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European Scrutiny Committee

Sixteenth Report of Session 2009–10

Documents considered by the Committee on 24 March 2010

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Staff

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Report

1 Marketing of construction products

(29711) 10037/08 COM(08) 311	Draft Regulation laying down harmonised conditions for the marketing of construction products
+ ADDs 1–2	Commission staff working documents: impact assessment and summary of assessment

Legal base	Article 95 EC; co-decision; QMV
Department	Communities and Local Government
Basis of consideration	Minister's letters of 18 May 2009 and 10 March 2010
Previous Committee Report	HC 16–xxv (2007–08), chapter 3 (25 June 2008); and HC 19–vii (2008–09), chapter 2 (11 February 2009)
To be discussed in Council	23–24 May 2010
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Previous scrutiny of the document

1.1 When we first considered this draft Regulation in June 2008, we noted that the Council had adopted a Directive in 1989 ("the Construction Products Directive") which specified conditions for the marketing of products used in the construction of buildings and civil engineering works.[1] The aim was to ensure that reliable information was presented about products and to help establish fair competition in the EC's single market.

1.2 If a product is marked with "CE" (*conformité européene*) consumers know that it has been assessed against a common European standard. CE marked products should be accepted onto the market anywhere in the European Economic Area. The CE mark indicates the characteristics of the product but does not guarantee that it is suitable for a particular purpose.

1.3 In May 2008, the Commission proposed the repeal of the Construction Products Directive and its replacement by this draft Regulation. It had two main reasons. First, the 1989 Directive has not succeeded in creating a single market for construction products partly because of differences in the way in which Member States have transposed the provisions into national law. For example, some Member States (including the UK) have voluntary CE markings whereas, in others, CE marking is compulsory. Second, the Commission wished to make the requirements for the marketing of construction products easier to apply, more effective and less onerous for manufacturers (especially for small businesses).

1 Council Directive 89/106/EEC: OJ No. L 40, 11.2.89, p.12.

1.4 The main differences between the Construction Products Directive and the proposed Regulation are as follows:

- The Regulation would have direct effect. Member States would not need to transpose it. So there would be no room for Member State to apply the requirements differently in their national legislation. The Commission's aim is to remove nationally-created obstacles to fair competition in a single market for construction products.

- The arrangements for assessing new and innovative products which are not covered by harmonised standards would be simplified and standardised.

- For unique products and products produced by "micro-enterprises" (that is, enterprises with fewer than 10 employees and an annual turnover of not more than €2 million) there would a simplified process for the assessment and verification of the product's performance using Standard Technical Documentation.

1.5 In June 2008, the Government told us that the greatest change for the UK, if the proposed Regulation were adopted, would be the introduction of mandatory CE marking. The effects of mandatory marking would be felt especially by UK businesses which trade only on the domestic market and which are, therefore, less likely to be using the CE mark at the moment.

1.6 We concluded that the aims of the proposal — simplification and clarification of the requirements for the marketing of construction products and the removal of barriers to the single market —seemed admirable. But the negotiations had only just begun, the Minister's Impact Assessment of the proposal was not yet available and the Government would be consulting stakeholders. So we decided to keep the document under scrutiny and asked the Government to send us a report on the consultations, a copy of the Impact Assessment and progress reports on the negotiations.

1.7 In his Supplementary Explanatory Memorandum of 4 February 2009, the Parliamentary Under-Secretary of State at the Department for Communities and Local Government (Mr Iain Wright) provided the information for which we had asked. He said that, during the negotiations in the Council Working Group, the Government had given broad support to the Commission's draft Regulation subject to some amendments. It had opposed changes proposed by the French Presidency and the European Parliament which, in the Government's view, risked creating extra burdens for industry and conflicting with the principle of subsidiarity.

1.8 The Minister enclosed with his Supplementary Explanatory Memorandum the final version of the Government's Impact Assessment. It takes account of the comments the Government received from the industry and others when it consulted them about a draft of the assessment. The main findings of the final Assessment were as follows:

- the voluntary take-up of CE marking in the UK is likely to be about 60%;

- a move to mandatory CE marking would probably impose on UK manufacturers a one-off cost of £40 million and subsequent annual costs of £7 million;

- it had not been possible to quantify the potential benefits of the draft Regulation; and
- mandatory CE marking would have a disproportionately adverse effect on the manufacturers (mostly small businesses) of individual products made for a particular project.

1.9 The Government's consultations on the draft Regulation lasted from July 2008 to January 2009. Key points from the responses were:

- manufacturers who already use CE marking were in favour of or neutral about the proposed move to mandatory marking, whereas those who do not were opposed to the move; and
- there was strong and widespread opposition to the proposal for a simplified process for the assessment and verification of products made by micro-enterprises on the grounds that the proposals were unclear, could cause confusion and might provide insufficient checks on products which are safety-critical.

1.10 In our report of 11 February 2009,[2] we noted that there were still disagreements between Member States on some major questions. Moreover, it was by no means clear that the amendments the European Parliament was likely to propose at first reading would be acceptable. We decided, therefore, to keep the document under scrutiny and asked the Minister for a further progress reports.

The Minister's letter of 18 May 2009

1.11 In his letter of 18 May, the Minister told us that:

- the European Parliament had adopted the draft Regulation at first reading and had approved about 100 amendments to it;
- there had been no prospect of a first reading deal;
- the Government welcomed this because more time was needed to find solutions to the remaining disagreements; and
- the Minister hoped that the Council and the European Parliament would be able to reach a second reading deal in the first half of 2010.

The Minister's letter of 10 March 2010

1.12 In his letter of 10 March, the Parliamentary Under-Secretary of State (Lord McKenzie of Luton) says that the main difference of opinion between Member States is about whether the CE marking should be compulsory for all products. The Government's position during the negotiations in the Council working group has been that, if CE marking were to become mandatory, it should be linked to national or local

2 See headnote.

building/works regulations, which set out the characteristics that are required for the product to be used in a particular area. The Minister adds that:

> "The view of some other Member States is that the CE marking should be much broader, where many characteristics must be declared. They claim that this is to guard against products moving across borders with insufficient performance information, and that if necessary, exemptions could be provided for certain micro-enterprises. The UK has argued for a proportionate and clear system for all businesses, not an onerous system for some and a complex system of exemptions for others."[3]

1.13 The Minister says that there has also been much debate about the Commission's proposals for simplified procedures for the products of micro-enterprises and manufacturers of one-off bespoke products. The Government now has a better understanding of the provisions and thinks that they could be acceptable and even beneficial to the UK.

1.14 The Minister tells us that many of the European Parliament's first reading amendments were minor and acceptable. But some were not, such as the proposal to require manufacturers to declare whether their product contains a dangerous substance. The Commission and a majority of Member States, including the UK, believe that this would create an undesirable overlap with the REACH Regulation.[4]

1.15 Finally, the Minister tells us that the Spanish Presidency is aiming for a political agreement to the Regulation at the Competitiveness Council on 23–24 May. He adds:

> "If they [the Presidency] are to succeed in this, then discussion on the key articles will need to be settled in the next few weeks, and at that stage we would hope to be able to submit this text to the Commons and the Lords committees for consideration in advance of a vote. I intend therefore to write to you again in March either to request that the scrutiny reservation be lifted in advance of a Council vote, or to inform you that there is still no agreement and negotiations are to continue."[5]

Conclusion

1.16 **We are grateful for the Minister's helpful progress report. It is clear that disagreement remains on some key points and, most importantly, about whether the CE marking should be compulsory and what special provision should be made for small businesses. Moreover, the European Parliament has not yet given the draft Regulation its second reading and we do not know what amendments it will propose. Because these major uncertainties remain, we shall keep the draft Regulation under scrutiny and welcome the Minister's intention to write to us again when the position is clearer.**

3 Paragraph 8 of the Minister's letter of 10 March 2010.

4 REACH: the Registration, Evaluation, Authorisation and Registration of Chemicals Regulation.

5 Minister's letter of 10 March, penultimate paragraph.

2 Quality and safety of human organs for transplantation

(a) (30265) 16521/08 COM(08) 818	Draft Directive on standards of quality and safety of human organs intended for transplantation
+ ADDs 1–2	Commission staff working documents: impact assessment and summary of assessment
(b) (30266) 16545/08 COM(08) 819	Commission Communication: *Action Plan on Organ Transplantation (2009–15): Strengthened cooperation between Member States*
+ ADDs 1–2	Commission staff working documents: impact assessment and summary of assessment

Legal base	(a) Article 168(4)(a) TFEU; co-decision; QMV (b) —
Department	Department of Health
Basis of consideration	Minister's letters of 19 May and 24 November 2009 and 18 March 2010
Previous Committee Report	HC 19–iii (2008–09), chapter 5 (14 January 2009); HC 19–viii (2008–09), chapter 6 (25 February 2009); and HC 19–xiv (2008–09), chapter 5 (22 April 2009)
To be discussed in Council	7–8 June 2010
Committee's assessment	Legally and politically important
Committee's decision	(Both) Not cleared; further information requested

Background

2.1 Article 168(1) of the Treaty on the Functioning of the European Union (TFEU) provides that action by the EU on public health should complement national policies and be directed to the improvement of public health and the prevention of illness and disease. Article 168(2) requires the EU to encourage cooperation between Member States to improve public health. Article 168(4)(a) authorises the Council to adopt measures setting standards of quality and safety for human organs, blood and other substances of human origin. Article 168(7) requires EU action to pay full respect to the responsibilities of the Member States for the organisation and delivery of health services and medical care and says that quality and safety measures adopted under Article 168(4)(a) "shall not affect national provisions on the donation or medical use of organs".

2.2 Similar provision was made in Article 154 of the EC Treaty; in particular, Article 168(4)(a) and 168(7) TFEU are word for word the same as Article 152(4)(a) and Article 152(5) of the EC Treaty.

2.3 In June 2007, we considered a Communication by the Commission on organ donation and transplantation.[6] It suggested ways in which the EC and Member States might increase the supply of organs and improve the quality and safety of transplantation. The Commission advocated the preparation of an Action Plan to encourage cooperation between Member States and EC legislation to establish basic principles of safety and quality.

2.4 In our report to the House on the document, we recognised the potential benefits of cooperation between Member States to disseminate best practice and agree common standards for the safety and quality of donated organs. But we endorsed the Government's view that vigilance would be needed to ensure that Community action was consistent with the principle of subsidiarity. We also drew attention to the need to ensure that the proposed Directive was compatible with the requirement in Article 152(5) EC that any new legislation should not affect national provisions on the donation or medical use of organs.

Previous scrutiny of the documents (a) and (b)

2.5 In January 2009, when we first considered the draft Directive (document (a)) and the proposed Action Plan (document (b)), we noted that these were the documents the Commission had advocated in its Communication.

2.6 Document (a) specifies common quality and safety standards for the donation, storage, transport and transplantation of human organs. For example, it provides that Member States should ensure that:

- there is a national quality programme to ensure compliance with the requirements of the Directive;
- the donation of organs takes place in a "procurement organisation" (that is, in a hospital or other body authorised by the national competent body to procure organs in specialised facilities which minimise risks of contamination);
- transplantation takes place in an authorised "transplantation centre"; and
- all organs can be traced from donor to recipient and vice versa and that the relevant data is kept for a minimum of 30 years.

2.7 The Commission's Action Plan for 2009–15 (document (b)) includes proposals for cooperation between Member States and the Commission to increase the number of organs donated and improve access to transplantation. The Plan would not be legally binding and each Member State would be invited to draw up its own programme and set its own priorities.

6 (28686) 9834/07: see HC 41–xxvii (2006–07), chapter 6 (27 June 2007).

2.8 The then Minister of State at the Department of Health (Dawn Primarolo) told us that the Government supported the proposed Directive but would argue strongly that the common standards should be kept to the minimum necessary to ensure safety and quality, should not be excessively bureaucratic and should not impose requirements beyond those which are clinically justified.

2.9 In the Conclusion to our report of 14 January 2009,[7] we noted that the Commission had cited Article 152(4)(a) of the EC Treaty as the legal base for the draft Directive and that Article 152(5) expressly said that the measures referred to in Article 152(4)(a) 'shall not affect national provisions on the donation of or medical use of organs'. The Minister had told us that the Human Tissue Act 2004 and the Human Tissues (Scotland) Act 2006 make national provision on those matters. It was not readily apparent to us, therefore, that the draft Directive complied with Article 152(5). We asked the Minister for her views on the matter.

2.10 In her reply of 11 February 2009, she said:

> "The Government's view is that there is a distinction to be drawn between provisions about the quality of organs (which are to be donated) and rules about donation of organs (such as consent, who may receive an organ, priorities for receipt of an organ, whether organ donation can take place at all, whether there can be donations from living persons etc.). Making quality rules about organs which are to be donated is not about donation of organs, but rather a different matter — the quality of the organs. The Human Tissue Act 2004 and the Human Tissues (Scotland) Act 2006 make national provision in relation to consent and use of organs and not in relation to the quality and safety standards that should be applied to those organs. Even though parts of these Acts may be amended by the Directive, for example to ensure that quality and safety fall within the regulation of the Human Tissue Authority, this would not affect the national rules on consent and use of organs. Therefore the Government is content that Article 152(4)(a) provides sufficient legal basis for the Directive."

