



House of Commons
European Scrutiny Committee

**Eighteenth Report of
Session 2009–10**

Documents considered by the Committee on 7 April 2010,
recommended for debate

The European External Action Service
Personnel and financial management

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 7 April 2010*

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 " <i>Legal base</i> ") Treaty establishing the European Community
EM	Explanatory Memorandum (submitted by the Government to the Committee)
EP	European Parliament
EU	(in " <i>Legal base</i> ") 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

The staff of the Committee are Alistair Doherty (Clerk), Ben Williams (Second Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Sir Edward Osmotherly (Clerk Adviser), Peter Harborne (Clerk Adviser), Paul Hardy (Legal Adviser) (Counsel for European Legislation), Dr Gunnar Beck (Assistant Legal Adviser), Hannah Lamb (Senior Committee Assistant), Allen Mitchell (Committee Assistant), Mrs Keely Bishop (Committee Assistant), Dory Royle (Committee Assistant), Shane Pathmanathan (Committee Support Assistant), and Paula Saunderson (Office Support Assistant).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is (020) 7219 3292/5465. The Committee's email address is escom@parliament.uk

Contents

Report	<i>Page</i>
Documents for debate	
1 FCO (31439) The European External Action Service	3
2 FCO (31445) (31446) Personnel and financial management	13
Formal Minutes	18
Standing order and membership	19

1 The European External Action Service

(31439) 8029/10 —	Draft Council Decision establishing the Organisation and Functioning of the European External Action Service (EEAS)
-------------------------	---

<i>Legal base</i>	Article 27 TEU; unanimity
<i>Deposited in Parliament</i>	30 March 2010
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 30 March 2010
<i>Previous Committee Report</i>	None; but see (29353) 5947/08: HC 16–xvii (2007–08), chapter 1 (26 March 2008)
<i>To be discussed in Council</i>	April 2010
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	For debate on the Floor of the House, together with two draft Regulations to amend the Staff and Financial Regulations

Background

1.1 Prior to the coming-into-force of the Lisbon Treaty, in 1999, the office of High Representative for Common Foreign and Security Policy was introduced by the Amsterdam Treaty. Javier Solana had occupied that position since then. Together with an increasing number of officials in the Council Secretariat, he assisted the Council in foreign policy matters, through contributing to the formulation, preparation and implementation of policy decisions. He acted on behalf of the Council in conducting political dialogue with third parties. The six-monthly rotating Presidency was in charge of chairing the External Relations Council, representing the Union in CFSP matters, implementing the decisions taken and for expressing the EU position internationally.

1.2 Under the Lisbon Treaty, new arrangements came into being. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, appoints the High Representative. He or she is subject, together with the President of the Commission and the other members of the Commission, to a vote of consent by the European Parliament.

1.3 At their informal meeting in Brussels on 19 November, ahead of the entry into force of the Treaty of Lisbon (TEU) on 1 December, EU Heads of State or Government agreed on the appointment of Baroness Catherine Ashton as the High Representative of the Union for Foreign Affairs and Security Policy (HR).

1.4 The High Representative now exercises, in foreign affairs, the functions which, so far, were exercised by the six-monthly rotating Presidency, the High Representative for CFSP and the Commissioner for External Relations. According to Articles 18 and 27 TEU, the High Representative:

- conducts the Union’s common foreign and security policy;
- contributes by her proposals to the development of that policy, which she will carry out as mandated by the Council, and ensures implementation of the decisions adopted in this field;
- presides over the Foreign Affairs Council;
- as one of the Vice-Presidents of the Commission, ensures the consistency of the Union’s external action and is responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union’s external action;
- represents the Union for matters relating to the common foreign and security policy, conducts political dialogue with third parties on the Union’s behalf and expresses the Union’s position in international organisations and at international conferences; and
- shall be assisted by a European External Action Service.

1.5 Article 27(3) TEU constitutes the legal basis for the Council decision on the organisation and functioning of the EEAS.

“In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the member states. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.”

European Council Guidelines on the EEAS

1.6 On 30 October 2009, the European Council agreed on guidelines for the European External Action Service (EEAS).¹ The future HR was invited to present a proposal for the organisation and functioning of the EEAS as soon as possible after the entry into force of the Lisbon Treaty, with a view to its adoption by the Council at the latest by the end of April 2010.² This was endorsed by the December European Council.

