



House of Commons

European Scrutiny Committee

Nineteenth Report of Session 2009–10

Documents considered by the Committee on 7 April 2010



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Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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1 Public access to documents

(29666) 9200/08 COM(08) 229	Draft Regulation regarding public access to European Parliament, Council and Commission documents
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<i>Legal base</i>	Article 255 EC (now Article 15 TFEU); co-decision; QMV
<i>Department</i>	Foreign and Commonwealth Office/Ministry of Justice
<i>Basis of consideration</i>	Minister's letter of 29 January 2010
<i>Previous Committee Report</i>	HC 16–xxvi (2007–08), chapter 2 (2 July 2008), HC 19–ii (2008–09), chapter 6 (17 December 2008); also see (28576) 8754/07: HC 16–ix (2007–08), chapter 10 (23 January 2008)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

1.1 Regulation (EC)1049/2001¹ provides for a right of access by EU citizens or legal persons residing or having their registered office in a Member State to European Parliament, Council or Commission documents. The right of access applies to all documents in the possession of one or more of the institutions, including documents received by an institution from a Member State or third party. The right of access is subject to a number of exceptions and limitations relating to such matters as data protection, intellectual property, duties of confidence, the protection of investigations and the decision-making process.

1.2 Access to information relating to the environment is the subject of an international agreement, the Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (the Århus Convention). By virtue of Regulation (EC) No.1376/2006 of 6 September 2006, the provisions of the Aarhus Convention apply to Community institutions and bodies with effect from 28 June 2007.

1.3 The proposed amendments would make the right of access available to any natural or legal person, regardless of nationality or State of residence (Article 2(1)). Article 2 is further amended by the addition of a new Article 2(5) which excludes documents submitted to “Courts” by parties other than the institutions. A new Article 2(6) also excludes documents forming part of the administrative file of an investigation or of “proceedings concerning an act of individual scope”² until the investigation is closed or the act has become definitive. A

1 OJ No. L 145, 31.05.01, p.43.

2 Such as, for example, a Commission decision addressed to an individual.

new definition of “document” refers to a document as being one which is “drawn-up by an institution and formally transmitted to one or more recipients or otherwise registered” or one which is “received by an institution”.³

1.4 The exceptions in Article 4 have been amended in a number of respects. First, an exception has been added relating to the protection of the public interest in the environment, such as the breeding sites of rare species. The exception corresponds to the requirements of the Åarhus Convention, and Article 6(2) of Regulation 1367/2006. For the same purpose, it is also now provides that the exception for the protection of commercial interests will be overridden in the public interest where the information relates to emissions into the environment. Secondly, a new provision (Article 4(5)) is added which provides that “names, titles and functions of public office holders, civil servants and interest representatives in relation with their professional activities shall be disclosed unless, given the particular circumstances, disclosure would adversely affect the persons concerned”. The rest of the new Article 4(5) provides that other personal data shall be disclosed in accordance with EC data protection principles.

1.5 The proposed revised Article 5(2) deals with the situation where a document originates from a Member State and is held by an institution. Whereas the existing Article 4(5) provides that a Member State may request an institution not to disclose such a document, the new Article 5(2) requires the Member State to be consulted and for disclosure of the document unless the Member State gives reasons for withholding it, based on the exceptions under Article 4 of the Regulation or specific provisions in its national law.

1.6 When we last considered the proposal on 17 December 2008 we agreed with the Government in welcoming the substance of the proposed amendments. We also asked the Government to explain whether Article 255 EC Treaty, which refers specifically to citizens of the Union and any natural or legal person residing or having its registered office in a Member State, provided a sufficient legal base for the proposed extension of the right of access to natural or legal persons who are neither EU citizens nor resident in the EU. We decided to hold the document under scrutiny pending the Minister’s reply.

The Minister’s reply

1.7 The Minister of Europe (Chris Bryant) has now replied jointly with the Minister of State at the Ministry of Justice (Michael Willis). In their joint letter of 29 January 2010 the Ministers inform us that the Ministry of Justice would assume formal responsibility for the dossier with immediate effect. The Ministers also tell us that the Council could not agree on a revised version of this proposal and that the European Parliament had indicated that it would not be prepared to give a first reading to the current Commission proposal. In the absence of a revised proposal agreed by the Council, a new Commission proposal or an opinion from the European Parliament, it remained unclear how the current version of the proposal could be taken forward.

³ Article 2(3) — which is not materially amended- provides for the Regulation to apply to “all documents held by an institution” i.e. “documents drawn up or received by it and in its possession”.

Conclusion

1.8 We thank the Ministers for their update on proposal designed to updated the rules on access to EU documents. We note the proposed transfer of departmental responsibility for the dossier.

1.9 We have to remind the Minister of our previous question concerning the adequacy of Article 255 EC Treaty as a legal base for the proposed extension of the right of access to EU documents beyond EU citizens or residents. We may be persuaded that a restriction of the right of access to EU citizens and residents might be problematic not least with a view to the rights guaranteed under the EU Charter, but would be grateful for a detailed explanation by the Minister, which shows how the proposed extension may be achieved under Article 255 EC Treaty (now Article 15 TFEU) alone.

1.10 We shall hold the document under scrutiny pending the Minister's reply.

2 Qualification and status of refugees

(31043) 14863/09 COM(09) 551	Draft Directive on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted
+ ADDs 1–2	Commission staff working documents: impact assessment and summary of assessment
+ ADD 3	Detailed explanation of the proposal
+ ADD 4	Commission staff working document: annexes to ADD 1

<i>Legal base</i>	Article 63(1)(c) and (2)(a) EC; co-decision; QMV; and Article 63(3)(a) EC; consultation; unanimity
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister's letter of 30 March 2010
<i>Previous Committee Report</i>	HC 5–i (2009–10), chapter 4 (19 November 2009) and HC 5–viii (2009–10), chapter 2 (27 January 2010)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

Introduction

2.1 In 2004, the Council adopted a Directive on minimum standards for the qualification and status of third country nationals or stateless people as refugees or people who

otherwise need protection (“the original Qualifications Directive”).⁴ The Commission believes that the standards set by the Directive are unsatisfactory and has, therefore, proposed this draft Directive to remedy what it sees as the defects and to ensure higher standards of protection for people who need it. To that end, the draft Directive re-enacts some of the provisions of the original Directive, omits others and amends the rest.

Previous scrutiny of the document

2.2 When we considered the draft Directive in November 2009, we drew attention to the significant differences between the original Directive and the Commission’s proposals for its replacement.⁵

2.3 In her Explanatory Memorandum of 5 November 2009 and her letter of 22 January 2010, the Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) told us that the Government was not persuaded of the case for some of the proposals and believed that they would pose a significant risk to the UK’s asylum system. She said, for example, that:

“The amended definition of a family member — in particular its extension to include the parents of unaccompanied minors whose claims are granted — is the most worrying [of the Commission’s proposals]. Although Article 2(j) states that the definition only extends to persons who are in the same Member State as the minor, we believe that this, especially when combined with the obligation to maintain family unity (Article 23(1)) and to trace the relatives of unaccompanied minors (Article 31(5)) carries an unacceptable risk of requiring us to admit the parents of unaccompanied minors who are granted status.