2.11 When we considered the Minister's reply,[8] we agreed with her that a distinction can be drawn between, on the one hand, legislation on the donation of organs and, on the other, legislation on the quality and safety of organs intended for transplantation. It appeared to us that she considered that the draft Directive drew that distinction and did not contain provision on the donation of organs. We found this surprising because:

- Article 2 of the draft Directive specifically stated that the Directive applies to the donation of organs intended for transplantation;
- Article 13 required Member States to: ensure that donations are voluntary and unpaid; prohibit advertising of the need for or supply of organs with a view to offering or seeking financial gain; and ensure that the procurement of organs is done on a not-for-profit basis; and

7 See headnote.

8 See HC 19–viii (2008–09), chapter 6 (25 February 2009).

- Article 15 contained mandatory requirements about the action Member States should take to protect potential donors.

2.12 We remained doubtful, therefore, that the draft Directive fully complied with Article 152(5) of the EC Treaty. So we asked the Minister for her further comments.

The Minister's letter of 31 March 2009

2.13 In her reply of 31 March, the Minister told us that, at the meeting of the Council Working Group on 6 March, the Government had asked:

> "for transplantation to be removed from Article 2 as it falls within Member State's competence.[9] This view was supported by a number of Member States and we await a draft revised text from the Commission to determine whether the UK's concerns in this area have been addressed."

2.14 As to whether some provisions of the draft Directive are inconsistent with Article 152(5) of the EC Treaty, the Minister's letter said:

> "In relation to Article 13 [which required Member States to ensure that donations are voluntary and unpaid], it is important for donations to be altruistic and voluntary as part of ensuring that quality is not jeopardised, for example by people abusing the system by hoping to gain financially. Article 13 also seeks to prevent not just the remuneration for, but also the trade and trafficking of, organs. The requirements under this Article also help facilitate the lawful cross-border movement of organs as there might be concerns that financial inducements in other Member States might compromise the safety and quality of the donated organ.
>
> "In relation to Article 15 [which contained mandatory requirements about the action Member States should take to protect living donors], we believe that requiring that donations are given with informed consent ('authorisation' in Scotland) ensures that there is less of a risk of quality and safety being undermined by other pressures, such as financial inducement, trade and trafficking. Article 15 also facilitates movement across borders by removing concerns that any organs might have been donated in ways that might not satisfy UK requirements. We would draw to the Committee's attention that this Article does not affect or require any changes to the law on consent in Member States.
>
> "We also draw to the Committee's attention that there are precedents for regulation within the Blood Directive and the Tissues and Cells Directive."

2.15 In the Conclusion to our report of 22 April 2009, we said that we continued to differ from the Minister's view that the draft Directive complies with the requirement in Article 152(5).[10] We were not persuaded the requirements in Article 13 of the draft Directive that

9 Article 2 of the draft Directive says:

"1. This Directive applies to the donation, procurement, testing, characterisation, preservation, transport and transplantation of organs of human origin intended for transplantation.

"2. However, where such organs are used for research purposes, this Directive only applies where they are intended for transplantation into the human body."

10 HC 19–xiv (2008–09), chapter 5 (22 April 2009).

donations be voluntary and unpaid were necessary only or mainly to ensure the quality and safety of organs for transplantation.

2.16 We also noted that Article 15(1) of the draft directive provided that Member States:

> "shall take all necessary measures to ensure that potential living donors are provided with all the information necessary, as to the purpose and nature of the donation, the consequences and risks, and on alternative therapies for the potential recipient to enable them to make an informed choice. The information shall be supplied in advance of the donation."

2.17 It seemed to us, on a plain reading of the Articles 13 and 15(1), that they are concerned solely with the conditions for donation.

2.18 We asked the Minister to reflect further on the question and tell us her conclusion when she provided her next progress report on the negotiations. Meanwhile, we kept documents (a) and (b) under scrutiny.

The Minister's letter of 19 May 2009

2.19 The Minister's reply of 19 May provided a further explanation of the reasons why she believed that the draft Directive complied with Article 152)5). She added, however, that she has some sympathy with the Committee's arguments about Article 15(1) of the draft Directive and that she would:

> "consider entering a scrutiny reservation in relation to Articles 13 and 15(1). Should this prove necessary, this will ensure that the legal issues relating to these two Articles are fully examined in the Health Working Party."

The Minister's letter of 24 November 2009

2.20 The main points of the letter of 24 November from the current Minister (Gillian Merron) were as follows:

- the working group had discussed the draft Directive on four occasions since June;
- most of the Government's concerns (unspecified) had been "taken on board" by the Commission and other Member States;
- but it would not be possible to judge how far the UK's points had been accepted until the revised text of the Directive was circulated in 2010; and
- in September 2009, the working group had discussed the Committee's concerns about whether some of the Articles comply with Article 152(5) of the EC Treaty and some other Member States had "agreed that this issue needed examination".

2.21 The Minister also told us that the Government had had discussions with the Commission and the Spanish Government to make sure that its concerns about the Directive were well understood. In particular, they had discussed the Government's concern that:

- as it stood, the draft Directive would require the UK to authorise all hospitals engaged in organ donation and transplantation. The Government thought that this could be unnecessarily bureaucratic and hoped for greater flexibility;
- in the Government's view, the national competent authorities should be able to delegate some of their functions to other organisations; and
- the Government wished to ensure that the draft Directive did not prevent Member States from setting national standards which are more stringent than those contained in the technical annex.

The Minister's letter of 18 March 2010

2.22 In her letter of 18 March, the Minister tells us that the negotiations on the draft directive have gone well and that nearly all of the Government's main concerns have been addressed. She encloses the Spanish Presidency's revised text of the draft Directive.

2.23 The Minister says that Article 13 of the Commission's draft and the Presidency's revised text does not affect the UK's legislation on the donation of organs because the UK legislation already ensures that all donations from deceased or living donors are voluntary and unpaid. But in the light of our concerns about the compliance of the Directive with Article 152(5) EC (Article 168(7) TFEU), the Spanish Presidency has, for example:

- added a new Recital 16 to the draft Directive. It says that when donation is made for financial gain, the quality of the donation process cannot be guaranteed. This is because improving the quality of life or saving the life of the recipient is not the main or unique objective of the donation. Moreover, because of the prospect of gain, the clinical history given by the donor might not be accurate because the donor or his relatives might withhold vital information. That would create a risk to the health or even the life of potential recipients; and
- omitted Article 15(1) (the provision in the Commission's draft of the Directive which would have required Member States to ensure that potential living donors are given all the information necessary about the purpose and nature of the donation, the consequences and the risks and any alternative therapies available to the potential recipient).

2.24 Commenting on matters which were of particular concern to the Government, the Minister says that Article 18 of the Presidency's text contains a new provision which would enable the national competent authorities to delegate their functions to, or be assisted by, other appropriate organisations; and the new Article 27(2) says that Member States would not be prevented from maintaining more stringent quality standards than those set out by the Directive.

2.25 The Government is seeking further amendments to ensure that hospitals which are already registered under a healthcare regulator are not required to obtain a separate registration or authorisation specifically to carry out organ transplantation.

Finally, the Minister says that:

"The draft Organ Directive is currently being considered by MEPs and a vote on the Organ Directive will be held at the European Parliament's plenary session on 18 May. In the meantime, negotiations among Member States and between the Presidency, the Council and members of the European Parliament will continue. Should a first reading deal be reached (which is likely in view of the commitment on all sides to achieve this), the Council will seek to adopt this Directive at Health Council on 7 and 8 June.

"In view of the progress made in negotiations and the timetable described above, I am seeking your Committee's clearance for the Organ Directive."

Conclusion

2.26 **We are grateful to the Minister and her officials for the regular and helpful reports she has sent us on the progress of the negotiations.**

2.27 **In our view, the Spanish Presidency's revised text of the Directive is a marked improvement on the original draft proposed by the Commission. In particular we welcome the new Recital 16 and the deletion of Article 15(1). We believe these changes are necessary to comply with Article 168(7) TFEU.**

2.28 **But the negotiations are not yet over. The Government will be seeking further amendments and it is not known what changes the European Parliament may propose. For these reasons and because of the importance of the donation and transplantation of human organs, we think that it would be premature to clear documents (a) and (b). We should be grateful, therefore, if the Minister would send us a further progress report on the negotiations. Meanwhile, we shall keep both documents under scrutiny.**

3 Iceland's application for membership of the European Union

(31366) 6956/10 + ADD 1 COM(10) 62	Commission Communication: *Commission Opinion on Iceland's application for membership of the European Union*

Legal base	Article 49 TEU; unanimity
Document originated	24 February 2010
Deposited in Parliament	3 March 2010
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 18 March 2010
Previous Committee Report	None; but see (31101) 15367/10: HC 5–xii (2009–10), chapter 2 (3 March 2010)
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

3.1 Article 49 TEU states that:

> "Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account."

3.2 Article 2 states that:

> "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."

3.3 In Copenhagen, in June 1993, the European Council concluded that accession will take place as soon as a country is able to assume the obligations of membership by satisfying the economic and political conditions required. The "Copenhagen criteria" require:

— that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;

— the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union;

— the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

3.4 In December 2006, the European Council agreed that "the enlargement strategy based on consolidation, conditionality and communication, combined with the EU's capacity to integrate new members, forms the basis for a renewed consensus on enlargement".

3.5 The Commission also notes that "the Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries."

The Commission Opinion

3.6 Iceland addressed its application to the Council on 16 July 2009. On 27 July the Council referred the application to the Commission, seeking its Opinion. The Commission's Opinion is its formal response to the Council. It is also communicated to the European Parliament.

3.7 The Opinion recommends opening accession negotiations.

3.8 The Commission has analysed Iceland's application on the basis of the country's capacity to meet the Copenhagen criteria. The method followed in preparing this Opinion is, the Commission says, the same as used in previous opinions, *mutatis mutandis*. The Commission has analysed both the present situation and the medium-term prospects (medium-term being defined as a period of three years).

3.9 In line with the renewed consensus on enlargement, the present Opinion also identifies key policy areas likely to require particular attention in the event of Iceland's accession and provides initial impact estimates with regard to key policies and sectors. The Commission says that it will provide more detailed impact assessments for these key policy areas at later stages of the pre-accession process. The report containing the detailed analysis on which the Opinion is based is made public as a separate document (Analytical Report for the Opinion on the application from Iceland for EU membership).

The Government's view

3.10 In his Explanatory Memorandum of 18 March 2010, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) notes that, as Iceland is already a member of the EEA, the Opinion has been split into three sections: Chapters covered by the EEA, Chapters partially covered by the EEA, and Chapters not covered by the EEA.

3.11 He then says that "the Government welcomes the Commission's Opinion of Iceland and fully supports Iceland's EU membership application" and comments on the Opinion as follows:

Political criteria

"The Opinion states that Iceland is a functioning democracy with strong institutions and deeply rooted democratic traditions. Iceland's judiciary is of a high standard and the judicial system is well established. There are some areas of concern given the country's small population, notably the close links between the political class and the business community. The procedure for judicial appointments has also been highlighted as needing improvement. The Commission stresses that mechanisms to reduce the scope for conflict of interest will need to be strengthened."

Economic criteria

"The Commission indicates that Iceland can be considered a functioning market economy. Due to the impact of the 2008 economic crisis Iceland has a large fiscal deficit, but the government has been taking measures to reduce it. Fiscal consolidation and the firm implementation of a credible fiscal strategy remain key challenges. As a member of the EEA, Iceland has proved able to withstand competitive pressures and market forces within the EEA. The economic crisis has seriously affected the investment capability of the private sector. However, provided appropriate macroeconomic policies and structural reforms are implemented, it could regain its capacity to sustain the competitive pressures of the single market in the medium term."

Legal obligations of membership

"The Opinion covers the *acquis* as broken down into 33 chapters for accession negotiations. In general, alignment with the *acquis* is good as Iceland's membership of the EEA means that its legislation is already aligned with approximately two thirds of the *acquis*."

3.12 The Minister then says that "the following chapters cover areas of the *acquis* which are of significance to UK policy, and/or which may require particular attention in accession negotiations", viz:

"Chapter 9 — Financial services is covered by the European Economic Area (EEA) Agreement. Iceland is already a member of the EEA. The Commission assesses that Iceland generally applies the *acquis* on financial services but that some improvements are necessary in order to fully implement the *acquis*, in particular. Iceland must address the weaknesses in its financial supervisory system and the deposit guarantee scheme at an early stage. The Government has made clear that it is essential for Iceland to meet its international obligations, including those under the Deposit Guarantee Directive which is part of its obligations under the EEA agreement.