1 A paper presented by the then EU Presidency, available at <http://register.consilium.europa.eu/pdf/en/09/st14/st14930.en09.pdf>

2 The extract from the European Council conclusions reads thus:

“The European Council takes note of the preparatory work in view of the entry into force of the Lisbon Treaty (doc. 14928/09). It endorses the Presidency’s report on guidelines for the European External Action Service (doc. 14930/09) and invites the future High Representative to present a proposal for the organisation and functioning of the EEAS as soon as possible after the entry into force of the Lisbon Treaty with a view to its adoption by the Council at the latest by the end of April 2010. In this context, it also recognises the need, as underlined in the European Security Strategy, for the European Union to become more capable, more coherent and more strategic as a global actor, including in its relations with strategic partners, in its neighbourhood and in conflict-affected areas.”

1.7 According to the guidelines, the EEAS will be a single service under the authority of the High Representative, with an organisational status reflecting and supporting the High Representative's unique role and functions in the EU system. The EEAS will help the High Representative ensure the consistency and coordination of the Union's external action as well as prepare policy proposals and implement them after their approval by Council. It will also assist the President of the European Council and the President as well as the Members of the Commission in their respective functions in the area of external relations and will ensure close cooperation with the Member States. The EEAS should be composed of single geographical (i.e., covering all regions and countries) and thematic desks, which will continue to perform under the authority of the High Representative the tasks currently executed by the relevant parts of the Commission and the Council Secretariat. Trade and development policy as defined by the Treaty should remain the responsibility of relevant Commissioners of the Commission.

1.8 With respect to its staffing:

- EEAS staff will be appointed by the High Representative and drawn from three sources: relevant departments of the General Secretariat of the Council, of the Commission and of national diplomatic services of the Member States. Recruitment will be based on merit, with the objective of securing the services of staff of the highest standard of ability, efficiency and integrity, while ensuring adequate geographical balance;
- In order to enable the High Representative to conduct the European Security and Defence Policy (ESDP), the EU's crisis management structures should be part of the EEAS, under the direct authority and responsibility of the High Representative.

1.9 The EEAS should be a service of a *sui generis* nature, separate from the Commission and the Council Secretariat, with administrative budget and staff management autonomy and its own section in the EU budget, to which the usual budgetary and control rules will apply, and which the High Representative will propose and implement. It is to be guided by cost efficiency and aim at budget neutrality.

1.10 Overseas, the Commission's delegations will become Union delegations under the authority of the High Representative and be part of the EEAS structure. They will contain both regular EEAS staff (including Heads of Delegation) and staff from relevant Commission services. All staff should work under the authority of the Head of Delegation. EU delegations should work in close cooperation with diplomatic services of the Member States and play a supporting role as regards diplomatic and consular protection of Union citizens in third countries.

The Council Decision

1.11 In her covering Explanatory Memorandum, the HR says that the EEAS will “help strengthen the European Union on the global stage, give it more profile, and enable it to project its interests and values more efficiently”, and that “in order to attain these objectives and implement the Lisbon Treaty, the EEAS must be operational as soon as possible.”

1.12 She says that the present proposal for a Council Decision is “based on wide and constructive consultations the High Representative held with Member States, the

Commission and the European Parliament over the last months... sets out the framework for an efficient and effective EEAS and lays the foundation upon which it will be built.”

1.13 In its essentials, the Council Decision would appear to be true to the guidelines adopted by the European Council. The EEAS will be functionally autonomous, separate from the Commission and the General Secretariat of the Council, placed under the authority of the High Representative and support her in fulfilling her mandate.

1.14 As well as assisting the President of the Commission and the Commission, and the President of the European Council, the EEAS “will equally extend appropriate support to the other institutions and bodies of the Union, in particular the European Parliament.”