“We fear that that would lead to a significant increase in the number of applications we receive from minors (currently about 3500 a year, or 12% of our intake) — possibly as a result of parents sending their children ahead of them in the hope of being able to join them if they are granted status. That would be deeply prejudicial to the welfare of the children concerned and is in our view, the wrong direction to go in when numbers of UASCs [unaccompanied asylum seeking children] arriving in Europe have already significantly increased. The Government already spends over £140m a year in caring for unaccompanied asylum seeking children, and an increase in the number of applications we receive from this category would risk raising these costs further.”

2.4 The Minister also told us that, because of its concerns about the likely effects of the proposals on the UK’s asylum system, the Government had decided not to opt into the draft Directive. It would, however, take part in the negotiations with a view to applying to be bound by the Directive (if adopted) if the Government’s concerns have been dealt with satisfactorily.

2.5 When we considered the draft Directive on 27 January 2010,⁶ we noted that Title IV of the EC Treaty would no longer provide the legal base for the draft Directive. Because the

4 Council Directive 2004/83/EC: OJ No. L 304, 30.09.04, p.12.

5 See HC 5-i (2009–10), chapter 4 (19 November 2009).

Treaty of Lisbon came into effect on 1 December 2009, the Treaty on the Functioning of the European Union will provide the legal base and all the provisions of the draft Directive will be subject to co-decision between the Council and the European Parliament and the Council and to Qualified Majority Voting in the Council. This removes the legal difficulty to which we referred in paragraph 4.10 of our Report of 19 November 2009.

2.6 We were not surprised by the Government's decision not to opt into the draft Directive. We asked the Minister to send us progress reports on the negotiations and kept the draft Directive under scrutiny.

The Minister's letter of 30 March 2010

2.7 In her letter of 30 March, the Minister reminds us of the Government's reservations about the proposed extension of the definition of a family member. She says that the Government is:

“particularly worried that this would be interpreted as requiring Member States to allow unaccompanied minors whose claims for protection are granted to be joined by their parents.

“The Commission has said that the change is not intended to have this effect, but only to cover family members who are present in the same Member State as the unaccompanied minor. While this is reassuring we think there is still an unacceptable risk that the Courts will interpret the provision differently, because of the continuing obligations to maintain family unity and to trace family members that appear in the Directive. We are therefore pressing for wording to be included that will put the issue beyond doubt.

“Many Member States raised similar objections to the broader definition and felt that this would lead to abuse by parents and family members and there have been suggestions that this article be looked at again in light of all Member States' concern.”

2.8 During the negotiations, the Government has also expressed its reservations about Article 7 (“actors of protection”) and 8 (“internal protection”).⁷ Other Member States share the view that the proposals go too far and that they risk requiring Member States to grant protection when it is not actually needed and that the wording of the original Qualifications Directive is better.

Conclusion

2.9 We thank the Minister for her helpful letter. We should be grateful if she would provide us with a further progress report in three months or sooner if there are significant developments before then. Meanwhile, we shall keep the draft Directive under scrutiny.

6 See HC 5–viii (2009–10), chapter 3 (27 January 2010).

7 Article 7 provides that protection against persecution must be effective and durable and can only be provided by “actors of protection”, defined as States and parties or organisations controlling a substantial part of the territory and which are willing to enforce the rule of law and take reasonable steps to prevent persecution. Article 8 gives Member States discretion to decide that an asylum seeker is not in need of international protection because he or she has access to protection in a part of his or her country of origin.

3 Procedures for granting and withdrawing asylum

(31046) 14959/09 COM(09) 554	Draft Directive on minimum standards for Member States' procedures for granting and withdrawing international protection (recast)
+ ADD 1	Commission staff working paper: article by article explanation of the draft Directive
+ADDs 2–4	Commission staff working paper: impact assessment and summary of assessment

<i>Legal base</i>	Article 63(1)(d) and (2)(a) EC; co-decision; QMV
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister's letter of 30 March 2010
<i>Previous Committee Report</i>	HC 5–i (2009–10), chapter 3 (19 November 2009) and HC 5–viii (2009–10), chapter 3 (27 January 2010)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

Previous scrutiny

3.1 When we considered this proposal in November 2009, we noted that the Council had adopted a Directive in 2005 on Member States' procedures for granting and withdrawing refugee status.⁸ The Commission's original draft of the 2005 Directive contained common minimum standards. But, in negotiation, the Council amended the draft to allow Member States wider discretion. The Commission believes that this has led to disparate national arrangements and deficiencies in, for example, the procedural guarantees for asylum seekers.

3.2 So, in October 2009, the Commission proposed the repeal of the 2005 Directive and its replacement by a new ("recast") Directive which would re-enact some of the provisions of the existing Directive, omit others and amend the rest with the aim of remedying the deficiencies and moving closer to a truly common asylum procedure and a uniform status for people seeking protection. For example:

- The draft Directive says that its purpose is to establish minimum procedural standards for granting or withdrawing "international protection". It defines "international protection status" as recognition by a Member State of a third country national or stateless person as a refugee or person eligible for subsidiary protection.⁹

⁸ See HC 5–i (2009–10), chapter 3 (19 November 2009).

⁹ A **refugee** is a person who, because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his or her country of nationality

- Article 4(2) of the draft Directive contains a new mandatory requirement about the matters to be included in the training of officials who examine applications for international protection.
- Article 17 of the draft Directive contains a new mandatory duty on Member States to allow applicants who ask for it an impartial medical examination in order to support claims of past persecution or serious harm.
- Article 27(6) of the draft Directive reduces the grounds on which a Member State may accelerate the examination of an application for international protection.

3.3 When we considered the draft Directive last November, the Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) told us that the Government was concerned that the draft Directive would impede Member States' ability to tackle abuses of the asylum system. For example:

- The Government did not question the need for medical reports in some cases, but was concerned about the proposed requirement in Article 17 for Member States to allow medical examinations on request because it would encourage applicants who have not got medical needs to ask for a medical examination so as to delay the processing of their applications.
- The Government did not believe that the use of the accelerated procedure for the examination of applications should be restricted in the way proposed in Article 27 of the draft Directive.

3.4 We noted that the Government had opted into the 2005 Procedures Directive and its major reservations about the Commission's proposals for a recast version of it. We questioned whether the training requirements in Article 4(2) were consistent with the principle of subsidiarity. We asked the Minister to raise the point with the Commission and in the Council working group and to tell us the response. We also asked her for progress reports on the negotiations.

3.5 In the reply the Minister sent us in January, she said that the Government was concerned that the draft Directive would prevent the UK from operating the Detained Fast Track procedure. She told us that the accelerated procedure provides fast and fair decisions and resulted in the removal, between April 2008 and September 2009, of over 1200 people whose applications for asylum had not been granted, with 97% of the decisions being upheld on appeal.

3.6 The Government's discussions with other Member States indicated that many of them shared the UK's opposition to parts of the draft Directive. The negotiations were likely to be long and difficult. There was a real risk that the draft Directive, when the negotiations have been completed, would contain provisions which the Government could not accept.

and is unable or unwilling to avail himself or herself of the protection of that country; or a person who is stateless and unable or unwilling to return to the country of his or her habitual residence because of such fears of persecution.