"As the Committee will be aware, on 6 March Icelanders voted 'No' in the referendum on the Icesave loan bill agreed by the Icelandic government in December 2009. We hope further talks with Iceland on this issue will resume soon. A satisfactory resolution of the Icesave issue is necessary to rebuild the confidence of

the international financial community, aid the recovery of the Icelandic economy and enable Iceland to meet the criteria and obligations for EU membership.

"Regarding Chapter 11— Agriculture and rural development, the Commission states that Iceland's agricultural policy is not currently in line with the *acquis* and will need to be adapted before accession. In particular, support measures must be adjusted to align with EU competition and state aid rules. Administrative capacity and the processing of agricultural statistics are other areas which need strengthening. Iceland must also set up an EU-compliant paying agency and an integrated administrative and control system (IACS) to manage the common agricultural policy (CAP). Iceland's possible accession is estimated to have a minor impact on the CAP under the current *acquis*. It would probably account for less than 0.1% of EU-27 CAP spending.

"The analysis on Chapter 13 — Fisheries states that the Icelandic fisheries management system can be considered as relatively successful, its overall design and implementation is similar to those implemented in the EU. In its analysis, the Commission states that Iceland will have to align with common fisheries policy (CFP) instruments by accession. These instruments include fishing capacity management, technical conservation measures and integrated control measures. Iceland will also have to align with the *acquis* in several other areas including the EU principle of access to waters and EU internal market law. This covers the right of establishment, the freedom to provide services and the free movement of capital in the fisheries production and processing sectors. The UK has an important relationship with Iceland as a fisheries partner and looks forward to strengthening it. DEFRA is in the process of consulting industry and other parties on the best approach to take once negotiations open. The Opinion indicates that Iceland's accession to the EU would have a significant impact on the CFP as it stands. The CFP is currently being reviewed and may be reformed, effective from 2013.

In its analysis of Chapter 27 — Environment, the Commission indicates that there are several areas in which Iceland does not fully meet the requirements of the nature protection *acquis*, of which the protection of cetaceans (whales, dolphins, and porpoises) is one. Iceland currently allows the hunting of fin and minke whales. This is not in line with the EU common position which does not permit whale hunting in EU waters. The Opinion states that Iceland will have to undertake the necessary steps to align with the *acquis*.

"There are a number of strong conservation minded Member States, including the UK, who will strive for the effective conservation of cetaceans. The Government would continue to argue against any actions which would threaten the protection of cetaceans within EU waters."

3.13 The Minister then notes that: the Opinion has no immediate financial implications; that EU financial assistance for enlargement is delivered via the Instrument for Pre-Accession Assistance (IPA), with respect to which €1.6 billion will be committed in 2010 for all eligible countries; and that, in order for Iceland to be eligible for the IPA, a separate Regulation must be passed.

The IPA Regulation

3.14 The Instrument for Pre-Accession Assistance (IPA) is the Community's financial instrument for the pre-accession process for the period 2007–2013. Assistance is provided on the basis of the European Partnerships of the potential candidate countries and the Accession Partnerships of the candidate countries. The IPA provides assistance which depends on the progress made by the beneficiary countries and their needs as shown in the Commission's evaluations and annual strategy papers. Though it does not say so specifically, the whole pre-accession process is predicated on the need for support to help less-sophisticated countries reach EU standards.

3.15 Against this background, the Commission proposed to change Article 4 and Annex II of the IPA Council Regulation to allow Iceland, as a potential candidate country, to access funding from IPA. In his 24 November 2009 Explanatory Memorandum, the Parliamentary Secretary at the Department for International Development (Mr Michael Foster) professed himself "supportive of Iceland's membership application", and therefore "the principle of Iceland receiving IPA funds." He noted that Iceland was already closely aligned to the EU through membership of the European Economic Area and being a signature of the Schengen agreement, and said that "as a country with a very small administration, Iceland will need assistance to cope with the burdens of accession negotiations, (e.g. translation costs) and with the preparations for the administration of structural funds." He also pointed out that it was anticipated that Iceland would receive less than €10 million per year, and only for two years, that this money would be found from within the existing IPA financial framework (which amounts to €11.47 billion in 2007–13) and was too small to affect significantly the percentage of the instrument which was scored as ODA. He made no mention of the ICESAVE controversy.

3.16 Although the Parliamentary Under-Secretary made no mention of its role in this process, we were subsequently informed by his officials that the proposed amendment required the agreement of the European Parliament. He also made no mention of the collapse of Landsbanki in October 2008 and its aftermath. We therefore awaited further developments.

3.17 We were recently informed that the European Parliament had given its support to the proposal as drafted, and that it would therefore be presented to the Council "imminently". We also received further relevant information from the Minister for Europe.

The Minister's letter of 25 February 2010

3.18 In his letter, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) likewise recalled the events of last July, and continued as follows:

> "The Commission has analysed Iceland's application on the basis of the country's capacity to meet the criteria set by the Copenhagen European Council of 1993.
>
> "On 24 February 2010 the Commission published their Opinion recommending opening accession negotiations and a detailed Analytical Report. We are considering this carefully. I will provide an explanatory memorandum in due course as normal

but I want to take this opportunity to highlight some key aspects of the Opinion and our reaction.

"In its Opinion the Commission notes that Iceland is a parliamentary republic with deeply rooted traditions of representative democracy and assesses that it satisfies the political criteria. It assesses that Iceland can be considered a functioning market economy as required by the economic criteria. It further assesses that Iceland has a generally satisfactory track record in implementing its obligations under the EEA and is well prepared to take on the obligations of membership. The Commission highlights a number of areas where serious efforts will be needed to align legislations with the *acquis* and ensure its implementation and enforcement including: fisheries; agriculture and rural development; the environment; free movement of capital; financial services; as well as customs union; taxation; statistics; food safety, veterinary and phytosanitary policy; regional policy and coordination of structural instruments; and financial control. Fisheries negotiations are likely to be particularly sensitive. We remain determined to see an early end to Icelandic whaling.

"The UK Government has responded to the Commission's Opinion by making clear both that we fully support Iceland's application to join the EU and that it is essential that Iceland meets its international obligations, including those under the Deposit Guarantee Directive which is part of its obligations under the EEA agreement. As the Committees will recall, after the collapse of Landsbanki in October 2008 the Icelandic compensation scheme had insufficient funds to reimburse all depositors as required by the Directive. On 30 December the Icelandic Government agreed the terms of a loan with the UK and Netherlands to enable Iceland to discharge its obligations. However, the Icelandic President refused to sign the bill into law it is now is due to be put to a referendum in Iceland on 6 March. As I write, talks on the Icesave loan are continuing between officials from HM Treasury together with their Dutch colleagues and representatives from Iceland.

"The UK, along with every other Member State, will want to consider the Commission's recommendation carefully before deciding whether to open accession negotiations. The accession process is based on strict criteria. Iceland — like all candidate states — will have to meet these. The Commission has made it clear that Iceland must address the weaknesses in its financial supervisory system and the deposit guarantee scheme at an early stage. A satisfactory resolution of the Icesave issue is necessary to rebuild confidence of the international financial community, aid the recovery of the Icelandic economy and enable Iceland to meet the criteria and obligations for EU membership."

3.19 The Minister concluded his letter by saying that he would keep the Committee informed of the progress of Iceland's membership application.

3.20 There being no reason not to clear the draft Regulation, we did so. We also reported this to the House because of the level of political interest in the overall context.[11]

11 See headnote: (31101) 15367/10: HC 5–xii (2009–10), chapter 2 (3 March 2010).

Timetable

3.21 The Minister now concludes his Explanatory Memorandum by noting that: at the time of writing, EU Member States are considering the Opinion; the issue is not on the agenda for the Spring European Council; and it is not yet clear when the Presidency will bring this issue to the Council for a decision.

Conclusion

3.22 **The Minister makes no mention in his Explanatory Memorandum of the European Parliament, and thus of the meeting on 8 March — the day after the referendum[12] — between its Foreign Affairs Committee and Štefan Füle, Commissioner for Enlargement and European Neighbourhood policy, on the Commission Opinion on Iceland's application for membership. At that meeting, the Commissioner said that the outcome of the referendum should not hinder the accession process as this was a bilateral matter between Iceland, the Netherlands and the UK; the European Parliament's rapporteur and others, including the chair of the Parliament's delegation to Switzerland, Iceland and Norway and the EEA, agreed that Iceland, the Netherlands and the UK needed to resolve it by themselves and that it should not affect the accession process.**

3.23 **We mention this not to take issue with the Government's position, but rather to illustrate that there are different, important views about the relevance of the Icesave issue in this context.**

3.24 **The Minister says that there is no imminent prospect of the Opinion being put to the Council or European Council. We shall therefore retain the Communication under scrutiny until the Minister is in a position to write to us with a clear timetable and an explanation of what has changed in the interim, to include what he knows of the then views of the Commissioner and of the European Parliament.**

12 Law 1/2010, known as the Icesave Bill, was rejected, with 93% voting no, less than 2% yes and 5% spoiling their ballot papers, within an overall turnout of 63%.

4 Forest protection and information

(31372) 7060/10 + ADD 1 COM(10) 66	Green Paper on Forest Protection and Information in the EU: *Preparing forests for climate change*

Legal base	—
Document originated	1 March 2010
Deposited in Parliament	4 March 2010
Department	Forestry Commission
Basis of consideration	EM of 15 March 2010
Previous Committee Report	None, but see footnotes 13 and 14
To be discussed in Council	June 2010
Committee's assessment	Politically important
Committee's decision	Cleared

Background

4.1 Competence for forestry policy lies primarily with Member States, the role of the EU being intended primarily to add value to national programmes by monitoring the state of EU forests, anticipating global trends (and drawing these to the attention of Member States), and proposing options for early action at EU level. Notwithstanding this, the EU's Forestry Strategy sets out common principles for forestry, whilst its Forest Action Plan[13] builds upon that Strategy by coordinating forest related activities and policies at EU level. According to the Commission, the importance of protecting forests and managing them sustainably has also been acknowledged globally since the United Nations adopted in 1992 the "Rio forest principles", in addition to which the United Nations Framework Convention on Climate Change (UNFCCC) recognises the importance of forests in the greenhouse gas balance, whilst forest diversity is addressed through the Convention on Biological Diversity (CBD).

4.2 As foreshadowed in its White Paper[14] "*Adapting to Climate Change: towards a European Framework for Action*", it has now produced this Green Paper in order to launch a debate on the options for an EU approach to forest protection and information, aimed at ensuring that forests continue to perform their various functions.

The current document

4.3 The Green Paper identifies briefly the general situation and global relevance of forests; describes the characteristics and functions of EU forests; identifies the main challenges they

13 (27603) 10448/06: see HC 34–xxxv (2005–06), chapter 12 (12 July 2006).

14 (30535) 8526/09: see HC 19–xvii (2008–09), chapter 5 (13 May 2009).

face; and presents on overview of the means available to protect forests and of the various related information systems.

Forest functions

4.4 The Commission notes that forests now cover less than 30% of the Earth's land surface, that they are steadily decreasing in area, and that current deforestation, mostly in developing countries, causes about 12–15% of global emissions of carbon dioxide. However, although EU forests account for only 5% of the world's forests, they have been expanding, and, together with other wooded land, cover some 175 million hectares, equivalent to some 42% of the total EU land area.

4.5 It adds that forests are among the most biodiverse of the terrestrial ecosystems, and that they serve multiple and inter-related social, economic and environmental functions. In particular, they:

- provide jobs, income and raw materials for renewable energy, and for a large number of industries, their economic importance being especially high in rural areas;
- are a key component of the European landscape, and, by preventing landslides and avalanches, make many mountain areas habitable;
- help to preserve soil fertility, and to prevent erosion;
- play a major role in the storage, purification and release of freshwater supplies;
- have a key role in conserving biodiversity.

The Commission also highlights the role of forests in climate regulation, in that they remove carbon dioxide from the atmosphere (and subsequently act as a "sink"), are an important source of raw materials for the production of renewable energy, and have a direct impact on wind and weather patterns. At the same time, however, it notes that deforestation can cause substantial greenhouse gas emissions, due to fires and biomass decay.

Impacts of climate change on forests

4.6 The Commission observes that, although forests have in the past developed together with a naturally changing climate, the rate of human-induced climate change is now overcoming the natural ability of ecosystems to adapt. In particular, it suggests that the increase in temperatures now forecast by 2100 would alter the suitability of whole regions for certain forest types, particularly in southern Europe, forcing a shift in species distribution, and increasing the risk of storms and forest fires, thus making it likely that increased human intervention as regards species choice and management techniques will be required in order to maintain viable forest cover and functions.