1.15 To ensure the effective day-to-day administration and operation of the Service, the High Representative shall appoint a Secretary-General, two Deputy Secretaries-General working under the latter’s authority, and the Directors General of the EEAS. The Secretary-General, assisted by the Deputy Secretaries-General, shall manage the EEAS and ensure the effective coordination between all departments of the EEAS and with the Union Delegations. The Directorates General shall include geographical desks covering all countries and regions of the world as well as multilateral and thematic desks. These departments shall coordinate as necessary with relevant services of the Commission and with the General Secretariat of the Council. The EEAS will also comprise administrative, staffing, financial and other support services necessary for the functioning of the service. The Chairpersons of the Political and Security Committee and other Council preparatory bodies under the High Representative’s authority shall be designated by her from the EEAS staff.

1.16 Overseas, each Delegation shall be led by a Head of Delegation or equivalent, who has authority over all staff and activities of the Delegation and who is accountable for the overall management of the work of the delegation and for ensuring the coordination of all actions of the Union. The Head of Delegation shall receive instructions from the High Representative and the EEAS, and shall be responsible for their execution. In areas where the Commission exercises the powers conferred to it by the Treaties, the Commission may also issue instructions to the Delegations, which shall be executed under the overall responsibility of the Head of Delegation.

1.17 A significant part of the HR’s Explanatory Memorandum is taken up with the Commission/EEAS nexus, which is detailed in Article 8 of the draft Decision (“Programming”). The management of EU external cooperation programmes remains under the responsibility of the Commission. But the High Representative and the EEAS shall contribute to the programming and management cycle for the following geographic and thematic instruments, on the basis of the policy objectives set out in the said instruments:

- the Development Cooperation Instrument,
- the European Development Fund,
- the European Instrument for Democracy and Human Rights,
- the European Neighbourhood and Partnership Instrument,

- the Instrument for Cooperation with Industrialised Countries,
- the Instrument for Nuclear Safety Cooperation.

Throughout the whole cycle of programming, planning and implementation of these instruments, the High Representative and the EEAS shall work with the relevant members and services of the Commission. All proposals for decision will be prepared through Commission procedures and submitted to the Commission for decision.

1.18 The EEAS shall in particular have responsibility for preparing the Commission decisions on the strategic, multi-annual steps within the programming cycle:

- country allocations to determine the global financial envelope for each region (subject to the indicative breakdown of the financial perspectives). Within each region, a proportion of funding will be reserved for regional programmes;
- country and regional strategic papers (CSPs/RSPs);
- national and regional indicative programmes (NIPs/RIPs).

1.19 With regard to the European Development Fund and the Development Cooperation Instrument, any proposals, including those for changes in the basic regulations and the programming documents, shall be prepared by the relevant services in the EEAS and in the Commission under the direct supervision and guidance of the Commissioner responsible for Development Policy, and then jointly submitted with the High Representative for decision by the Commission.

1.20 With regard to European Neighbourhood and Partnership Instrument, any proposals, including those for changes in the basic regulations and the programming documents shall be prepared by the relevant services in the EEAS and in the Commission under the direct supervision and guidance of the Commissioner responsible for Neighbourhood Policy and then jointly submitted with the High Representative for decision by the Commission.

1.21 Thematic programmes shall be prepared by the appropriate Commission Service under the guidance of the Commissioner responsible for Development and presented to the College in agreement with the High Representative and other relevant Commissioners.

1.22 Following the guidelines, the draft Decision sets out who shall comprise the EEAS, how they will be recruited and that changes will need to be made to the staff regulations to take account of the EEAS and give a base for staff terms and conditions.

1.23 The Decision makes it clear that the High Representative shall act as authorising officer for the EEAS section of the General Budget. The Decision explains that provisions should be adopted relating to the staff of the EEAS and their recruitment and the Financial Regulation should be adopted in order to ensure budgetary autonomy necessary for the smooth operation of the EEAS. In particular the High Representative will be the Appointing Authority, in relation both to officials subject to the Staff Regulations of Officials of the European Communities and agents subject to the Conditions of Employment of Other Servants and she will also have authority over the Seconded National Experts (“SNEs”) in post in the EEAS. The number of officials in the EEAS will be

decided each year as part of the budgetary procedure and be reflected in the establishment plan.

1.24 Other issues covered by the Decision, such as deciding on security rules and data protection cover the range of issues that a new body would have to take account of in its initial set up.