Subsidiary protection is the status given to people who do not qualify as refugees but who are at risk of serious harm if returned to their country of origin.

So the Government had not opted into the draft. But the Government would continue to take part in the consideration of the proposal because, if the grounds for the UK's objections were removed, the way would be open for the Government to opt in after the adoption of the Directive.

3.7 In the report we made to the House on 27 January, we said that we understand why the Government had not opted into the draft Directive but would continue to take part in the negotiations on it. We asked the Minister for further progress reports and kept the draft Directive under scrutiny.

The Minister's letter of 30 March 2010

3.8 The Minister's letter tells us that the discussion of the draft Directive in the Council working group has underlined how complex and confusing many of the provisions are. She says, for example, that "the difference between an "accelerated" and a "prioritised" procedure in Article 27(5) and (6) has become increasingly unclear".

3.9 She also tells us that the Government has put to the working group our doubt whether the training requirements in Article 4(2) of the draft Directive are compatible with the principle of subsidiarity. She says that other Member States have supported our concern and that the Commission has offered to discuss the matter.

3.10 It is unlikely that the European Parliament will vote on the draft Directive before September.

Conclusion

3.11 We are grateful to the Minister for her letter. It shows that, as we expected, the negotiations in the Council working group are proceeding very slowly and that the UK is not alone in its concerns about the draft Directive. We should be grateful for further progress reports and, meanwhile, will keep the document under scrutiny.

4 Strengthening FRONTEX

(31368) 6898/10 COM(10) 61	Draft Regulation to amend Council Regulation (EC) No. 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)
+ ADDs 1–2	Commission staff working documents: impact assessment and summary of the assessment

Legal base	Articles 74 and 77(1)(b) and (c) TFEU: co-decision; QMV
Department	Home Office
Basis of consideration	Minister's letter of 6 April 2010
Previous Committee Report	HC 5–xiv (2009–10), chapter 3 (17 March 2010)
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

4.1 FRONTEX is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States. It began work in October 2005. Its budget for 2009 was €83 million. It is based in Warsaw and has over 220 staff.

4.2 The Regulation which established FRONTEX¹⁰ gave the Agency six tasks: coordination of operational cooperation between Member States in the management of the external borders; training border guards; doing risk analyses; R&D; organising technical and operational help for Member States in need of it; and helping to organise the return of illegal immigrants.¹¹

4.3 Contrary to the Government's wishes, the UK is excluded from full participation in FRONTEX because the Court of Justice has ruled that the 2004 Regulation builds on provisions of the Schengen *acquis* to which the UK is not party. But the Regulation includes a provision which enables the UK to participate in some of the Agency's activities (for example, as observers of selected joint operations).

4.4 In October 2009, the European Council called for the strengthening of FRONTEX's operational capacity and invited the Commission to present proposals for that purpose. The invitation was repeated in the Stockholm Programme.¹²

¹⁰ Council Regulation (EC) No. 2007/2004: OJ No. L 349, 25.11.04, p.1.

¹¹ See (25365) 6226/04: HC 42–xiii (2003–04), chapter 21 (17 March 2004).

¹² The Stockholm Programme outlines proposals for EU action on JHA matters over the next five years. It was adopted by the European Council on 10–11 December 2009.

4.5 Article 74 of the Treaty on the Functioning of the European Union (TFEU) requires the Council to adopt measures to ensure administrative cooperation between Member States on the matters covered by Title V of the Treaty (matters related to justice and home affairs). Article 77(1) TFEU requires the EU to develop policies on, among other things, carrying out checks on people at Member States' external borders and the gradual introduction of an integrated system for the management of those borders. Article 77(2)(b) and (d) authorise the European Parliament and the Council to adopt measures for those purposes.

Previous scrutiny of the document

4.6 When we considered the draft Regulation on 17 March,¹³ we noted that it contains a large number of amendments to the Regulation of 2004 which established FRONTEX ("the parent legislation"). Most of the amendments clarify the provisions of the parent legislation or supplement FRONTEX's powers and duties without changing them substantially. For example, the draft Regulation contains a new definition of "technical equipment" and gives FRONTEX a duty to "participate" in the development of relevant research rather than merely to "follow-up" its development.

4.7 But the draft Regulation also includes some significant changes to the parent legislation. They include the following amendments:

- FRONTEX would have a new duty to develop and operate information systems to enable swift and reliable exchanges of information about emerging risks at the external borders.
- The FRONTEX Management Board (which comprises representatives of the participating States and the Commission) would decide, from time to time, what number of border guards the Member States should make available for deployment in FRONTEX Joint Support Teams to take part in joint operations and pilot projects. Member States would be obliged to make the officers available when requested "unless they are faced with an exceptional situation substantially affecting the discharge of national tasks".¹⁴
- Member States would also be required to second border guards to FRONTEX for not more than six months in a 12-month period for deployment to joint operations and pilot projects.
- FRONTEX would have a new duty to evaluate the capacity of Member States to cope with present and foreseeable threats and pressures at their external borders and to report the results of the evaluations to the Agency's Management Board at least once a year.
- FRONTEX would be given a new power to acquire or lease technical equipment (such as boats, aircraft and mobile radar) for use in, for example, joint operations, pilot projects and operations to return illegal immigrants to their countries of origin.

¹³ See headnote.

¹⁴ Article 3 b(3) of the draft Regulation.

- The Management Board would be given responsibility to decide what technical equipment FRONTEX should have for operational purposes. The Agency would have a duty to maintain records of the equipment, comprising equipment made available by Member States and equipment acquired or leased by the Agency. Member States would have a new duty to contribute equipment to the pool within 30 days of being asked for it.
- Member States would be required to tell FRONTEX once a month about their plans for returns and to what extent help from and coordination by the Agency would be needed.
- FRONTEX would have power to post liaison officers to third countries to maintain contacts with the authorities responsible for the control of migration and law enforcement and to encourage them to take part in FRONTEX activities such as pilot projects, joint operations and training for border guards.

4.8 In her Explanatory Memorandum of 11 March 2010, the Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) told us that (for the reason explained in paragraph 4.3 above) the UK is excluded from the draft Regulation and will not be bound by it. Nonetheless, the Government welcomes the draft Regulation because an effectively managed and secure external border is in the interests of all Member States, so as to counter illegal migration, cross-border crime and terrorism.

4.9 At present, border guards from Schengen States have additional protection against criminal and civil liability when taking part in FRONTEX operations. The Minister told us that, while the Government has no intention of seeking executive powers for UK border officers taking part in FRONTEX operations, it does wish to protect them from unreasonable or malicious prosecution. So the Government will seek an amendment to the draft Regulation to extend to UK officials the cover currently given to the border guards of the Schengen and Schengen-associated states alongside whom they work.