Forest protection

4.7 The rest of the Green Paper looks at ways in which forests within the Community can be protected. It notes that all Member States have national (and sometimes regional)

legislation on forest use and management, some of it — including National Forest Programmes — being sector-specific, and some deriving from other legislation: likewise, the mechanisms available at EU level include both the Forestry Strategy and Action Plan and a range of other related policies, the latter including measures in relation to climate change, agriculture and rural development, sustainable production and consumption, Cohesion Policy and the EU Solidarity Fund, and the Seventh Research Framework Programme.

4.8 In particular, it suggests that sustainable forest *management*, based on the principles defined by the Ministerial Conference on the Protection on Forests in Europe in 1993, should include afforestation, fire prevention, planning the adaptation of forest species, the sustainable harvesting of wood, encouraging those trees likely to be better adapted to future climatic growing conditions, preserving endemic genetic resources likely to be best adapted to future growing conditions, and preventing the introduction of new pests and diseases by international trade. In the case of forest *information*, it notes that the EU has reporting obligations under the UNFCCC and CBD, but that information on forests is held at several different levels. These include national inventories; the integrated administration and control system (IACS) used under the Common Agricultural Policy and rural development fund; the monitoring of forest fires; the monitoring of forest conditions under the LIFE+ programme; and the forest classification developed by the European Forest Data Centre.

The next steps

4.9 In the light of the information set out in the Green Paper, the Commission has invited interested parties to comment by 31 July 2010, and in particular has posed a number of specific questions (see Annex A).

The Government's view

4.10 In his Explanatory Memorandum of 15 March 2010, the Minister for Marine and Natural Environment at the Department for Environment, Food and Rural Affairs (Mr Huw Irranca-Davies) says that the Green Paper offers a fair assessment of the general situation for forests, addresses key challenges facing them in the future in relation to climate change, and rightly recognises the need for improved data and information in order to increase understanding of climate change and inform policy decision making. However, he also observes that it fails to address the diverse nature of forests and forestry across the EU, including ownership and governance structures.

4.11 He adds that the UK welcomes the opportunity to continue working with the EU on forests through its continued delivery of the Forest Action Plan, and the fact that the Green Paper recognises the role of forests in providing a major contribution to climate change. However, he warns that the forestry community and Member States are conscious that, whilst the role of the EU is at present limited to adding value to national forest policies and programmes, this debate could open the door for the Commission to take a step further and propose an EU Directive on Forests. In particular, he comments that an increased role on forest policy for the EU would create competency issues, including in external relations on the global forest dialogue, and could potentially undermine national strategies, policies

and action. He says that the UK does not wish to see a "Common Forest Policy" or other approach which would infringe on responsibilities at national or devolved level.

4.12 The Minister also refers to a recent report "*Contributing to Climate Change: A Role for UK Forests*", which he says provides a useful assessment of the potential of forests to adapt to climate change, and will inform the development of policy in the UK. He adds that EU Member States are mindful that the Green Paper may also have a considerable impact on other relevant work ongoing under the FOREST EUROPE (Ministerial Conference on the Protection of Forest in Europe) process, which covers the whole of Europe, including Russia and involves 46 countries, to explore the possibility of a legally binding agreement on forests in Europe.

Conclusion

4.13 **As this Green Paper makes clear, the main responsibility for forestry policy within the EU currently rests with Member States, and, to the extent that the document seeks to draw attention to the various issues which need to be considered in relation to climate change and other matters, it does not in itself appear to raise any issues requiring further consideration by the House. We are therefore content to clear it. Having said that, the Government has drawn attention to the possibility that the discussion generated by the Green Paper could lead the Commission to seek a greater role in future for the EU in this area, and we therefore think it right to draw it to the attention of the House.**

Annex A: Questions Posed by the Green Paper

Question 1:

Do you think maintaining, balancing and enhancing forest functions should be given more attention? If so, on what level should action be taken, EU, National and/or other? How should it be done?

Question 2:

To what extent are EU forests and the forest sector ready to address the nature and magnitude of the challenges posed by climate change?

Do you consider particular regions, certain countries more exposed/vulnerable to the effects of climate change? What sources of information would you base your answer on?

Would you see the need for EU-level early action to ensure all forest functions are maintained?

How could the EU contribute to add value to the respective efforts of Member States?

Question 3:

Do you consider that EU and Member States policies are sufficient to ensure that the EU contributes to forest protection, including preparing forests for climate change and conserving biodiversity in forests?

In what areas, if any, do you think further action may be necessary?

How might this be organised, under the given policy framework or beyond?

Question 4:

How could the practical implementation of sustainable forest management be updated in order to upkeep the productive and protective functions of forests and overall viability of forestry, as well as enhance the resilience of EU forests in view of climate change and biodiversity loss?

What steps are required to ensure that the gene pool in forest reproductive material can be successfully conserved in its diversity and adapted to climate change?

Question 5:

Taking into account the various relevant policy levels, is available forest information today sufficient to assess with sufficient accuracy and consistency the health and condition of EU forests; their productive potential; their carbon balance; their protective functions (soils, water, weather regulation, biodiversity); the provision of services to society and their social function; overall viability of forestry?

If it is insufficient, how should forest information be improved?

Are efforts towards harmonised data collection of forests sufficient?

What can the EU do to further develop and/or enhance forest information systems?

5 EU Relations with Fiji

(31371) 6963/10 COM(10) 63	Draft Council Decision amending and extending the period of application of the measures in Decision 2007/641/EC concluding consultations with the Republic of Fiji Islands under Article 96 of the ACP-EC Partnership Agreement and Article 37 of the Development Cooperation Instrument

Legal base	Article 96 of the Cotonou Agreement and Article 37 of Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation; QMV
Document originated	26 February 2010
Deposited in Parliament	3 March 2010
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 17 March 2010
Previous Committee Report	None; but see (30874) 12744/09: HC 19–xxvii (2008–09), chapter 25 (14 October 2009); also see (28857) 12379/07: HC 41–xxxiii (2006–07), chapter 17 (2 October 2007)
To be discussed in Council	29 March 2010
Committee's assessment	Politically important
Committee's decision	Cleared

Background

5.1 Fiji is a signatory of the African Caribbean and Pacific-European Community (ACP-EC) Partnership Agreement, signed in Cotonou on 23 June 2000 (and known as the Cotonou Agreement). This provides a framework for relations between the EU and 77 countries of the African Caribbean and Pacific group of states (ACP). Article 96 of the Cotonou Agreement allows for consultations between the EU and an ACP state where a breach of any of Cotonou's "essential elements" — respect for human rights, democratic principles or the rule of law — is perceived to have taken place.

5.2 Article 3(1) of the Development Cooperation Instrument (DCI) confirms these same elements as general principles of the EU that it will seek to promote in partner countries through dialogue and cooperation. Article 37 of the DCI details the process where a breach of these principles is deemed to have taken place.

5.3 Fiji has been allocated €60 million under the DCI thematic programme for ACP sugar protocol countries for the period 2007–2010, which money was directed at reforming Fiji's sugar sector.

Council Decision 2007/641/EC

5.4 On 2 October 2007, the Committee cleared the Council Decision in question. It was adopted in the face of adverse political developments in Fiji, which are set out in detail in our earlier Report. In sum, on 5 December 2006, members of the Fiji Military Forces staged a coup, led by Commander Frank Bainimarama, which removed the democratically elected government, and the Commander appointed himself briefly as President and later as Prime Minister. In the following months the Commander sacked many key figures, including the Chief Justice. He appointed military figures to key positions in government ministries and put an interim Cabinet in place. In April, the Commander suspended the Great Council of Chiefs after they refused to accept the President's (effectively, the Commander's) nomination for the role of Vice-President. Many people speaking out against the coup, including those in the media, were detained by the military and intimidated. There were numerous accounts of human rights abuses, including two deaths in military custody. The independence of the judiciary was also compromised.

5.5 Against this background, the EU considered the coup in Fiji constituted a violation of Cotonou's essential elements and the DCI's general principles and on 27 February 2007 accordingly opened consultations with Fiji. During these consultations, representatives of Fiji's Interim Government agreed to a number of commitments designed to return Fiji to democracy and the rule of law — the key commitment being to hold free and fair elections by March 2009.

5.6 The Council accordingly agreed to conclude consultations and adopt appropriate measures under Article 96 of the Cotonou Agreement and Article 37 of the DCI. These included:

— making the finalisation, signing and implementation of the 2008–2013 Country Strategy Paper, for which funding would be made available under the 10th European Development Fund (EDF), subject to the interim government meeting agreed commitments in respect of human rights and rule of law;

— making Fiji's 2007 allocation under the DCI thematic programme for ACP sugar protocol countries zero and tying the provision of assistance under this programme in 2008, 2009 and 2010 to the return to democratic government;

— certain cooperation activities already underway or in preparation for funding under the 8th and 9th EDFs were to continue, likewise implementation of the 2006 sugar assistance provided under the Regulation establishing accompanying measures for Sugar Protocol countries affected by the reform of the EU sugar regime (Regulation 266/2006);

— support for activities which would help the return to democracy and improve governance would also be permitted, as would humanitarian aid and direct support to civil society; Fiji would also continue to be able to participate in regional cooperation activities;

— cooperation with the European Investment Bank and the Centre for Development Enterprise would continue, subject to the timely fulfilment of commitments;

— the EU would follow the situation closely, and enhanced political dialogue with the interim Fijian authorities would be conducted to ensure respect for human rights, restoration of democracy and respect for the rule of law.

Our assessment

5.7 In clearing the document, the Committee noted that its interest in the application and effectiveness of the "Article 96" process had now been amplified by the addition of similar "governance" provisions in the new Development Cooperation Instrument. Given the widespread interest in the House in EU development assistance policy and activity, and the importance these provisions now had therein, we considered that the stage now reached in the EU and the Government's endeavours to return Fiji to the path of democracy and the rule of law warranted a Report to the House.[15]

The most recent extension to Council Decision 2007/641/EC

5.8 In his Explanatory Memorandum of 24 September 2009, the Minister of State at the Foreign and Commonwealth Office (Mr Ivan Lewis) said that the situation worsened again in April 2009, when the Fiji Court of Appeal declared Bainimarama's regime illegal: the following day the President, at Bainimarama's behest, had abrogated the constitution, suspended the courts and re-appointed Bainimarama Prime Minister; since then, the military had restricted public gatherings, severely censored the media and ensured impunity for abuses by military personnel; and Bainimarama had announced that no elections will be held until 2014 after fundamental land and electoral reform.

5.9 The Council Decision noted that:

— the review of the current Decision, which was due to expire on 1 October 2009, coincided with an ongoing joint initiative by the United Nations and the Commonwealth to mediate, to which the EU had given its full support, but which was stalled;

— the interim Prime Minister had recently presented a roadmap for reforms and elections; while insufficient as it stood, it might be worthwhile to engage in dialogue regarding it and to consider whether it might serve as a basis for new consultations;

and said that, taking into account the above considerations, the Commission could only, at this stage, propose an extension of the current policy.

5.10 Referring to the commitment to hold free and fair elections by March 2009, the Minister continued as follows:

> "As a result of Fiji's failure to meet these commitments the EC announced on 18 May that it had taken the decision to cancel the 2009 sugar allocation for Fiji (totalling EUR 24 million). This action will have serious impact on Fiji's failing economy. The UK fully supported the EC's decision.

15 See headnote: (28857) 12379/07: HC 41–xxxiii (2006–07), chapter 17 (2 October 2007).

> "The Government supports the Commission's approach to Fiji. The Article 96 consultations have offered the opportunity to promote a return to democratic government and rule of law in Fiji and to demonstrate the importance that the EU attaches to upholding the essential elements of the Cotonou Agreement and the general principles in the Development Cooperation Instrument."

5.11 The Minister also notes that the UK currently holds the local EU Presidency in Suva and, he says, plays an important role in monitoring progress:

> "The UK will continue to use every opportunity to press the Fiji authorities to behave transparently, respect human rights and the rule of law and return the country to democratic rule as soon as possible. The measures outlined in this Council Decision will aid these efforts. We strongly believe tangible 'next steps' are necessary to avoid the current agreement continually being extended. The discussions on what these next steps should be will take place in Brussels over the next 6 months, with a view to having a decision in place before the end of the extended period."

Our further assessment

5.12 We reported these latest unfortunate developments to the House for the same reasons as two years previously.

5.13 In clearing the document, we also asked the Minister would write to us when he knew what the "next steps" were likely to be.[16]

The proposed amendment and extension to Council Decision 2007/641/EC

5.14 The Commission says that:

— taking into account the above considerations, it can only, at this stage, propose an extension of the current policy and appropriate measures, and is therefore proposing to the Council to extend the current Decision for a further six months ending on 1 October 2010;

— the Decision should continue to be reviewed in a way that allows the EU to keep a regular dialogue and permanent political engagement with Fiji, and therefore should be kept under constant review.