1.25 The HR concludes by noting that:

- in accordance with the European Council guidelines, “it is critical that the present Decision be adopted swiftly” and that “in parallel and as part of this overall project, amending provisions to the Financial Regulation and the Staff Regulation³ and an amending budget should be adopted rapidly, with a view to rendering the EEAS fully operational.”
- a report to the Council on the functioning of the EEAS will be produced in 2012;
- in the light of experience, the Council, acting on a proposal by the High Representative, shall review this Decision in accordance with Article 27 TEU, no later than the beginning of 2014.

The Government’s view

1.26 In his Explanatory Memorandum of 30 March 2010, the Minister for Europe (Chris Bryant) begins his comments by declaring that “the next five years present us with a real opportunity to develop the way the EU acts on the world stage.” He continues as follows:

“The Lisbon Treaty, including the new EEAS and the High Representative’s position, should give the Commission and Council a unique step change in the way the EU conducts its external action. We welcome the High Representative’s proposed Decision for the establishment of the European External Action Service (EEAS) which we see as being an integrated service, able to act more coherently on behalf of both the Council/Member States and the Commission, and made up of a mix of former Commission/Council staff and secondees from national diplomatic services. The aim of this Decision is to put in place the main legal building blocks of the service and we would not expect it to cover much of the detailed arrangements. Even after the decision is adopted, there will be a wide range of organisational, procedural and cultural issues to be tackled over the Belgian and future Presidencies, to ensure that the Service emerges as a credible and effective institution. We will continue to keep Parliament informed of these as they emerge.”

1.27 Nonetheless, the Minister believes that the Decision covers the key issues, which he considers thus:

“We believe that the nature and scope as described in Article 1 in line with Government priorities. The EEAS should be an administratively autonomous body, separate from the Commission and the Council Secretariat but working closely in

³ (31445) and (31446) 8134/10 + ADD 1: see chapter 2 of this Report.

cooperation with the Council, Commission and Member States, and capable of acting on their behalf. We agree with the description of how the central administration might operate, including the proposal that there should be a Secretary General and two Deputy Secretaries General to support the High Representative. These very senior officials can both ease the burden of external representation on the High Representative and ensure co-ordination and effective policy processes within the service itself.

“It is **important that the EEAS has geographical desks** covering all countries and regions of the world, as well as multilateral and thematic desks. The detail of the full responsibilities of the Deputy Secretaries General and how the Directorate Generals will be organised has still to be discussed in full. We imagine that the Secretary General will undertake a role similar to a Permanent Secretary.

“We would like to see the Secretary General and the Deputy Secretaries General, as the senior management structure of the EEAS, providing high level corporate leadership, easing the burden of representational work on the High Representative, and ensuring policy coherence within the Service.

“On **Union Delegations** we agree that the Head of Delegation should have authority over all staff in the delegation, regardless of their status or to whom they report in Brussels. For example, there could be a number of staff from DG Trade in a delegation working on a trade agreement. We will want to be sure that the arrangements for co-ordination between the EEAS desks and Commission services are clear and that the EEAS is aware of all of the instructions that are being passed to delegations.

“The Decision mentions the EEAS playing a supporting role for **consular protection**. A number of Member States would like the EEAS to have a role in consular affairs. We believe that the Treaty only provides for Member States to undertake consular functions. The Council’s paper to the European Council in October 2009 on guidelines for the EEAS suggested that it might play a ‘supporting’ role, which we see as the facilitation of contact between Member States. Ministers have been clear that the UK will continue to have responsibility for the provision of Consular Services to UK nationals.

“On who has responsibility for **Programme funds**, particularly the key development funds (Development Co-operation Instrument and the European Development Fund) the Government has argued that while we want a strong High Representative and EEAS, there should also be a strong Development Commissioner in the European Commission. We will be discussing the proposal under Article 8 of the draft Decision, which suggests a way in which the EEAS and the Commission can share the responsibility on programming. It is important that any model maintains a strong role for the Development Commissioner. The High Representative should lead on politically sensitive countries and in situations of unforeseen crisis, such as war or political upheaval.