4.10 In the Conclusion to our report of 17 March, we said that, in our view, the draft Regulation complies with the principles of subsidiarity and proportionality. We also said, however, that the legal base fails to cite Article 77(2)(b) and (d) TFEU instead of, or in addition to, Article 77(1)(b) and (c) TFEU (see paragraph 4.5 above). We thought that it should. We asked for the Minister's opinion on the point and for progress reports on the negotiations. Meanwhile, we kept the document under scrutiny.

The Minister's letter of 6 April 2010

4.11 In her reply of 6 April, the Minister tells us that she agrees that it is arguable that Article 77(2)(b) and (d) TFEU should be cited as the legal base for the draft Regulation either in addition to or instead of Article 77(1). The Government will, therefore, put the point to the Commission. She will write to us again when she has received the Commission's response.

4.12 The Minister also tells us that:

- the Spanish Presidency will give the draft Regulation high priority;

- all Member States supported the draft Regulation in general terms when it was discussed by the Council working group on 9–10 March;
- but concerns were expressed about the proposed obligation on Member States to commit border guards to FRONTEX Joint Support Teams; the evaluation by FRONTEX of Member States' capacity to cope with threats at their external borders; and the cost of FRONTEX acquiring technical equipment; and
- the UK Government explained why it intended to seek an amendment to give UK officers protection from civil and criminal liabilities equal to that enjoyed by “guest officers” from Schengen states while deployed on joint operations.

Conclusion

4.13 We are grateful to the Minister for agreeing to put our question about the legal base to the Commission. We look forward to learning the Commission's response. We should also be grateful for progress reports on the negotiations in the Council working group. Meanwhile, we shall keep the document under scrutiny.

5 European Protection Order

(31237)	Draft Directive on the European Protection Order
17513/09	
+ ADDs 1–2	
—	

<i>Legal base</i>	Article 82(1)(d) TFEU; QMV; co-decision
<i>Department</i>	Justice
<i>Basis of consideration</i>	Minister's letters of 2 March and 24 March
<i>Previous Committee Reports</i>	HC 5–x (2009–10), chapter 5 (9 February 2010) and HC 5–xi (2009–10), chapter 4 (24 February 2010)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally important
<i>Committee's decision</i>	Not cleared; further information requested

Background

5.1 The European Protection Order (EPO) is intended to assist victims who have obtained a protection order in one Member State and who subsequently move to another Member State. The victim would apply (the EPO cannot be issued other than on the wishes of the victim) for an EPO from the Member State which issued the original protection order, and this EPO would then be transmitted to and recognised by the executing Member State to which the victim has moved. In the United Kingdom protection orders are often used in

domestic violence cases, although not exclusively so. Examples of protection orders include non-molestation orders, occupation orders (regulating who can occupy a property), restraining orders and injunctions.

Previous scrutiny

5.2 We have reported on this proposal twice already.¹⁵ On the last occasion we asked the Parliamentary Under-Secretary at the Ministry of Justice (Lord Bach) to provide us with the preliminary results of the Government’s consultation process and his views on the appropriate legal base. We noted that Article 82(1)(d) TFEU, the legal base, addresses “proceedings in criminal matters”, but national protection measures such as injunctions and restraining orders are civil proceedings, the criminal penalty being a consequence of the breach of a civil order. In which case, we thought there was an argument to say that the legal base should be founded on Article 81 TFEU — “Judicial Cooperation in Civil Matters”.

Minister’s letter of 2 March

5.3 On 2 March the Minister replied to our Report. On the consultation process, he said that most respondents had expressed support for the EPO: there was a general feeling that such an instrument could be very helpful in the protection of victims. Although there was some concern that there was no statistical evidence available for the need to have an EPO, representatives from victims’ groups suggested that there was significant anecdotal evidence. These groups also stressed that, whatever form the EPO eventually took, the mechanism should be simple for the protected person: it should not be burdensome to administer or enforce. There was strong agreement from practitioners that once an EPO was accepted, the executing State should have jurisdiction and undertake all subsequent action.

5.4 On legal base, the Minister explained that the issues raised were not straightforward and were being discussed at some length in the Council working group. That said, his Department was content that the legal base in Article 82 TFEU was appropriate, because that Article permitted the EU to legislate for judicial cooperation in “criminal matters”, and “the purpose of protection orders, whether issued in UK criminal or civil proceedings, is ultimately to protect the victim from crime”. The Government would want to ensure that the EPO Directive was focussed on this point. If, however, the Council took the view that the criminal judicial cooperation legal base was not sufficient to cover protection orders made in civil proceedings, the EPO Directive may go ahead as a much a narrower instrument, addressing only orders made in criminal proceedings, but one in which the Minister expected the UK would still want to participate as a matter of policy.

5.5 The Government’s chief interest in the correct use of legal bases was in ensuring that the EU does not act beyond its competence. But the Minister said that this did not arise in this case because the EU had the power to legislate for civil judicial cooperation under Article 81 TFEU. The issue here was more one of citing the correct legal base (and with it, whether the Commission or the Member States have the power to propose legislation)

¹⁵ See headnote.

rather than whether or not the EU has competence to act in this area. Nor did this case raise an issue of conceding power to the EU to act by qualified majority voting rather than unanimity, as the procedure under Article 81 TFEU is the same as under Article 82 TFEU.

5.6 The Minister therefore concluded that the questions surrounding the legal base should not automatically determine whether the UK should opt-in. The Minister went on to say that, provided the Government decided, following the consultation, that it will support the EPO as a matter of policy, it would be far better placed to take issue effectively with the legal base by participating in the proposed measure than by seeking to do so from the sidelines. Experience had shown that the Government's voice is significantly weakened if its negotiating partners do not expect the UK to be bound by the measure.

Committee's reply of 10 March

5.7 We disagreed with the Minister's arguments, considering it important that any proposal be founded on the correct legal base, irrespective of whether there is a risk of the Commission acting outside its competence under the EU Treaties. The distinction between "civil matters" and "criminal matters" in Articles 81 and 82 TFEU should remain clear. So we did not share his view that Article 82 TFEU is appropriate because "the purpose of protection orders, whether issued in UK criminal or civil proceedings, is ultimately to protect the victim from crime". In the UK protection orders fall under the civil jurisdiction and so we thought that any regulation by the EU in this field should have a legal base in Article 81 TFEU. We asked the Government to take our view into consideration when deciding whether to opt into this proposal. We also asked the Minister to provide us with an update on the negotiations on legal base before the Government takes its decision to opt in.

Minister's letter of 24 March

5.8 The Minister replies that, given the complexity of the argument, he appreciates that there may be different views on whether Article 82 TFEU is the correct legal base. He explains that there continue to be discussions in the working group on this issue. Therefore, it is possible that the scope of the draft Directive may be drawn more narrowly than it is at the moment, restricting it to measures taken in the context of criminal proceedings and related to a criminal offence. This would mean that the fact that measures are taken to prevent a criminal offence would not, in itself, be sufficient for the legal base: all protection orders made in civil proceedings would be excluded. Such a reading of the legal base would restrict the utility of the instrument for the UK. However, roughly 25% of UK protection orders are issued in criminal proceedings, and so would be covered. A separate instrument would be needed to capture civil protection orders, which would pick up the remaining 75% of UK orders (the Commission has the sole right of initiative in civil matters). The Minister concludes by saying that the Government will carefully analyse the legal base debate, as it takes a very strong interest in the correct use of the legal bases in the Treaties; but it does not feel that a narrow reading of the legal base should preclude the UK opting into the instrument. As it said in its letter to the Committee on 2 March, if the Presidency proposal is ultimately restricted to criminal matters only, the Government would still wish to participate in order to continue in our objective to provide greater protection to victims across the EU.