5.15 The Commission also proposes that this Decision should be notified to the interim Government of Fiji, on the basis of the draft letter to President Iloilo annexed to the draft Decision, informing him

> "(a) that the EU remains committed to pursuing the enhanced political dialogue under Article 8 of the Cotonou Agreement, (b) that the assessment of progress made towards return to constitutional rule will guide the EU in the upcoming decisions on Accompanying Measures for Sugar Protocol Countries and 10th EDF National

16 See headnote: (30874) 12744/09: HC 19–xxvii (2008–09), chapter 25 (14 October 2010).

> Indicative Programme with respect to Fiji and, finally, (c) that new consultations under Article 96 of the ACP-EC Partnership Agreement and Article 37 of the Development Cooperation Instrument are a distinct possibility at the disposal of Fiji."

5.16 The draft letter recalls the abrogation of the Constitution, the very substantial delay in holding the parliamentary elections, and human rights violations; reminds the Fijian authorities of the commitments that it originally gave but whose implementation has been substantially delayed, and of the consequential losses for Fiji in terms of development funds. But in "the spirit of partnership forming the cornerstone of the Cotonou Agreement" the EU expresses its readiness to engage in new formal consultations as soon as there is a reasonable prospect for a positive conclusion to such consultations, noting that the Interim Prime Minister has "declared that a roadmap for reforms and for a return to democratic order is under preparation" and that "the EU stands ready to engage in dialogue regarding this coming roadmap, and is prepared to consider whether it may serve as a basis for new consultations." Extending the existing appropriate measures will "create a window of opportunity for new consultations … rather than update them unilaterally the EU prefers to further explore possibilities for new consultations with Fiji [regarding it] …. of particular importance that the Interim Government commits to an inclusive domestic political dialogue and to flexibility concerning the time-frame for the coming roadmap." While the EU's position "is and always will be guided by the essential elements of the revised Cotonou Agreement as well as its fundamental principles, notably regarding the pivotal role of dialogue and the fulfilment of mutual obligations, it is stressed that there are no foregone conclusions on the EU's side regarding the outcome of future consultations." If new consultations result in substantial commitments from Fiji, the EU is committed to an early, positive review of these appropriate measures:

> "Conversely, if the situation in Fiji does not improve, then further losses of development funds for Fiji are set to continue. In particular, the assessment of progress made towards return to constitutional rule will guide the EU in the upcoming decisions on Accompanying Measures for Sugar Protocol Countries and 10th EDF National Indicative Programme with respect to Fiji. Until new consultations have taken place the EU invites Fiji to continue and intensify the enhanced political dialogue."

The Government's view

5.17 In his Explanatory Memorandum of 17 March 2009, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) recalls the decision to cancel the 2009 sugar allocation for Fiji, and the serious impact on Fiji's failing economy, along with the UK's full support for the cancellation; and says that the decision on the 2010 allocation is due by 31 March: "as there has been no improvement in Fiji's situation this is also likely to be withheld."

5.18 The Minister also says that the Government supports the Commission's approach to Fiji, describing the Article 96 consultations as having "offered the opportunity to promote a return to democratic government and rule of law in Fiji and to demonstrate the

importance that the EU attaches to upholding the essential elements of the Cotonou Agreement and the general principles in the Development Cooperation Instrument."

5.19 He notes that the UK representatives in Suva will continue to use every opportunity to press the Fiji authorities to behave transparently, respect human rights and the rule of law and return the country to democratic rule as soon as possible, and says that the measures outlined in this Council Decision will aid these efforts.

5.20 With regard to the "next steps" envisaged last September, the Minister says:

> "The last 6 months have not provided conditions suitable for further negotiations. We hope that continued contact between the Fiji regime and the EU on the conditions which would allow a restoration of normal EU development assistance will persuade the regime of the need for change. A further review of the Cotonou arrangements in 6 months' time will ensure that these intractable issues remain on the EU's agenda."

Conclusion

5.21 **The door is open to the regime in Fiji to do the right things, and to benefit from doing so; we can but hope that, in six months' time, the Minister will have some positive developments to report.**

5.22 **In the meantime, we clear the document, which we are drawing to the attention of the House because of the continuing importance of EU development assistance policy and activity and the role of these "good governance" provisions in it.**

6 The Nuclear Non-Proliferation Treaty

(31422) — —	Council Decision relating to the position of the European Union for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

Legal base	Article 29 TEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 18 March 2010
Previous Committee Report	None
To be discussed in Council	29 March 2010 Agriculture Council
Committee's assessment	Politically important
Committee's decision	Cleared

Background

6.1 The NPT (Treaty on the Non-Proliferation of Nuclear Weapons) is described by the UN as "a landmark international treaty whose objective is to prevent the spread of nuclear weapons and weapons technology, to promote co-operation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament and general and complete disarmament" and "the only binding commitment in a multilateral treaty to the goal of disarmament by the nuclear-weapon States." Opened for signature in 1968, the Treaty entered into force in 1970. A total of 187 parties have joined the Treaty, including the five nuclear-weapon States. "More countries have ratified the NPT than any other arms limitation and disarmament agreement, a testament to the Treaty's significance."

6.2 To further the goal of non-proliferation and as a confidence-building measure between States Parties, the Treaty establishes a safeguards system under the responsibility of the International Atomic Energy Agency (IAEA). Safeguards are used to verify compliance with the Treaty through inspections conducted by the IAEA. The Treaty promotes co-operation in the field of peaceful nuclear technology and equal access to this technology for all States parties, while safeguards prevent the diversion of fissile material for weapons use.[17]

6.3 The provisions of the Treaty, particularly Article VIII, paragraph 3, envisage a review of the operation of the Treaty every five years. The next such Review Conference (RevCon) will take place in New York on 3 May 2010 and is scheduled to last four weeks.

6.4 On the basis of the principles and objectives set out in Article 21 TEU, the EU's Common Foreign and Security Policy is to be conducted, inter alia, by the adoption of decisions defining the approach of the Union to a particular matter of a geographical or thematic nature; Member States shall ensure that their national policies conform to such Union positions.

The Council Decision

6.5 The EU has prepared such an approach to the main issues which the Review Conference is expected to consider. As well as reaffirming the Union's regard for the NPT as "the cornerstone of the global nuclear non-proliferation regime, the essential foundation for the pursuit of nuclear disarmament in accordance with Article VI of the NPT and an important element in the further development of nuclear energy applications for peaceful purposes", the preamble also recalls that:

— on 12 December 2003, the European Council adopted a Strategy against proliferation of Weapons of Mass Destruction, in order to steer its action in this field;

— on 8 December 2008, the Council adopted a document on "New lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems";

17 For full information on the NPT, see http://www.un.org/disarmament/WMD/Nuclear/NPT.shtml.

— on 12 December 2008, the European Council adopted the "Statement on strengthening international security", reaffirming its determination to combat the proliferation of weapons of mass destruction and their means of delivery and promoting concrete and realistic disarmament initiatives which the EU submitted at the United Nations General Assembly; and

— the United Nations Security Council, meeting at the level of Heads of State and Government, unanimously adopted Resolution 1887 (2009), resolving to seek a safer world for all and to create the conditions for a world without nuclear weapons, in accordance with the goals of the Treaty on Non-Proliferation of Nuclear Weapons (NPT), in a way that promotes international stability, and based on the principle of undiminished security for all, calling upon all States that are not party to the NPT to accede to the Treaty as non-nuclear-weapon States, and calling upon States Parties to the NPT to comply fully with all their obligations and fulfil their commitments under the Treaty and to cooperate so that the 2010 NPT Review Conference can successfully strengthen the Treaty and set realistic and achievable goals in all the Treaty's three pillars: non-proliferation, the peaceful uses of nuclear energy, and disarmament.

6.6 In his Explanatory Memorandum of 19 March 2010, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) says that, based on the three "pillars", the EU approach will include universalisation of safeguards arrangements, strengthening the Treaty so that it deters further proliferation challenges and non-compliance, how to respond efficiently to a State's withdrawal from the NPT, progress towards a Middle East Zone Free from Weapons of Mass Destruction, concrete steps towards nuclear disarmament and facilitating the development of civil nuclear energy within a culture of transparency, confidence and high safety, security and non-proliferation standards.

The Government's view

6.7 The Minister characterises the three pillars, of non-proliferation, disarmament and the peaceful use of nuclear energy, as a "grand bargain" of three pillars, and describes it thus:

> "Under the bargain the (then) five nuclear powers (China, France, UK, Russia/USSR and USA) are recognised as nuclear-weapon States. All other signatories agreed not to develop or acquire nuclear weapons. In return these non-nuclear-weapon States have the right to develop nuclear energy for peaceful purposes and a commitment by the nuclear-weapon States to end the nuclear arms race as soon as possible and enter into negotiations for nuclear disarmament (without any timeframe)."

6.8 He regards the Treaty as having served the international community well:

> "However in recent years the nuclear non-proliferation and disarmament regime, and the NPT which is its cornerstone, have come under unprecedented pressure. There are several stressors. DPRK and Iran continue to pursue their nuclear ambitions in defiance of international opinion. The need to combat climate change and concern over the longer term availability of fossil fuels are likely to spark a civil nuclear renaissance, which could in turn see the dissemination of highly sensitive nuclear technology. Al-Qaida has made clear its intention to acquire weapons of mass destruction capacity at a time when nuclear know-how is increasingly available

on-line and there is evidence of an active black market in nuclear equipment and materials. It is also clear that the international consensus that must underpin the non-proliferation regime if it is to be effective has frayed. The last NPT Review Conference in 2005 failed to reach agreement."

6.9 The Minister then outlines the basis of UK policy as follows:

"The UK's analysis of the challenges facing the NPT and our policy response were set out by then Foreign Secretary Margaret Beckett in a landmark speech to the Carnegie Endowment in Washington on 25 June 2007.[18] Drawing on analysis from four eminent former US officials (Kissinger, Shultz, Perry and Nunn), Mrs Beckett argued the case for re-energising international consensus by renewing and strengthening the grand bargain and for a reinvigorated approach to nuclear disarmament.

"At the heart of 'Carnegie' is the recognition that DPRK and Iran have attempted to muddy the waters by claiming that the nuclear-weapon States have gone cold on their nuclear disarmament obligations. Hence to get more on non-proliferation, the nuclear-weapon States would need to give more, and be seen to give more, on nuclear disarmament."

6.10 Turning to the present, the Minister then says:

"There is clear evidence that the Government's approach, championed in a series of speeches by the Prime Minister, Foreign Secretary and other Ministers has gained traction. And the priority President Obama has given to nuclear non-proliferation and disarmament has had a powerful impact on the international mood music ahead of May's five-yearly NPT RevCon. For the first time in fifteen years States party [sic] have agreed an agenda and rules of procedure. But there is no room for complacency. In particular we need to bridge the gap between the Non-Aligned Movement and other States Party. NAM wants much faster progress on nuclear disarmament and largely unrestricted access to nuclear technology. Elsewhere the concern is responding to the proliferation challenges, a gradualist approach to disarmament and ensuring the expected nuclear renaissance doesn't sire widespread dissemination of highly sensitive nuclear fuel cycle technology.

"The UK (and latterly the US) have been active in engaging the NAM mainstream, and particularly heavyweight multipliers like South Africa, Brazil and Indonesia, behind support for a mandate from the RevCon for balanced strengthening of the Non-Proliferation Treaty's three pillars. We want to see an outward-looking EU put its shoulder to that wheel. However after a mention in despatches at the 2007 NPT Preparatory Committee, when the EU played a central role in thwarting Iranian mischief-making, the European Union failed to make any impact at the 2008 and 2009 PrepComs. This was chiefly, but not entirely, because of friction between France and Germany over the pace and extent of nuclear disarmament."

6.11 Finally, the Minister comments on the proposed Council Decision as follows:

18 For the full text of this speech, see http://www.carnegieendowment.org/files/keynote.pdf.

> "In the autumn the UK proposed a new Council Decision which would highlight areas of convergence between Member States and serve as a platform for EU cohesion and outreach towards key partners in support of a successful RevCon. The draft Council Decision produced by the Spanish Presidency and agreed by Member States on 9 March is a helpful manifesto of practical and pragmatic proposals on non-proliferation, disarmament and peaceful uses, which reflect the UK's objectives and offer a credible basis for agreement at the RevCon."

Conclusion

6.12 **All the questions that may arise from this Council Decision — for example, the illustration of the limitations of any common approach when differing national interests are engaged, in this instance those of France and Germany — are for others to contemplate.**

6.13 **We clear the Council Decision, which we are reporting to the House, and also drawing to the attention of the Foreign Affairs Committee, because of the widespread interest in nuclear non-proliferation issues.**

7 EU Special Representative for Afghanistan

(31425)	Council Decision appointing the European Union Special
—	Representative for Afghanistan
—	

Legal base	Articles 28, 31(2) and 33 TEU; QMV
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 22 March 2010
Previous Committee Report	None; but see (30674) —: HC 19–xix (2008–09), chapter 14 (10 June 2009) and HC 19–xxiii (2008–09), chapter 7 (8 July 2009); and (31296) —: HC 5–x (2009–10), chapter 8 (9 February 2010)
Discussed in Council	22 March 2010 Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested

Background

7.1 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 18 of the 1997 Amsterdam Treaty and are appointed by the Council. The aim of the EUSRs

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.