“On **Political-Military Structures** the Government agrees that they should be within the EEAS to ensure maximum coherence. The October 2009 European Council

conclusions stated that the EU's political-military structures (CPCC, CMPD, EUMS)⁴ should be inside the EEAS. We are glad that this Decision confirms that view. We see this as the most effective way for the High Representative and the EEAS to be able to act across the whole of the stabilisation spectrum. The discussions in Brussels are now looking at the detail of how they will all interact within the EEAS. Member States are clear that the staff of the EU Military Staff should remain as national secondees and not become temporary agents. The EEAS will also include the Joint Situation Centre (SITCEN) which is the intelligence portal for the EU. We will, however, want to be assured that arrangements are put in place in the service to ensure that the coherence of EU crisis management activity is improved, with closer links between operations, policy and assistance.

“The Government also agrees that the High Representative should be responsible for the management of the EEAS Regulation and is therefore content with the proposal for the High Representative to act as authorising officer for the EEAS section of the **EU Budget**. The Government also agrees that the EEAS should be responsible for its own administrative budget, which it considers should be financed from the Heading V (Administration) portion of the EU budget. A proposal for an amending budget to the General EU Budget for 2010 to make the necessary arrangements to accommodate this budget within the EU Budget, is expected to follow agreement on this Decision. In line with the expectation that the establishment of the EEAS will result in an elimination of the duplication inherent in the current structures, Council Secretariat desks will merge with their counterparts in the Commission. The Government considers that the EEAS administration budget should aim to be budget-neutral.

“The EEAS will be **staffed** by officials from the Commission, the Council Secretariat and Member States rotating into the service for fixed periods. Once the EEAS is at full capacity, the aim is for there to be equal numbers of staff from the three sources. The Government believes that the appointments should be on merit and not based on quotas for individual Member States, the Commission or Council Secretariat. Staff selection procedures will also need to provide a level playing field which is robust enough to ensure secondees have the right skills.

“The Government believes that it is important to ensure that the UK is properly represented in the EEAS, both as its headquarters and in the EU delegations. We have identified a pool of people from within the Foreign Office and across Whitehall Departments who have expressed an interest in being seconded to the EEAS and who would contribute effectively to the formulation and delivery of EU external policy. If they are recruited by the EEAS, they would go onto Special Unpaid Leave and would become part of the EEAS as Temporary Agents. They would be paid by the EEAS with the FCO paying only for training and any top up required of their allowances. We would expect them to return to UK service at the end of their EEAS tour.”

4 Civilian Planning Conduct and Capability (CPCC), Crisis Management and Planning Directorate (CMPD), EU Military Staff (EUMS).

1.28 The Minister says that the proposal does not have any direct financial implications for the UK:

1.29 Looking ahead, he says:

“A Commission proposal outlining the implications for the EU budget relating to the establishment of the EEAS is expected once the Council has adopted the Decision establishing the organisation and functioning of the EEAS. In October 2009 the European Council endorsed guidelines stating that ‘unnecessary duplication of tasks, functions and resources with other structures should be avoided’ and that the establishment of the EEAS should be guided by the ‘principle of cost-efficiency aiming towards budget neutrality’.

“The next stage is likely to be the Council seeking political agreement on this Decision by the end of April. Once that stage is reached, the Council will need to discuss this with the European Parliament, as some of the aspects are subject to Co-Decision (e.g. changes to the staff and financial Regulations). It is hard at this stage to say how long that process will take.”

Conclusion

1.30 We are grateful to the Minister for having been assiduous in keeping the Committee informed about the development of this document, and for having submitted his Explanatory Memorandum so soon after its publication, so that we could consider it before the dissolution of Parliament.

1.31 It is plain that, while the draft Council Decision has remained faithful to the guidelines and timeline endorsed by the European Council, it is somewhat short of the finished article. For example, the Annex, which lists the departments of the Commission and Council Secretariat to be transferred to the EEAS, has still to be completed.