Conclusion

5.9 We note the Minister’s acknowledgement that there may be different views on whether Article 82 TFEU is the appropriate legal base to cover protection orders made in civil proceedings in Member State courts. We thank the Minister for the indication that he expects the Government would opt into the proposal even if limited to protection orders issues in criminal proceedings.

5.10 For the reasons we outlined in our letter of 10 March, we do not share his view that Article 82 TFEU is an appropriate legal base because “the purpose of protection orders, whether issued in UK criminal or civil proceedings, is ultimately to protect the victim from crime”. We think “proceedings in criminal matters” in Article 82(1)(d) means exactly that, and cannot be interpreted to cover civil proceedings in which the protection of a victim from crime is the objective.

5.11 We look forward to an update when negotiations have developed further. When the Minister next writes, we would also be grateful if he could confirm whether the European Protection Order will only apply to final judicial decisions by competent authorities in the issuing State (rather than interim decisions); whether the “person causing the danger” will enjoy full procedural safeguards (e.g. notification, opportunity to make representations) without exception; and how the Government intends to implement the duty imposed in Article 5(3) of the draft Directive to inform all those who benefit from a protection order in the UK of the existence of an European Protection Order should they decide to move to another Member State.

5.12 In the meantime the document remains under scrutiny.

6 The EU and the Arctic Region

(30227)	Commission Communication: <i>The European Union and the Arctic</i>
—	<i>Region</i>
COM(08) 763	

<i>Legal base</i>	—
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister’s letter of 22 March 2010
<i>Previous Committee Reports</i>	HC 19–viii (2008–09), chapter 1 (25 February 2009) and HC 5–vii (2009–10), chapter 9 (20 January 2010)
<i>Discussed in Council</i>	8–9 December 2009 General Affairs and External Relations Council
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Cleared (decision reported 22 April 2009); further information provided

Previous scrutiny

6.1 We cleared the Commission’s Communication: *The European Union and the Arctic Region* from scrutiny in April 2009. We noted that the Communication was to be followed by a more detailed Communication on the Arctic. But we felt that sufficiently major policy issues were already raised in this Communication for a debate in the European Committee to be warranted. We asked that the Community’s competence to make recommendations in all of the areas covered by the Communication be covered during the debate as well.¹⁶ The debate took place on 21 April 2009.

Minister’s letter of 9 December 2009

6.2 Nothing more was heard until the present Minister for Europe (Chris Bryant) wrote to the Committee on 9 December 2009, with his views on the Council Conclusions on the EU and the Arctic adopted by the Foreign Affairs Council on 8 December. In responding to him, the Committee noted that the further Commission Communication had not materialised; instead, a substantive set of Council Conclusions had been adopted which, as the Minister said, constituted “a set of overarching principles and actions which the Commission can begin to develop in collaboration with Member States.”

6.3 The Minister also noted the Government’s continued support for the EU “in its efforts to become more engaged on the Arctic” and considered that the Commission “has a valuable role to play in many areas as outlined in the Council Conclusions.” The Minister also said that, at the same time, he had “striven to ensure that, where competency is reserved or shared, UK interests are protected [and] also sought to ensure that our bilateral and multilateral relationships with the Arctic States and the Arctic Council are unaffected.” But he did not explain where he believed such competency was reserved or shared, how UK interests were protected or how he had sought to ensure that these relationships would be unaffected.

6.4 The impression left with the Committee was that an important stage in the parliamentary scrutiny of this significant area of developing EU policy had been passed over, by virtue of there being no further Commission Communication but instead the adoption of very substantive Conclusions setting out the way forward.

6.5 The Committee accordingly asked the Minister for an explanation of why a further Communication had not been issued by the Commission and why it had not been given a chance to scrutinise the Council Conclusions before they were adopted.

Minister’s letter of 7 January 2010

6.6 The Minister responded by a letter of 7 January 2010. While he said he understood the Committee’s frustration that the Commission decided not to proceed with a further Communication, the Minister said:

“this was entirely their decision and we could not oblige them to do so. However, the decision by the Council to proceed with a second set of Conclusions does, I believe,

¹⁶ See headnote: HC 19–viii (2008–09), chapter 1 (25 February 2009).

provide a platform to take this policy forward and, importantly, ensure that the Council and Member States remain fully involved in the process.”

6.7 With regard to the competence of the EU institutions to act the Minister said:

“The Council Conclusions deal with matters of both reserved (such as fishing) and shared competence (for example environment, transport, energy). We have sought throughout this process to ensure that the Conclusions do not impinge upon UK bilateral relations or allow any form of Commission ‘competence creep.’ My officials were also able to ensure that the Council Conclusions did not contain any inappropriate specific commitments, especially spending commitments. We believe that the Conclusions provide an operational framework for the Commission’s work in the Arctic over the next 18 months, until June 2011, at which stage the Commission has been tasked to provide a progress report to the Council. This will help ensure engagement with Member States and adequate oversight. It should also address concerns raised in the April 2009 debate and emphasises the fact that the Conclusions are of course a Council not a Commission text.”

6.8 The Minister went on to “stress that bilateral and multilateral relations will not be affected”, as follows:

“The UK will be able to continue our excellent relationships with the Arctic States, such as our memorandum of understanding with Canada, our close working relationship on Polar issues with Norway and our ongoing work as a Permanent Observer at the Arctic Council.”

6.9 We did not consider that the Minister’s answers on process and substance were adequate, and asked him to appear before us at an evidence session.¹⁷ He did so on 24 February. During his evidence, he offered to write to the Committee with a list of the areas in which the Commission was competent to act in the EU’s policy on the Arctic. We followed him up on his offer, asking for clarification of which elements of the EU’s Arctic policy fell under the CFSP; which fell under the exclusive competence of the Commission; and which fell under shared competence between the Member States and the Commission, or supporting/complementary competence. We also asked the Minister to confirm whether UK bilateral interests were affected, and whether subsidiarity issues were raised.

Minister’s letter of 22 March

6.10 In a letter of 22 March the Minister confirms that:

- a) no competences fall within the remit of the CFSP;
- b) the only areas of exclusive competence covered in the Council Conclusions on the Arctic are:
 - i) relevant trade issues, for example the ban on the import of seal products with the allowances for the traditional activities of indigenous peoples; and

17 To be published as HC 392–i.

- ii) external fisheries;
- c) there are however a number of areas where the EU and Member States (not just those Member States who are Arctic Council Members) have shared competence. The Council Conclusions make clear that these are all areas where the Commission and Member States should work collaboratively to formulate policy:
 - i) environment (most importantly issues relating to sustainable development, Pollutants and Climate Change);
 - ii) transport;
 - iii) energy; and
 - iv) research;
- d) he does not believe that the Council Conclusions deal specifically with any areas that are of supporting or complementary competence;
- e) he does not believe that any subsidiarity concerns arise.