7.2 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. 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 Ashton)). Each is financed out of the CFSP budget implemented by the Commission. Member States contribute regularly e.g. through seconding some of the EUSR's staff members.

7.3 In June 2005 the Political and Security Committee decided that EUSR mandates should in principle be extended for 12 months rather than the previous arrangement of six months. This was put into effect in February 2006. The UK supported this proposal, as it enables extensions to be based on a more thorough reporting cycle. The renewed mandates now also ask EUSRs to prepare progress reports in mid-June and mandate implementation reports in mid-November.

7.4 The European Union currently has 12 Special Representatives (EUSRs) dealing with: Afghanistan, the African Great Lakes Region, the African Union, Bosnia and Herzegovina, Central Asia, Georgia, the former Yugoslav Republic of Macedonia, Kosovo, the Middle East, Moldova, the South Caucasus and Sudan.

7.5 Some EUSRs are resident in their country or region of activity, while others work on a travelling basis from Brussels.

Our earlier consideration

7.6 On 9 February 2010 we considered a number of draft Council Decisions extending their mandates. In his accompanying Explanatory Memorandum, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) explained that, the earlier decision of the PSC notwithstanding, on this occasion the mandates were to be 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; and that the HR intended to revert to the matter in the light of further work on the EEAS.

Afghanistan

7.7 The Council Decision that we considered then extended the appointment of Mr Ettore Sequi as the EUSR in Afghanistan. That mandate encompassed support to the government of Afghanistan, in particular in the implementation of the EU-Afghanistan Joint Declaration, support to the United Nations in Afghanistan, liaison with regional countries in support of EU policy, supporting the EU's work on human rights and coordination of EU work in Afghanistan.

7.8 In her accompanying Explanatory Memorandum of 25 January 2009, the then Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) said:

— the EU and Afghanistan's partnership is defined by the Strasbourg Declaration of 16 November 2005, with the joint commitments in this Declaration being kept under review by periodic meetings between the Afghan government and the EU;

— the EU (specifically, the European Commission and member states) is a major donor to Afghanistan, having disbursed or pledged $7.5 billion between 2002 and 2011, including over $5 billion of pledges in support of the Afghan National Development Strategy at the Paris conference in June 2008;

— EU Member States provide approximately 16,000 troops to International Security Assistance Force;

— the EU launched its Police Mission to Afghanistan (EUPOL) in June 2007;

— the EU Special Representative would continue to play an important role in focusing the EU effort, and ensuring that it dovetailed with the work of other bilateral and multilateral partners;

— the Afghan government and international partners, particularly the UN, continued to insist upon the need for greater international coordination in Afghanistan;

— in view of the many challenges facing the country in 2009, particularly the Presidential elections and the difficult security situation in the south and east of the country, the need for effective international engagement was even greater.

7.9 Then, in June and July 2009, we considered a further proposal to amend the mandate to include Pakistan. In her Explanatory Memorandum of 3 June 2009, the then Minister for Europe said that the decision to extend EUSR Sequi's mandate to include Pakistan "reflects the direction of international debate on Afghanistan and broader regional challenges, particularly on Pakistan", and "also chimes with a message that the UK has been consistently delivering in the EU, that we need to be better equipped to address the regional dimension of policy on Afghanistan, particularly Pakistan." The Minister continued as follows:

> "The UK Government supports the extension of the mandate to include Pakistan as we have been pushing the EU to increase its engagement in both Afghanistan and Pakistan and to see the problems in both countries as interlinked. On 29 April, the Prime Minister made a statement to the House outlining the UK's Afghanistan-Pakistan strategy. This was designed to reinforce and be consistent with the new US strategy, which has similarly refocused its Afghanistan policy to include Pakistan. This followed the 22 January appointment of Richard Holbrooke as US Special Envoy to Afghanistan and Pakistan, and subsequent appointments of various other 'Af/Pak' Special Envoys, all of which highlight the international communities [sic] focus on the links between instability in both countries."

Our assessment

7.10 We had no wish to hold up this amendment, and accordingly cleared the document, which we reported to the House because of the widespread interest in the subject matter.

But we had a number of questions for the then Minister, to which she responded in a letter of 30 June 2009. We reported that to the House in our Report of 8 July 2009.[19]

7.11 Returning to the present Minister for Europe's Explanatory Memorandum of 3 February 2010, in commenting on this latest extension of EUSR Sequi's mandate, the Minister noted that there might be a change in the candidate for this role. He then commented as follows:

> "The Government supports the extension of this mandate because of the important role of the EU in Afghanistan. The EU and Afghanistan's partnership, defined by the Strasbourg Declaration of 16 November 2005, means that EU commitments are kept under review by periodic meetings between the Afghan government and the EU. The EU is a major partner in Afghanistan, having disbursed or pledged $7.5bn between 2002 and 2011. EU member states also provide 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.
>
> "The EUSR will continue to play an important role in focusing the EU efforts described above, and ensuring that it dovetails with the work of other bilateral and multilateral partners. The Afghan government and international partners, particularly the UN, continue to place an emphasis upon the need for greater international coordination in Afghanistan, the EUSR is a key part of fostering this cooperation."

7.12 We noted that the Minister was unable to provide any financial information on this occasion. We also understood that, Afghanistan being a major UK priority, the Minister was pushing for a decision at the 22 February 2010 Foreign Affairs Council, and that, as well as there being a possible new EUSR, it was expected that the mandate would be significantly upgraded.

7.13 We understood, too, that, these lacunae notwithstanding, the Minister had submitted what information was presently available in order to take account of the impending parliamentary recess, which, regrettably, meant that there was insufficient time between then and the 22 February FAC for the Minister to provide this additional information.

7.14 No other questions arose, and we had no wish to hold up the process. We accordingly cleared the documents. But in so doing we asked the Minister to provide a Supplementary Explanatory Memorandum as soon as possible with the sort of financial information that he had provided on previous occasions and full information about the candidate and mandate of the EUSR for Afghanistan.

7.15 Looking further ahead, we reminded the Minister that we would expect full and timely financial and other relevant information when all the mandates next came up for renewal, particularly about the way in which the EUSRs would interact with the prospective EEAS.[20]

19 See headnote: (30674) —: (HC 19–xix (2008–09), chapter 14 (10 June 2009) and HC 19–xxiii (2008–09), chapter 7 (8 July 2009).

20 See headnote: (31296) —: HC 5–x (2009–10), chapter 8 (9 February 2010).

7.16 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.

The further draft Council Decision

7.17 In his Explanatory Memorandum of 22 March 2010, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) says that the Foreign Affairs Council on 22 March will confirm the appointment of Mr Ušackas as EUSR for Afghanistan from 1 April 2010. He also notes that the mandate for the current EUSR, Ettore Sequi, expires on 31 March 2010.

7.18 In the draft Council Decision, it says that the financial reference amount intended to cover the expenditure related to the mandate of the EUSR in the period from the date of entry into force of this Decision to 31 August 2010 shall be €2,500,000. The Minister says that the cost of the new appointment will be met from existing EU budgets; and that there will be no call for Member State contributions.

The Government's view

7.19 After briefly rehearsing some of the context, the Minister says:

> "The Government supports the appointment of Vygaudas Ušackas. As a senior political figure, his appointment as EUSR is a demonstration of the EU's enhanced engagement in Afghanistan. It is also the last piece in the jigsaw to up the international civilian effort, following the appointment of heavyweight figures for the role of NATO Senior Civilian Representative and the new UN Special Representative for the Secretary General. Key to the civilian effort in Afghanistan will be enhanced co-ordination between theses three roles."

Conclusion

7.20 **Although Mr Ušackas' appointment was announced by the High Representative on 22 February, there is no mention of it in the Foreign Affairs Council Conclusions of that same day. Indeed there is no mention of Afghanistan at all. [21] Moreover, the HR's letter to the Council of 22 February mentions, *en passant*, the prolongation of the mandate of a further EUSR, to Burma/Myanmar, on the same basis as the others, i.e., until 31 August 2010, or until the establishment of the European External Action Service (EEAS), whichever is the earlier; we should like to know when this will be submitted for scrutiny.**

7.21 **We ask the Minister to explain more about this present process. Under Article 33 TEU, it is for the HR to propose and for the Council to decide; here, however, it would seem that an appointment has been made, and announced to the world, with no sign of discussion in the Council; and that the Council — and thus this Committee's role — is now to rubber stamp it.**

21 The Council Conclusions are available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/112999.pdf.

7.22 **Contrary to what he said in his 3 February Explanatory Memorandum, the Minister now says that Mr Sequi's mandate was extended only until 31 March, but says nothing about how and when this decision was taken. We ask the Minister to clarify this. Nor does the Minister tell us anything about Mr Sequi's successor; we should like to know more about his qualifications for this crucially important job.**

7.23 **We should also like to know more about the job itself. The Minister does not mention that it is to be "double-hatted", i.e., that he is to be not only the voice of the Council but also the head of the Commission's technical assistance operations. What will this entail? What is the annual budget that he will control? What are the main programmes that he will be in charge of implementing? And how do they relate to other bilateral and international activities?**

7.24 **In his EUSR capacity, he will have a budget of €2,500,000 from 1 April to 31 August 2010. What will this be spent on?**

7.25 **Although our understanding was that the EUSR's mandate was to be significantly upgraded, it seems instead to have been diminished, in that there is no mention of his predecessor's role regarding Pakistan. We ask the Minister to explain this.**

7.26 **In addition to be asked to clear a *fait accompli*, the Committee is also being asked to do so after a further administrative error by the Minister's Department — this despite several assurances that this type of administrative oversight would be a thing of the past. We ask the Minister to explain, in detail, the nature of this oversight and how, despite his assurances, it came to pass. The problem of administrative oversights exists across government departments; we will therefore be writing to the Cabinet Secretary and Head of the Home Civil Service to ask him to give evidence to the Committee.**

7.27 **We now clear the document.**

8 CSDP: Piracy off the coast of Somalia

(31426) — —	Draft Council Decision on a European Union military mission to contribute to the training of Somali Security Forces

Legal base	Articles 28 and 43(2) TEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 22 March 2010
Previous Committee Reports	None; but see (31259) —: HC 5–vii (2009–10), chapter 2 (20 January 2010); also see (31174) 16450/09: HC 5–iii (2009–10), chapter 19 (9 December 2009); (30982) —: HC 19–xxvii (2008–09), chapter 29 (14 October 2009); (30724) — and (30728)—: HC 19 xxiii (2008–09), chapter 9 (8 July 2009) and (30341) —, (30348) — and (30349) —: HC 19–iv (2008–09) chapter 17 (21 January 2009); (30400) 13989/08: HC 16–xxxvi (2007–08), chapter 17 (26 November 2008) and HC 16–xxxii (2007–08), chapter 10 (22 October 2008); and (29953)—: HC 16–xxx (2007–08), chapter 19 (8 October 2008)
To be discussed in Council	31 March 2010
Committee's assessment	Politically important
Committee's decision	Cleared

Background

8.1 In response to growing international concern over the problem of piracy off the coast of Somalia, the United Nations Security Council adopted Resolution (UNSCR) 1816 (2008) in June which encouraged "States interested in the use of commercial maritime routes off the coast of Somalia, to increase and coordinate their efforts to deter acts of piracy and armed robbery at sea". Then, on 7 October 2008, the Security Council unanimously adopted UNSCR 1838, which was initiated by France and co-sponsored by 19 countries (Belgium, Croatia, the US, the UK, Italy, Panama, Canada, Denmark, Spain, Greece, Japan, Lithuania, Malaysia, Norway, the Netherlands, Portugal, Korea and Singapore).

8.2 Our previous reports set out the history of the European Union's endeavours to address this problem, leading to the creation of the first ESDP naval operation, Operation ATALANTA, and subsequent developments.[22]

8.3 These include a Council Decision extending Operation ATALANTA for a further 12 months until 12 December 2010 and to include:

- monitoring of fishing activities off the coast in Somalia;

22 See headnote.

- the need for Operation ATALANTA to liaise and cooperate with international bodies working in the region;
- assisting the Somali authorities by sharing information on fishing activities;

8.4 In his accompanying Explanatory Memorandum of 25 November 2009 on that Council Decision, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) went on to note that, although 2009 had witnessed an increase in the number of pirate attacks, the actual number of successful attacks has been reduced significantly, especially in the critical Gulf of Aden transit artery; but also that the threat of piracy had not diminished, continued to pose a threat to international shipping, and had resulted in an increase in pirate attacks in the much broader Somali basin. The Minister also illustrated ways in which the UK continued to provide a direct contribution to a number of international efforts to counter piracy.