1.32 We note that the Minister does not refer to adoption of the Decision before the end of this month, but says that the Council will be “seeking political agreement” on it by then. We understand that there is no inwardness in this formulation, which is normally used in the context of co-decision. It does though perhaps unconsciously acknowledge the elephant in the room, i.e., the European Parliament. The HR says that her proposals “shall take effect on the day of the adoption of the amending Budget of the European Union providing for the corresponding posts and appropriations in the EEAS” — put otherwise, can be implemented only as and when the European Parliament does so. And all the indications thus far is that it is endeavouring to make its agreement to this and the associated staff and financial regulations dependent on changes to this Council Decision, particularly with regard to the Deputy Secretary General positions. Powerful voices there, it seems, wish to see three political Deputy Secretaries General, broadly reflecting the political balance of the EP, who would deputise for the HR when necessary. That three politicians should be embodied in an official organisation, and stand between the equivalent of a permanent under secretary and his or her staff, seems to us a bizarre notion — but it is nonetheless in play, in a situation in which the EP has demonstrable leverage.

1.33 We also note that the crucial proposals in Article 8 remain open to discussion. The complex arrangements set out therein seem much more to reflect unresolved “turf wars” and the inherent difficulties of a position that has a large footprint in two institutions than a formula consistent with the “principle of cost-efficiency aiming towards budget neutrality”. As a consequence, we are unable to understand the division of responsibilities between the EEAS and the Commission in the programming of the EU’s external cooperation programmes, particularly with respect to development and neighbourhood policies in Article 8(4) and (5).

1.34 On the plus side, the Minister’s position on the provision of consular services to UK citizens overseas is commendably clear and robust.⁵ Even so, he has nothing to say about what impact he thinks the creation of a world-wide EU diplomatic service, delivering technical assistance and in charge of an expanding EU common foreign and security policy, will have on Britain’s capacity to promote her own bilateral interests in the major centres of power and opportunity, which will remain crucial to our future as a global economic and political actor.

1.35 With a general election now imminent, the normal option of holding the Council Decision under scrutiny while the Minister provided further information between now and the end of the month is not available to us. But we do not feel able, on the basis of the information presently available, to clear it. The third option would be for a debate, ahead of adoption. That too is not possible. In all the circumstances —and recognising that this will not take place until there is a new Parliament — we consider that the last is nonetheless the best option available to us.

1.36 We so recommend. Given the importance of this proposal, which — the Minister’s assurances on consular protection notwithstanding — is nonetheless likely to be the most significant change in the conduct of British foreign policy for many years, we consider that this debate should be on the Floor of the House. When it takes place, we expect the Minister to provide a detailed outline of what has been transferred to the EEAS and of the arrangements that have been decided upon under Article 8 between the EEAS and the Commission in the programming of the EU’s external cooperation programmes, and his or her views on:

- how they fulfil the “principle of cost-efficiency aiming towards budget neutrality; and
- the impact of this new global diplomatic service on Britain’s ability to promote her bilateral interests.

1.37 In the meantime, we retain the document under scrutiny.

⁵ For the Committee’s consideration of this matter, see (29353) 5947/07: HC 16–xvii (2007–08), chapter 1 (26 March 2008) and the subsequent debate in the European Committee on 23 June 2008, the record of which is available at <http://www.publications.parliament.uk/pa/cm200708/cmgeneral/euro/080623/80623s01.htm>.

2 Personnel and financial management

(a) (31445) — —	Draft Regulation amending the Staff Regulations of officials of the European Communities and the conditions of employment of other servants of those Communities
(b) (31446) 8134/10 + ADD 1 COM(10) 85	Draft Regulation amending Council regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as regards the European External Action Service

<i>Legal base</i>	(a) Article 336 TFEU; co-decision; QMV (b) Article 322 TFEU and Article 106a Euratom Treaty; co-decision; QMV
<i>Documents originated</i>	(a) — (b) 24 March 2010
<i>Deposited in Parliament</i>	26 March 2010
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister's letter of 25 March 2010 and EM of 30 March 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Possibly the end of April 2010
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate on the Floor of the House, together with a draft Council Decision on establishing the European External Action Service

Background

2.1 Management of the EU's staff and financial resources is governed by the Staff Regulations and the Financial Regulation.