6.11 In relation bilateral and multilateral relationships with the Arctic States, the Minister informs us that the UK continues to maintain strong bilateral relationships with all eight Arctic States. The Government's position as a State Observer to the Arctic Council remains unaffected by the EU's involvement. On a multilateral basis the UK is involved with the Arctic States in a large number of international agreements and networks. The UK is also a key player in a wide range of international organisations including the United Nations Convention on the Law of the Sea, the International Maritime Organisation, the North East Atlantic Fisheries Organisation, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The UK has been heavily involved in, and made a significant contribution to, the International Polar Year, one direct consequence of which was the Memorandum of Understanding between the UK and Canada on polar research and monitoring cooperation.

Conclusion

6.12 We thank the Minister for his explanation of where competence lies in the EU's policy on the Arctic. This will be a useful guide for us when scrutinising the development of this policy.

7 EU Enlargement: Romania and Bulgaria

(a) (31436) 7947/10 COM(10) 112	Commission Interim Report on progress in Bulgaria under the Co-operation and Verification Regime
(b) (31437) 7948/10 COM(10) 113	Commission Interim Report on progress in Romania under the Co-operation and Verification Regime

<i>Legal base</i>	—
<i>Documents originated</i>	23 March 2010
<i>Deposited in Parliament</i>	25 March 2010
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 31 March 2010
<i>Previous Committee Report</i>	None; but see (30828) 12386/09 and (30829) 12388/09: HC 19–xxvi, chapter 22 (10 September 2009); (30347) 6405/09 and (30348) 6407/09: HC 19–xvii (2008–09), chapter 8 (13 May 2009), HC 19–xiv (2008–09), chapter 6 (22 April 2009) and HC 19–xii (2008–09), chapter 3 (25 March 2009); also see (29876) 12177/08 and (29877) 12182/08 HC 16–xxix (2007–08), chapter 2 (10 September 2008); (29431) 6150/08 and (29432) 6161/08 HC 16–xiii (2007–08), chapter 15 (27 February 2008); (28754) 11491/07 and (28768) 11489/07 HC 41–xxxii (2006–07), chapter 11 (25 July 2007) and (27865) 13347/06: HC 34–xxxviii (2005–06) chapter 3 (18 October 2006)
<i>To be discussed in Council</i>	April 2010 Foreign Affairs Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

7.1 The accession negotiations with *Romania* and *Bulgaria* were concluded in December 2004 and a Treaty of Accession was signed on 25 April 2005. The UK ratified the Treaty on 5 April 2006.

7.2 The Commission’s October 2005 and May 2006 monitoring reports identified a number of areas where further improvements were needed in order to meet all membership requirements, and all of which went to the heart of a properly functioning governance system based on the effective implementation of laws by an accountable, independent and effective judiciary and bureaucracy. The Accession Treaty allowed for a

delay until 2008, but only if the Commission recommended that either country was “manifestly unprepared” for membership. The Commission’s final verdict was that both countries would be in a position to take on the responsibilities of membership by 2007.

7.3 There were, however, still significant shortcomings, particularly on Justice and Home Affairs (JHA) issues.¹⁸ So, various post-accession measures were put in place, the most crucial being the Mechanism on Cooperation and Verification — a process whereby, having set benchmarks on JHA issues, the Commission works closely with both governments on steps to meet them, and reports to the European Parliament and the Council, with the sanction of non-recognition of judicial decisions under mutual recognition arrangements if progress was insufficient.¹⁹ Accession on 1 January 2007 was now essentially a *fait accompli*; however, given the range of outstanding issues and their implications for actual and aspiring candidates, the Commission’s final verdict was debated in the European Standing Committee on 15 January 2007.²⁰

7.4 Bulgaria’s benchmarks are:

- Benchmark 1 — Independence/ accountability of judicial system
- Benchmark 2 — Transparency/efficiency of judicial process
- Benchmark 3 — Reform of the judiciary
- Benchmark 4 — High level corruption
- Benchmark 5 — Corruption at borders and in local government
- Benchmark 6 — Organised crime

7.5 Romania’s benchmarks are:

- Benchmark 1 — Reform of judicial process
- Benchmark 2 — Establishment of an integrity agency
- Benchmark 3 — Investigation of high level corruption
- Benchmark 4 — Corruption, in particular within local government

7.6 The Commission monitors progress and writes reports every 6 months: interim reports at the start of the year and main reports at mid-year. As with previous such interim reports, both are described as a technical update on significant developments during the previous six months, and not an assessment of progress achieved; with, in this case, the 22 July 2009 Report and its recommendations remaining the point of reference “for the assessment of

18 For details, see previous Reports enumerated in the headnote to this chapter.

19 Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria and Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime (OJ L 354, 14.12.2006, p. 56 and 58; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:354:0056:0057:EN:PDF> and <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:354:0058:0060:EN:PDF>).

20 *Stg Co Deb*, European Standing Committee, 15 January 2007, cols. 3–28.

progress achieved against the benchmarks and the identification of the remaining challenges”.

Bulgaria

7.7 The Commission says that during the last six months, Bulgaria has initiated several concrete proposals for reform which respond to its recommendations made by the Commission: a partial revision of the Penal Procedure Code currently under Parliamentary discussion; ongoing work on a substantial reform of the Criminal Assets Forfeiture Act and on a revision of the Conflicts of Interest Law; a decision to strengthen prosecution structures for some priority cases involving high-level corruption and organised crime; the launch of a structural reform of the National Revenue Agency and of the National Customs Agency; and the beginning of work on “a comprehensive strategy to fight corruption and organised crime”. Against that:

“the judiciary continued to produce only few results in cases involving high-level corruption and organised crime and a further street killing occurred in January 2010. Allegations of serious corruption related to senior appointments in the judiciary involving members of the SJC still need to be fully examined. A quicker and more complete administrative follow-up to the Commission’s concerns regarding irregularities, conflict of interest and fraud in the implementation of EU funds needs to be implemented before the next assessment.”

7.8 The Commission describes the “Outlook” thus:

“In the last six months, Bulgaria has launched a number of important initiatives which show will for reform.

“These efforts are laudable. Although their merit can only be assessed in the light of their effective contribution to the fight against corruption and organised crime once they are implemented, Bulgaria’s recent efforts demonstrate a growing recognition that substantial and far-reaching reforms are required.

“In order to achieve practical and measurable results in a significant number, Bulgaria should extend further its reform efforts. Reforms recommended by the Commission in July 2009 should become a matter of national priority and must be launched in more areas to achieve a profound reform of the judiciary.

“The Commission will continue to support Bulgaria in this endeavour and provide its next in-depth assessment of progress by summer this year.”

7.9 In his accompanying Explanatory Memorandum of 31 March 2010, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) describes the situation under each Benchmark as follows:

“**Benchmark 1: Independence/accountability of the judicial system:** The Inspectorate to the Supreme Judicial Council (SJC) has continued to register a good track record of inspections producing overall a visible preventative effect among the magistrates. However sanctions imposed were often lenient and cases dismissed when not meeting deadlines.