8.5 The Minister also subsequently sent the Committee two letters, of 27 November and 7 December 2009, which in various ways sought to respond to the Committee's request for information on what action was being taken to deal with the circumstances that had led to the piracy problem, and both of which are set out in detail in our most recent Report.

Our assessment

8.6 Against this background, we drew the Minister's attention to a relevant letter published by "The Times" newspaper on 5 December 2009 from the Prime Minister of the Transitional Federal Government of Somalia (which is reproduced at Annex 1 to our most recent Report). Though it seemed that a response to his first point — "The help we need is first in the restoration of both effective government and the training of national security forces required to secure peace and enforce laws" — was under discussion, it was not clear to what extent the other two — restoring and enforcing Somalia's economic exclusion zone and a large scale civil affairs programme — were being addressed.

8.7 We therefore asked that, in his promised further letter, the Minister included his assessment of the extent to which:

— the activity to which he had referred in his letter of 7 December;

— the proposals under discussion within the EU to train Somali security forces; and

— what was contained in the Council Decision, particularly with regard to fishing activities

8.8 In the meantime, we cleared the document, which we drew to the attention of the House because of the widespread interest in the situation that it was endeavouring to tackle and the UK role in it.

8.9 For the same reasons we also drew it to the attention of the Foreign Affairs and Defence Committees.[23]

23 See headnote: (31174) 16450/09: HC 5–iii (2009–10), chapter 19 (9 December 2009).

The Minister's letter of 9 December 2009

8.10 In his letter, the Minister said that Member States had been discussing how the EU could increase its commitment to Somalia in a variety of areas, including reinforcement of Somalia's capacity to manage security challenges; this, he said, was reflected at the General Affairs and External Relations Council on 17 November 2009 where a crisis management concept was adopted concerning a possible CSDP training mission for the Somali security forces. Closer analysis was, he said, currently being undertaken with research and planning expected to continue into next month. He continued as follows:

> "A CSDP mission could make a useful contribution to increased international action on Somalia. We believe that the UK should work with the international community and regional partners and welcome further planning of this possible EU mission. However, we have been clear that our agreement to continue planning should not prejudice any future decisions regarding whether or not to agree to the Mission. We need to be fully convinced that, if launched, it will be workable and contribute to progress in Somalia."

8.11 The Minister then went on to note that:

> "Somalia is a failed state and has been for nearly two decades. A protracted conflict has been caused by a breakdown in the rule of law and frequent conflicts at national and local level. This has resulted in an humanitarian crises [sic], increased migration, and the growth of terrorism and piracy. There is no "easy fix" and no state can deliver progress in Somalia alone. The UK Government therefore believes that the international community (including regional actors) needs to engage effectively and develop a common approach. A CSDP mission could make a useful contribution to increased international action on Somalia."

8.12 Finally, the Minister said that the Government, the EU as a whole and the UN fully supported the UN-led Djibouti process,[24] which he believed must provide the basis for a lasting and stable political settlement:

> "We support the efforts of the Transitional Federal Government of Somalia (TFG) and welcome signs of progress made to achieve peace and stability. Progress towards peace and security in Somalia must be a Somali-led process, but the UK coordinates closely with the UN and the rest of the international community."

The most recent Council Decision

8.13 Against this background, we then considered a draft Council Decision outlining the proposed EU military mission. In his accompanying Explanatory Memorandum of 19 January 2010, the Minister for Europe said that, since the decision to adopt a crisis

24 According to the Institute for Security Studies , the Djibouti peace process, which began in May 2008, was started following the failure of the Transitional Federal Government (TFG) to consolidate itself into an all-inclusive national government embraced by all Somalis, came in the midst of a deteriorating security and humanitarian situation following the forcible ouster of the Union of Islamic Courts (UIC) by Ethiopia, and was driven by the realization that the Somali crisis would not be resolved without a negotiated settlement involving the Islamist groups, who denied foothold to the TFG in most parts of Somalia. For information on the Djibouti process, see http://www.iss.co.za/index.php?link_id=29&slink_id=7229&link_type=12&slink_type=12&tmpl_id=3.

management concept, planning work had been undertaken, including the development of a military strategic option and a reconnaissance mission to Uganda. He then went on to outline, analyse and comment on the proposal in detail (all of which is set out in our most recent Report).

Our assessment

8.14 We had no wish to stand in the way of this process. But a number of questions arose:

— in his 9 December 2009 letter, the Minister said that he would need to be fully convinced that, if launched, a CSDP mission will be workable and contribute to progress in Somalia. Given the general impression that the TFG does not control the whole of Mogadishu, let alone the country, the question inevitably arises as to whether it is possible to be thus convinced;

— there were already hints that this mission would not be ended in 12 months time, given that the draft text said that the Mission "shall terminate when 2000 Somali recruits are trained up to and including platoon level, including appropriate modular specialised and training for officers and non-commissioned officers" — the feasibility of which in 12 months, in all the circumstances, we felt must be open to question;

— when the Minister said that the Mission "would need partners (including the US) to assist the EU by providing (in particular lethal) equipment and pay", what did he mean? What lethal equipment? And pay to whom for what?

— as well as contributing to strengthening the Somali Security Forces through the provision of military training, the draft text says that the Mission's other objective will be "to contribute to a holistic and sustainable perspective for the development of the Somali Security Sector". It was by no means clear what "a holistic and sustainable perspective" was. Nor what was meant in practice by the requirement to fulfil these objectives "without prejudice to other security-related actions, and the other actors in the international community, in particular, the United Nations, the African Union and the United States."

— in his most recent letter, the Minister said that he believed "that the international community (including regional actors) needs to engage effectively and develop a common approach." Were they so engaging? If so, who, and in what ways? What common approach was being developed?

8.15 We noted that this proposal was to be discussed at the Foreign Affairs Council on 25 January, and no doubt the Minister would not wish to delay progress. We also noted that a further Council Decision would be required in order to launch the Mission following approval of the Mission plan.

8.16 We recommended that, the forthcoming Foreign Affairs Council discussion notwithstanding, this Council Decision should be debated in the European Committee, to give the House an opportunity to pursue these and other questions that interested Members may wish to raise, and the Minister to respond to those of our earlier questions

that remain unanswered. We asked that this debate be arranged before any further related Council Decision was put forward for scrutiny.

8.17 As before, we are also drew this chapter of our Report to the attention of the Foreign Affairs and Defence Committees.[25]

8.18 That debate took place on 8 March 2010, at the end of which the European Committee welcomed the Council Decision as a positive contribution to building peace and stability in Somalia.[26]

The Council Decision

8.19 This further Council Decision authorises the mission plan that has been developed in the meantime, a launch date of 7 April 2010 and the mission commander to release the activation order to execute the deployment of the forces and start the execution of the mission.

8.20 In his accompanying Explanatory Memorandum of 22 March 2010, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) says that sets out the legal basis for this EU action, explains why he feels that the Committee's previous concerns have been satisfactorily addressed on a continuing basis, including before mission launch, and why he regards the mission — which has been renamed, from EUTRA Somalia, to EUTM Somalia — as a positive contribution to the Somali peace process..

8.21 He then describes the mission as follows:

> "The political objective of the mission would be to contribute to the strengthening of the Transitional Federal Government (TFG) as a functioning government serving Somali citizens. The military strategic objective would be to make a comprehensive and sustainable contribution towards the development of the Somali Security Sector through the provision of specialist military training to some 2,000 Somali trainees up to platoon level. The mission would contribute to the existing African Union mission in Somalia (AMISOM) training programme for the Somali Security Forces, currently being carried out by Uganda with the objective of ensuring that the enhanced training programme can be sustained without EU support.
>
> "The mission would be time-limited (at least one year). Two consecutive training periods of six months would train 2,000 Somali soldiers up to platoon level. Of these, 670 trainees would receive recruits basic training whilst 330 would receive NCOs basic training. Trainees would have acquired basic techniques and would be able to fulfil trained tasks at the appropriate level.
>
> "EU provided instructors for specialist training would come from several Member States and rotate over a period of one year.

25 See headnote: (31259) —: HC 5–vii (2009–10), chapter 2 (20 January 2010).

26 The record of the debate is at http://www.publications.parliament.uk/pa/cm200910/cmgeneral/euro/100308/100308s01.htm.

> "Training modules would include: junior officers training session; NCOs basic training session; infantry section leaders module; communications module; combat life saving module; mine and C-IED awareness modules; and fighting in built up areas (FIBUA).
>
> "The mission Commander is Colonel Ricardo Gonzalez Elul (Spain). He will exercise the functions of EU Operation Commander and EU Force Commander. The EU Mission Headquarters, intended to perform the functions of both Operational Headquarters and Force Headquarters, would be based in Uganda. It would perform the functions of both Operational Headquarters and Force Headquarters. A Liaison Office would be established in Nairobi, Kenya, and a Support Cell will be established in Brussels.
>
> "The next training programme of Somali Security Forces in Uganda begins on 1 May. The EU hopes to reach Initial Operational Capability (IOC) by 23 April 2010 (the Mission Headquarters will be at full strength in Kampala, Bihanga (the training location), Brussels and Nairobi and critical infrastructure projects for the training will be completed). Full Operational Capability (FOC) would be reached by 1 May 2010 –when training would begin."

8.22 The Minister concludes by saying that, although the Decision is in draft form and is still being discussed by the External Relations DG RELEX, he does not expect any significant changes to be made to the draft text.

Subsidiarity

8.23 The Minister again says that the EU, working with the wider international community, is seeking to contribute to the strengthening of the Transitional Federal Government (TFG) as a functioning government able to deliver basic services to the population. He notes that the EU provides support to Somalia — through humanitarian aid and EUNAVFOR to tackle piracy — and continues to discuss further ways to promote peace and stability in Somalia; and that the wider international community, despite some differences of emphasis, shares a broad analysis of Somalia's problems and possible solutions (for example, the need for the process to be Somali-led, the need for political outreach, support for the TFG and the African Union's peacekeeping force: AMISOM). EU Member States, with a significant Somali diaspora, are increasingly interested in Somalia and are looking for ways in which to positively engage with the peace process.

8.24 This CSDP Mission, he says, presents EU Member States with the opportunity to share costs and to work together to create a mission with a greater effort and enhanced result than if each country was working towards the same goal individually:

> "For the UK the ability to leverage international resources for an area we are interested in has benefits for our foreign and security policy. We have worked with the international community and regional partners to influence and shape this mission, ensuring that it is a well-organised initiative delivering positive results."

8.25 The Minister also sees this CSDP mission as "an example of how the Lisbon Treaty will allow the EU to be a more effective international player", and describes this approach as:

> "fully in line with the intentions behind the European External Action Service to have a foreign policy structure which is more coherent and able to develop policy on a more consistent basis — getting the collective voice of the EU heard throughout the world — and supports the UK objective to develop effective international organisations, above all the UN and EU."

The Government's view

8.26 The Minister then comments further, as follows:

> "Somalia is a high priority for the UK. We have concerns about migration, terrorism and piracy and there is a large Somali diaspora living in the UK. Instability in Somalia exacerbates the suffering of its people and is a severe threat to regional and international peace, security and development. The UK already contributes to EUNAVFOR, the operation to tackle piracy off the coast of Somalia, including the provision of the Operational Headquarters.
>
> "During previous scrutiny by both Houses pre-requisites for this mission were set out. A commitment was made to the House of Lords Scrutiny Committee to ensure that these were fully addressed before the final decision to launch:
>
> i. A force structure to incorporate newly trained Platoons, and a mentoring process to develop TFG security forces.
>
> ii. A structure, process and funds to ensure regular payment to returning trainees for at least one year.
>
> iii. Logistical arrangements to house, feed and supply such forces.
>
> "These pre-requisites were included in the formal Conclusions from January's Foreign Affairs Council: these issues should be 'satisfactorily addressed on a continuing basis, including before the mission launch'.
>
> "These issues have been gripped. Key partners, the EU institutions, EU Member States (France), the US, the UN and Uganda (key AMISOM partners in the training effort), are convinced of the importance of these requirements.
>
> "All partners are fully seized of the need to have funds in place to pay the newly trained recruits. UNPOS (UN Political Office of Somalia) and the African Union (AU) have stressed the need to ensure funds are available for salaries for at least one year. The Secretariat (Brussels) has designated a lead person, working to the High Representative, Baroness Ashton, to coordinate these contributions and manage donors to ensure the right level and mechanisms for salaries are in place. A key partner has committed to fund salaries for all troops until January 2011. A mechanism has been identified through which funds can be transmitted to troops in a safe, prompt and accountable way.

"A force structure for TFG security forces has emerged in the past two months and oversight arrangement to incorporate newly trained platoons can be confidently expected to be in place by the end of training.

