laying
8279/12 down regulatory technical standards for the assessment of
– compliance of credit rating methodologies.
- (33858) Draft Decision authorising Denmark to introduce a special measure
9337/12 derogating from Article 75 of Council Directive 2006/112/EC.
COM(12) 185

- (33870)
9712/12
COM(12) 204
- Draft Decision on the mobilisation of the European Globalisation Adjustment Fund in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (application EGF/2011/020 ES/Comunidad Valenciana footwear from Spain).
- (33902)
10230/12
COM(12) 217
- Draft Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) as regards the dates of its transposition and application and the date of repeal of certain Directives.

Formal minutes

Thursday 14 June 2012

Members present:

Mr William Cash, in the Chair

Chris Heaton-Harris
Kelvin Hopkins
Penny Mordaunt

Jacob Rees-Mogg
Henry Smith

1. Scrutiny of Documents

The Committee deliberated.

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

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

Paragraphs 1.1 to 2.21 read and agreed to.

Paragraph 2.22 read, amended and agreed to.

Paragraphs 3.1 to 4.21 read and agreed to.

Paragraph 4.22 read, amended and agreed to.

Paragraphs 4.23 to 25 read and agreed to.

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

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

[Adjourned till Wednesday 20 June at 2.00 p.m.]

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*)
 Penny Mordaunt MP (*Conservative, Portsmouth North*)
 Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)
 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*)