“Benchmark 2: Transparency/efficiency of judicial process: The Government has introduced several amendments to the Penal Procedure Code. Judicial efficiency has been increased by the use of the instrument of plea-bargaining. However this has led to undue leniency in cases and a consideration of excluding some serious offences from the expedited procedure. No progress has been reported in adopting the new draft Statutory Instruments Act.

“Benchmark 3: Reform of the judiciary: The Supreme Judicial Council (SJC) has adopted an ordinance to improve fairness and objectivity in the giving of appraisal ratings to magistrates. It has also continued to monitor cases of high public interest, and amid allegations of trade in influence and corruption into senior appointments formal disciplinary proceedings were launched against a number of magistrates. The Minister of Justice has proposed an amendment to the Judicial Systems Act to strengthen the disciplinary responsibility of SJC members.

“Benchmark 4: High level corruption: Five additional joint teams will address organised crime cases. By the beginning of March six indictments including for two former ministers have been registered. The capacity for the joint investigative team for the counteraction of EU fraud has been increased and 108 cases have been forwarded to court. Amendments were prepared to the law on the prevention of conflicts of interest. High level corruption cases are currently being investigated but there have been severe delays and there have been no convictions reported during the period covered by this report.

“Benchmark 5: Corruption at borders and in local government: On 18 November 2009 strategy on corruption and organised crime adopted by the Council of Ministers.

“Benchmark 6: Organised crime: Five permanent joint investigation teams announced. These teams, which are led by prosecutors, will focus on organised crime cases.”

Romania

7.10 The Commission says that Romania has not been able to keep the momentum of reform it had established by mid-2009. On the positive side of the equation, the National Anticorruption Directorate (DNA) has continued to maintain a good track-record, the reappointment of the General Prosecutor for a new term is welcomed, and the progress of the National Integrity Agency (ANI) has been consolidated and extended. But the recent electoral period led to delays in the parliamentary discussion of draft civil and criminal procedure codes, “whose adoption will be a vital next step in the reform process.” Moreover, the capacity of the judicial system has been put under further strain by net staff losses and the protests during September. Only limited results can be shown in judicial reform. Jurisprudence in high-level corruption trials remained “inconsistent and not dissuasive.” High-level corruption trials “continued to suffer from procedural delays.” In response to Commission recommendations, there have been “some steps to strengthen the implementation of the national anti-corruption strategy at local level.”

7.11 The Commission describes the “Outlook” thus:

“After a difficult second half of 2009 with limited progress, Romania should in particular aim at a swift adoption of the civil and criminal procedure codes, implementing legislation and impact studies in order to prepare the successful implementation of all new codes. For this purpose, close and constructive cooperation between the different political actors and the judiciary to back the necessary reforms is indispensable and should be considered an issue of national importance.

“The Commission will continue to support Romania in this endeavour and provide its next in-depth assessment of progress by summer this year.”

7.12 In his accompanying Explanatory Memorandum of 31 March 2010, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) describes the situation under each Benchmark as follows:

“**Benchmark 1: *Reform of judicial process.*** Discussions on implementing the Civil and Criminal Codes adopted last year stalled in October and only re-started in February. Preparatory work on the necessary legislation has commenced. Some progress reported in the unification of jurisprudence. No effective improvement has been noted since mid-2009 in the human resourcing of the judiciary. The Superior Council of Magistracy (SCM) has adopted a study of the workload of judges. Judicial inspectors have been recruited since early 2009 but the procedure for recruitment is currently under review to ensure objectivity.

“**Benchmark 2: *Establishment of an integrity agency.*** The encouraging work of the NIA continued in the second half of 2009. 174 additional files have been referred to competent institutions to apply sanctions or pursue criminal investigations. It has also established its interim staffing level and should become fully operational during 2010. All asset and interest declarations are publicly available online.

“**Benchmark 3: *Investigation of high level corruption.*** The DNA has been able maintain a good track record of investigations into high level corruption cases, sending to trial 122 defendants in 45 cases. However penalties for high level corruption still appear to be too lenient. Also trials are too lengthy with all cases involving high level defendants having points referred to the Constitutional Court. While these are generally rejected by the Court it nevertheless leads to trials being suspended, in some cases by more than 6 months.

“**Benchmark 4: *Further measures against corruption including in local government.*** Since mid-2009 some steps were taken to strengthen the coordination and monitoring mechanisms for the national anti-corruption strategy in response to recommendations from the Commission. The local strategies for combating corruption prepared by the county prosecution offices appear to be delivering results with an increase in the number of indictments and investigations (173 indictments involving 273 defendants compared to 81 indictments involving 180 defendants in 2008).

The Government's view

7.13 The Minister welcomes these reports as “a fair and objective assessment of progress.” He notes that “the continuation of a rigorous, transparent and objective monitoring mechanism is essential to support reform in Romania and Bulgaria, as well as ensuring the integrity of EU enlargement policy”.

7.14 With regard to the “slowing of momentum on this issue” brought about by the political situation in Romania, the Minister says that it is “important that the Romanian authorities demonstrate a regaining of momentum during the next six months particularly in the area of justice reform.”

7.15 With regard to Bulgaria, the Minister says only that “the report highlights some positive changes made since the new government took up office.”

7.16 He concludes with the hope that “both countries will take note of the areas in the report where the Commission notes that more remains to be done, with the aim of delivering more concrete progress ahead of the full summer reports.”

Conclusion

7.17 There is a familiar ring in both what the Commission and the Minister for Europe have to say. Yet again, it is very much a case of incremental steps forward, other steps backward, some marking of time, and an overall impression of a continuing lack of sustained commitment by the political class as a whole in both countries.

7.18 As the Committee has noted on a number of previous occasions, its concern is not with a post-mortem on Bulgaria and Romania's accession but, rather, to ensure that the lessons that emerge from it are incorporated into the way in which subsequent accessions are handled, and specifically that of Croatia.

7.19 In its most recent previous Report, the Committee recalled not only its own visit to Croatia in June 2009 but also the evidence it took from the Foreign Secretary on 2 July 2009 on enlargement, with a particular focus on the lessons to be learned, and especially the Commission's earlier judgement that both Bulgaria and Romania needed to demonstrate three things:

- “an autonomously functioning, stable judiciary, which is able to detect and sanction conflicts of interests, corruption and organised crime and preserve the rule of law”;
- “concrete cases of indictments, trials and convictions regarding high-level corruption and organised crime”; and that
- “the legal system is capable of implementing the laws in an independent and efficient way.”

On that occasion, the Committee asked him if he agreed that Croatia needed to meet all of these requirements before it is allowed to accede to the European Union.

7.20 The Foreign Secretary's response is set out in that Report, together with a further letter of 25 July from him, in which he outlined in greater detail the strengthening of

the accession process via the addition of a new Chapter 23 on judicial reform and fundamental rights, within which Member States have to agree unanimously on opening and closing benchmarks, and that they have been met, before the chapter can be opened or closed. There, he noted that the Council has not yet set closing benchmarks and that “when the moment comes we and the EU will certainly want to ensure that they set clear requirements for tackling corruption, including a track record of results”.²¹

7.21 We again draw all this to the attention of the House because of the widespread interest in the enlargement process, particularly in the Balkans, in the hope that we shall be able to report some significant progress in six months time, and in any case that it will be of relevance if and when the time comes to consider an accession treaty concerning Croatia.