2.2 Amongst matters covered by the Financial Regulation are budgetary principles, establishment, structure and implementation of the budget, procurement, accounts, external audit and discharge by the European Parliament. The Financial Regulation is complemented by detailed Implementing Rules adopted by the Commission.⁶ The Financial Regulation is subject to a triennial review, the next one of which is due later this year.

⁶ Commission Regulation (EC, EURATOM) No 2342/2002: see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:357:0001:0071:EN:PDF>.

2.3 The High Representative has proposed recently a draft Council Decision about the organisation and functioning of the European External Action Service (EEAS), which implies the need for amendment of the Staff and Financial Regulations.⁷

The documents

2.4 The draft Regulation to amend the Staff Regulations, document (a), is required to make the EEAS operational as soon as it is established. The EEAS will be treated as an institution for the purposes of the Staff Regulations. The High Representative and Vice-President will be the Appointing Authority for the staff of the EEAS (with a possibility to entrust EEAS staff members with these powers).

2.5 Where it is stipulated in the Council Decision establishing the EEAS that an entity from the Council or Commission organisation chart is transferred to the EEAS (the list of entities to be transferred has yet to be confirmed) the officials and temporary staff occupying posts in that entity and other staff assigned to that entity are transferred from their respective institutions to the EEAS.

2.6 Appointment to the EEAS will be based on equality of treatment between the sources of EEAS staffing:

“all members of the staff of the EEAS... shall have the same rights and obligations, regardless [of] whether they are officials of the European Union or temporary agents coming from the diplomatic services of the Member States, and be treated equally, in particular as concerns eligibility to assume all positions under equivalent conditions” (Article 6(7) of the proposed Council Decision establishing the EEAS).

2.7 Hence selection procedures for posts will be open on an equal basis (as opposed to the current situation, where internal candidates, followed by inter-institutional candidates, have priority). The Appointing Authority will consider applications for vacant posts in the EEAS from different categories of staff — staff of national diplomatic services, officials of the Commission, the Council and the EEAS, as well as temporary staff of the EEAS from national diplomatic services — without giving any priority to any of them. After the start-up phase, but on 1 July 2013 at the latest, this facilitated access to vacant posts in the EEAS will be extended to officials of other institutions of the Union. In order to guarantee proper representation of staff from national diplomatic services in the EEAS, it should be possible, until 30 June 2013, to give priority to candidates from national diplomatic services of the Member States in case of substantially equal qualifications.

2.8 Staff from national diplomatic services will be employed by the EEAS as a specific category of temporary staff. For this particular category of temporary staff, certain rules (retirement age, possibility of secondment, and leave on personal grounds) have to be aligned to those applicable to officials. These staff members will thus benefit from the same working conditions as officials.

2.9 Special arrangements are foreseen for cases where EEAS staff will have to perform functions on behalf of the Commission. In this respect they will have to take instructions

7 (31439) 8029/10: see chapter 1 of this Report.

from the Commission. Moreover, the Commission will be involved in the recruitment and evaluation of these members of staff, as well as in disciplinary matters. In addition, account is also taken of the situation of Commission officials working in Union delegations who will have to take instructions in certain areas from the Head of Delegation (who will be an official or a temporary agent of the EEAS).

2.10 Other, more technical, amendments concern Annex X to the Staff Regulations (applicable to staff serving in third countries), contract staff and local staff. They should improve the functioning of the Union delegations. The whole of Annex X (and not only certain provisions) will apply to contract staff serving in a third country, including Commission staff.

2.11 The draft Regulation to amend the Financial Regulation, document (b), is to make an *ad-hoc* revision to the Financial Regulation to take account of the creation of the EEAS in advance of the triennial review of the Financial Regulation later this year. The main changes provided for in the draft Regulation result from the Service being treated, for the purposes of the Financial Regulation, as an EU institution, so that it would have its own budgetary authority. Like the other institutions it would implement its own administrative expenditure.

2.12 The draft Regulation also provides for changes consequent on what were Commission Delegations around the world becoming EU Delegations and part of the EEAS, needing therefore to have authority to implement operational expenditure from the external actions programming of the General Budget. And Heads of EU Delegations, members of the Service, would be responsible for signing off parts of the EU budget previously administered by the Commission. So the draft Regulation provides for specific rules so that Heads of EU Delegations, when they implement part of the Commission section of the budget, would apply Commission financial management rules and be submitted to the same duties and obligations as any other sub-delegated authorising officer of the Commission. Finally the draft Regulation provides that administrative and support expenditure to finance common costs in EU Delegations should be carried out by a single support service, whatever the section of the General Budget in which the respective appropriations are entered.