"Work is underway to secure funds from the European Commission as well as through bilateral donations to improve the infrastructure for troops on return to Mogadishu. An existing base used by AMISOM has been identified and its needs established.

"On balance, taking into account what has been done and what is left to be done, I am satisfied that the right processes are in place to ensure that the required salaries and infrastructure are in place at the point at which they are needed, for example, that the matching mechanism in Brussels will ensure that remaining funds are in place for salaries from January 2011. The UK will continue to work with the Secretariat, EU Member States and the US to push this work through.

"The UK has been working to ensure that the mission should fit with other international security sector reform efforts, led by the UN; be based on political commitment from the Transitional Federal Government; and be acceptable in resource terms. This would mitigate against defections and the loss of equipment provided as part of the mission. I believe that these have been addressed.

"The mission fits with other international security sector reform efforts. The UN takes the lead internationally on Somalia, working with the international community and regional actors, including the EU. UN Security Council Resolution 1872 stressed the importance of the re-establishment, training, equipping and retention of Somali security forces and urged Member States, regional and international organisations to offer technical assistance for the training and equipping of the Somali security forces.

"The Mission would meet the recommendations from the Joint Needs Assessment on Security Sector Reform. The Transitional Federal Government, the UN Political Office of Somalia (UNPOS), the EU, the United States and other international actors were all involved in producing this Needs Assessment. This CSDP mission would involve close EU cooperation and coordination with the African Union (AU), the UN and other relevant partners, in particular the US. This coordination and cooperation has been evident during the planning stages. Troops will be vetted by AMISOM, with support from the US, before training begins, looking at age, health and clan representation. This should ensure that the troops represent 'Somalia' rather than a particular area or clan.

"The TFG is committed to the Security Sector process through the JSC and has expressed its appreciation for EU efforts to carry out the training of the Somali National Forces in letters to the EU. Together with the EU Member States and Key Partners we will continue to engage with the TFG about this mission and to secure further support throughout the TFG. During his Guest of Government visit to the UK (8–11 March 2010) the President of Somalia requested support in the security sector — equipment, pay, infrastructure and training. This mission responds to this request for support.

"The mission is acceptable in resource terms (see below — Financial Implications). The costs of the mission are shared across Member States through Assessed Costs. Member States have been invited to contribute trainers to the mission. Such contributions are optional and there has been a positive response across EU Member States. The UK has secured two positions: Executive Officer, Kampala, Uganda; and the Liaison Officer in the Nairobi Mission Headquarters.

"It has been questioned previously how the Government can be convinced that the CSDP mission will be workable and contribute to progress in Somalia given the general impression that the TFG does not control the whole of Mogadishu, let alone the country.

"The UK approach to Somalia is supportive of the UN-led Djibouti Peace Process which resulted in a new Transitional Federal Government of Somalia in January 2009 and looks to take the peace process forwards towards elections in 2011. A key element of the TFG is that the government is 'transitional'. We ought to support the process and buy-in to the long-term — Somalia's problems will not be solved overnight. We acknowledge the TFG as the current government in power in Somalia, as does the EU and the UN, and we deal with them on that basis. The UK recognises states, not governments. We support the Transitional Federal Institutions, the Transitional Federal Government, the Offices of the President and the Prime Minister and the Independent Commissions (for example Constitutional and Reconciliation Commissions), not the individual incumbents within the institutions. There has been recent fighting in Mogadishu in response to attacks by insurgent groups. The government has the right to defend and control its capital city. EUTM Somalia will develop the ability of the TFG to manage its own security in the longer term, ensuring better standards, and allow the TFG to focus on building up infrastructure and government institutions within a more secure environment.

"The mission's end state will be after two 6 month training periods have been completed and EUTM Somalia personnel and equipment have been recovered. The final agreed text stated: 'The EU military mission shall terminate in 2011 after two consecutive six-month training periods'. This means that the mission's objectives are met whilst ensuring that it has a clear exit strategy.

"The mission is small, designed to support and enhance existing Ugandan-led training. Uganda is currently carrying out basic training of Somali Security Sector Forces. The Ugandans, veterans of Mogadishu, have a clear idea of what will work in Somali culture and are in an excellent position to work alongside EU trainers. The Ugandans have welcomed the CSDP mission. The Mission supports the African Union's peacekeeping mission to Somalia (AMISOM). By focusing on the need to 'train the trainer' the benefits of the training are extended beyond the Mission's timeframe as trainers are given the capability that will endure beyond the end of the mission. The training will take place outside Somalia, taking account of the security situation and its impact on the safety of EU instructors."

Financial Implications

8.27 The Minister says that:

— the initial reference amount for the mission was estimated at €4.8 million for a 12 month period;

— he expects the final budget to be "in the vicinity of" €4.978 million;

— the UK share of the estimated budget, from Assessed Costs, under the Athena mechanism, would be around £700,000 for 2010/11, which would come from the Tri-Departmental Peacekeeping budget;

— a proportion of the infrastructure costs could be covered by the Africa Peace Facility, in which circumstances the UK share from Assessed Costs would be about £550,000 for 2010/11;

— the Peacekeeping budget can meet the UK share of the mission cost if the final figure is, as he expects, slightly above the €4.8 million reference.

Conclusion

8.28 **We are grateful to the Minister for explaining the nature and purpose of this mission, and for endeavouring to address earlier concerns, so comprehensively.**

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

9 Stability and Growth Pact: excessive deficit procedure

(31407) 7340/10 COM(10) 91	Commission Communication: *Follow-up to the Council Decision of 16 February 2010, giving notice to Greece to take measures for the deficit reduction judged necessary in order to remedy the situation of excessive deficit*

Legal base	—
Document originated	9 March 2010
Deposited in Parliament	11 March 2010
Department	HM Treasury
Basis of consideration	EM of 18 March 2010
Previous Committee Report	None
Discussed in Council	16 March 2010
Committee's assessment	Politically important
Committee's decision	Cleared

Background

9.1 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%.[27] Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State.[28] 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.

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

9.3 On 16 February 2010 the Council adopted a Decision[29] giving notice to Greece to take measures for a deficit reduction judged necessary in order to remedy the situation of excessive deficit — this followed on from the Council's December 2009 finding on the inadequacy of Greece's earlier responses in relation to the excessive deficit procedure. The adjustment required by the Decision to bring the fiscal deficit to below 3% of GDP by 2012 would include an annual structural adjustment of at least 3.5% of GDP in 2010 and 2011 and of at least 2.5% of GDP in 2012. Towards this end, the Council outlined a number of consolidation measures to be adopted by the Greek authorities, most of which were included in Greece's latest updated Stability Programme.[30]

The document

9.4 At the 16 February 2010 Council meeting, at which decisions related to Greece were adopted, it was agreed that Greece should stand ready to take further action if, by mid-March 2010, a Commission-led technical mission to Athens, assisted by the European Central Bank and IMF staff, assessed that the deficit reduction plan for 2010 was lagging behind targets. On 3 March 2010 the Greek government announced a package of

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

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

29 (31334) 6147/10: see HC 5–xiii (2009–10), chapter 5 (10 March 2010).

30 (31331) 6560/10: see HC 5–xiii (2009–10), chapter 5 (10 March 2010).

additional measures worth approximately 2% of GDP and which were outlined in a report to the Commission on 8 March 2010.

9.5 This Commission Communication is the report from the Commission-led technical mission, which visited Greece between 22–24 February 2010. The document covers the initial findings of the mission, together with its assessment of the additional measures announced on 3 March 2010 and outlined to the Commission on 8 March 2010 and the next steps that the Greek government will need to take over the near future. The Commission's conclusion is that Greece is implementing the Council Decision on the need for Greece to ensure the reduction of the 2010 government deficit to a target 8.7% of GDP. Although it identifies significant risks to the budgetary outcomes projected in relation to measures outlined in the updated Stability Programme, the Commission assesses that, on balance, the additional measures announced by the Greek government "appear sufficient to safeguard the 2010 budgetary targets provided in the Council Decision of 16 February 2010 and in the stability programme".

9.6 However the Commission notes that its assessment will be an ongoing process that will progressively widen to structural reforms and to the fiscal plans for 2011 and 2012. Accordingly, the next steps that it outlines for Greece include a number of specific planning and reporting requirements. In line with the Council's decision to place Greece under increased surveillance, the Commission asks the Greek authorities to submit to it and to the Council, by 15 May 2010, a report presenting "in full detail":

- the fiscal consolidation measures to be implemented in 2010, including a detailed calendar of implementation of all measures announced;
- the preparatory steps to be made for the respective measures to be taken in 2011 and 2012; and
- data on the monthly state budget execution, infra-annual budget implementation by social security, local government and extra-budgetary funds, debt issuance and reimbursements, public employment, spending arrears and financial situation in public enterprises.

9.7 Thereafter, Greece is requested to submit and make such reports public on a quarterly basis. In line with the Council Decision these quarterly reports will additionally outline the government's planned structural reforms, including a detailed calendar of implementation of all measures announced. And these plans should include measures to increase the competitiveness of the economy in the field of pensions, healthcare, public administration, the functioning of product markets, labour market, absorption of structural funds, supervision of the financial sector, and statistics.

The Government's view

9.8 The Economic Secretary to the Treasury (Ian Pearson) says that there are no direct policy implications for the UK arising from this document. He adds that:

- the Government supports the appropriate and timely implementation of the Stability and Growth Pact as a means to manage the course of fiscal consolidation in Member States toward a level of sustainable public finances; and

- there is, furthermore, a clear need to address more specific recommendations in this situation and it supports the process and recommendations that have been applied.

Conclusion

9.9 **Although we clear this document from scrutiny, it adds to the information we have about the present situation with Greece and the EU's requirements of the Greek authorities and, as such, we draw it to the attention of the House.**

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

Department for Business, Innovation and Skills

(31375) 7135/10 SEC(10) 194	Commission Staff Working Paper on the Internal Market Scoreboard No. 20.
(31415) 6332/10 COM(10) 48	Draft Council Regulation amending Council Implementing Regulation (EU) No. 1202/2009 of 7 December 2009 imposing a definitive anti-dumping duty on imports of furfuryl alcohol originating in the People's Republic of China following a "new exporter" review pursuant to Article 11(4) of Regulation (EC) No.1225/2009.

Department for Energy and Climate Change

(31365) 6948/10 + ADDs 1-2 COM(10) 11	Commission Report on sustainability requirements for the use of solid and gaseous biomass sources in electricity, heating and cooling.

Foreign and Commonwealth Office

(31402) — —	Draft Council Regulation imposing certain specific restrictive measures directed against certain natural and legal persons, entities and bodies in view of the situation in Somalia.

Department for Transport

(31374) 7126/10 COM(10) 64	Commission Report on experience acquired in the application of Regulation (EC) No. 1365/2006 of the European Parliament and of the Council of 6 September 2006 on statistics of goods transport by inland waterways.

HM Treasury

(31109) 15429/09 + ADD 1 COM(09) 580	Draft Council Decision providing macro-financial assistance to Ukraine.
(31411) 7276/10 COM(10) 69	Commission Report on borrowing and lending activities of the European Union in 2008.

Formal minutes

Wednesday 24 March 2010

Members present:

Michael Connarty, in the Chair

Mr David S Borrow
Mr William Cash
Jim Dobbin
Mr David Heathcoat-Amory
Keith Hill

1. Scrutiny of Documents

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

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

Paragraphs 1.1 to Annex A read and agreed to.

Headnote read, amended and agreed to.

Paragraphs 5.1 to 6.12 read and agreed to.

Paragraph 6.13 read, amended and agreed to.

Headnote to paragraph 7.25 read and agreed to.

Paragraph 7.26 read amended and agreed to.

Paragraphs 7.27 to 10 read and agreed to.

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

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

[Adjourned till Tuesday 30 March at 10.30 am.

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 Standing 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

Michael Connarty MP (*Labour, Linlithgow and East Falkirk*) (Chair)
Mr Adrian Bailey MP (*Labour/Co-op, West Bromwich West*)
Mr David S. Borrow MP (*Labour, South Ribble*)
Mr William Cash MP (*Conservative, Stone*)
Mr James Clappison MP (*Conservative, Hertsmere*)
Ms Katy Clark MP (*Labour, North Ayrshire and Arran*)
Jim Dobbin MP (*Labour, Heywood and Middleton*)
Mr Greg Hands MP (*Conservative, Hammersmith and Fulham*)
Mr David Heathcoat-Amory MP (*Conservative, Wells*)
Keith Hill MP (*Labour, Streatham*)
Kelvin Hopkins MP (*Labour, Luton North*)
Mr Lindsay Hoyle MP (*Labour, Chorley*)
Mr Bob Laxton MP (*Labour, Derby North*)
Angus Robertson MP (*SNP, Moray*)
Mr Anthony Steen MP (*Conservative, Totnes*)
Richard Younger-Ross MP (*Liberal Democrat, Teignbridge*)