2.13 In its Explanatory Memorandum on the draft Regulation the Commission stresses the importance of the EEAS building on the Commission's considerable experience, guidance, support and training for financial management and internal control in the external relations field. In a staff working document accompanying the proposal the Commission outlines the amendments it is likely to make to the Implementing Rules to complement the amendments it proposes to the Financial Regulation.

The Government's view

2.14 On the draft Regulation to amend the Staff regulations, document (a), noting that "the Government is keen for the EEAS to be established as soon as possible so that it can support the High Representative in her vision of making the EU a true global actor", the Minister for Europe (Chris Bryant) says that discussion on the detail of the changes to the Staff Regulations will take place in the week beginning 12 April in the Coreper preparatory group (Antici).

2.15 The Minister states that the EEAS needs the mixture of experience provided by the Member States, Commission and Council Secretariat. If there is not equal division between these three groups then the EEAS will be less effective because the internal balance will be upset. The Minister welcomes the suggested changes to the Staff Regulations that will allow Member State representatives to be recruited into the EEAS on an equal footing to the Commission and Council Secretariat staff. In particular, he welcomes the fact that it should be possible until 30 June 2013 to give priority to candidates from Member States in case of substantially equal qualifications. Overall, he considers that the changes suggested by the proposed amendments will help achieve the objectives on staffing and recruitment set out in the draft Decision on the establishment of the EEAS. Finally, the Minister says that the Government welcomes the confirmation that the Amending Staff Regulation is broadly budget neutral.

2.16 On the draft Regulation to amend the Financial Regulation, document (b), the Minister says that:

- the Government is broadly content with the proposed amendments from a budgetary perspective;
- they will enable the establishment of the EEAS as an institution and its operational functioning;
- with the changes proposed to the Financial Regulation Heads of EU Delegations would be able to sign off on Commission budgets, so ensuring that they would be involved in the work of the Delegation as a whole, answerable to the High Representative;
- at the same time, the changes aim to ensure that those best placed to authorise and disburse external action funding on the ground would be able to do so, while, crucially, ensuring that EU funds are properly protected from misuse and are well-managed; and
- the Commission and Council continue to discuss precise divisions of responsibility between the institutions — as they become clearer the Government will examine closely further proposed working rules between the institutions on implementation of the EEAS, Council and Commission sections of the budget.

2.17 The Minister tells us that:

- these proposals are not expected to have any direct financial implications for the UK; and
- a Commission proposal outlining the implications for the EU budget relating to the establishment the EEAS is expected once the Council has adopted the draft Decision establishing the organisation and functioning of the Service.

He adds a reminder that in October 2009 the European Council endorsed guidelines stating that “unnecessary duplication of tasks, functions and resources with other structures should be avoided” and that establishing the Service should be guided by the “principle of cost-efficiency aiming towards budget neutrality”.

Conclusion

2.18 The precise implications of these two proposals, particularly how accountability would work in practice, will only become apparent when relationships between the functions of the Council, the Commission and the European External Action Service are fully defined on adoption of the draft Council Decision on the Service. Nevertheless we recommend that these two documents be debated on the Floor of the House with the draft Council Decision. We so recommend not only because of their intrinsic importance but because it seems likely that the European Parliament will use the leverage it has, as co-legislator on the draft Regulations, in relation to discussion of the draft Council Decision.

2.19 Whilst the main focus of the debate may well be the draft Council Decision, we suggest that in considering the draft Regulations Members will want to explore how the detail of the proposals is developing during negotiations.

Formal Minutes

Wednesday 7 April 2010

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey

Mr William Cash

Mr James Clappison

Jim Dobbin

Keith Hill

Kelvin Hopkins

Mr Bob Laxton

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 2.19 read and agreed to.

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

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

[The Committee adjourned.]

Standing order and membership

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

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European 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*)