7.22 In the meantime, we now clear the documents.

8 Stability and Growth Pact: excessive deficit procedure

(31396) 15765/09 —	Council Recommendation to the United Kingdom with a view to bringing an end to the situation of an excessive government deficit
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<i>Legal base</i>	Article 126(7) TFEU; —; QMV, with the Member State concerned not voting
<i>Deposited in Parliament</i>	9 March 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 22 March 2010
<i>Previous Committee Report</i>	None
<i>Discussed in Council</i>	2 December 2009
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

8.1 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%.²² Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or

²¹ See headnote: (30828) and (30829); 12386/09 and 12388/09: HC 19–xxvi, chapter 22 (10 September 2010).

²² 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.

convergence programme of each Member State.²³ 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.

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

8.3 Twenty Member States, including the UK, are currently in the excessive deficit procedure. The UK was put into the Excessive Deficit Procedure (EDP) on 8 July 2008 and received recommendations proposed by the Commission and endorsed by Council Decision to reduce its deficit and received a further round of revised recommendations in April 2009.²⁴

The document

8.4 This document is the latest set of recommendations to the UK under the EDP. The Council says that the Government should:

- implement the fiscal measures in 2009/10 as planned in the 2009 Budget, avoiding further measures contributing to the deterioration of public finances;
- begin fiscal consolidation in 2010–11; and
- bring the deficit below the 3% reference value by 2014–15 and ensure that the UK's revised fiscal framework limits the risks to the adjustment and, after the excessive deficit has been corrected, underpins sustained budgetary consolidation.

The Government's view

8.5 The Economic Secretary to the Treasury (Ian Pearson) introduces his comments by saying that the Government has always believed in a prudent interpretation of the Stability

23 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.

24 (29931) 11300/08 (29932) 11302/08: see HC 16–xxxii (2007–08), chapter 13 (15 October 2008) and (30582) 7955/09 (30583) 7956/09: see HC 19–xviii (2008–09), chapter 24 (3 June 2009).

and Growth Pact, which takes into account the economic cycle, the long-term sustainability of public finances and the important role of public investment. He then recalls that Article 139 of the Treaty also makes clear that the UK, like all Member States who have not adopted the euro as their currency, cannot have corrective measures imposed on it under the Stability and Growth Pact (in Article 126(9)) nor be made subject to sanctions (such as fines under Article 126(11)) if it does not follow recommendations made under the excessive deficit procedure.

8.6 The Minister then says that:

- the Government has taken a judgment on the appropriate pace of consolidation of the public finances and has set out plans to deliver sustained fiscal consolidation;
- those plans are enshrined in law in the Fiscal Responsibility Act;
- the Act imposes an obligation on the Government to halve the deficit over four years, to reduce borrowing as a share of GDP in each year from 2009–10 to 2015–16 and to ensure that debt is falling in 2015–16;
- the Government is setting a target in secondary legislation under the Act for public sector net borrowing to be 5.5% of GDP or less in 2013–14;
- the 2009 Pre-Budget Report said that the Government would reverse the temporary fiscal stimulus as planned in January 2010 and projected that borrowing would fall as a percentage of GDP from 2009–10 to 2010–11; and
- the 2009 Pre-Budget Report forecast the deficit to peak at 12.6% of GDP in 2009–10, before falling as the economy recovers and the Government takes further action to ensure sustainability, and is forecast to be 4.6% of GDP by 2014–15.

8.7 This document was deposited for scrutiny three months after adoption of the Council Recommendation on 2 December 2009 and, in this connection, the Minister says that:

- the reason for a delay in deposit results from the document's classification as *limité* (restricted);
- although it is dated 30 November 2009 it did not become publicly available until 6 December 2009, after Council agreement;
- as there has been no formal system to notify departments when *limité* documents become publicly available it was not deposited for scrutiny;
- so HM Treasury has assessed the handling of Explanatory Memoranda on Council Decisions and Recommendations related to excessive government deficits (as well as stability and convergence programmes) and will in future produce unnumbered Explanatory Memoranda ten working days after the Council has considered them; and
- this process will ensure that we, and the Lords EU Committee, can consider such documents within a more appropriate timeframe.

Conclusion

8.8 Whilst clearing this document we draw it to the attention of the House as it encapsulates the EU view of the UK's present fiscal situation.

8.9 Although the Minister did not feel it necessary to apologise for the delay in depositing this document, nor those related to other Member States dealt with elsewhere in this report,²⁵ we note his explanation and the arrangement to avoid repetitions — we trust that this will be successful.

9 Financial management

(31419) 7065/10 + ADD1 SEC(10) 178	Commission Report : <i>Member States' replies to the Court of Auditors' 2008 Annual Report:</i>
---------------------------------------------	-------------------------------------------------------------------------------------------------

<i>Legal base</i>	—
<i>Document originated</i>	26 February 2010
<i>Deposited in Parliament</i>	17 March 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 29 March 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No discussion planned
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

9.1 The Commission is obliged to inform Member States of the references to them in the annual reports of the European Court of Auditors and to invite them to respond. The Commission publishes annually a report on those responses.

The document

9.2 In this document the Commission reports on the responses of Member States to the references to them made in the European Court of Auditors' 2008 Annual Report.²⁶ In the report the Commission particularly notes responses to its questionnaire on the follow-up Member States gave to the Court's findings on a number of different issues. The staff

²⁵ See chapter 10.

²⁶ (31201): see HC 5–iv (2009–10), chapter 2 (15 December 2009), HC 5–vii (2009–10), chapter 3 (20 January 2010) and *Stg Co Deb*, 1 February 2010, cols. 3–32.

working document accompanying the report summarises all the general and specific responses from Member States.

9.3 The Commission first recalls the Court's Statement of Assurance, noting that for the second year in a row the overall level of irregularity in the EU budget had decreased and that the EU accounts were reliable, and recapitulating that in relation to areas of shared management, the Court concluded that:

- transactions underlying the agriculture and natural resources (with the exception of the rural development area) expenditure were free from a material level of error —supervisory and control systems were partially effective and, although there were weaknesses in the application of the Integrated Administration and Control System in some Member States, the system had been effective in limiting the risk of error or irregular expenditure;
- in relation to cohesion expenditure, the area most affected by error, there was an error rate of 11%, similar to the situation in 2007 — Member States' systems for correcting errors detected by national controls were in most cases partially effective and further progress had been made in improving the Commission's supervisory and control systems;
- the education and citizenship expenditure area warranted an unqualified opinion and the supervisory and control systems were partially effective as a whole;
- the research, energy and transport policy area and the external aid, development and enlargement policy area were still affected by a material level of error — however, the remedial action taken in the research policy area had led to an overall decrease in the error rate and the supervisory and control systems were partially effective in both policy areas;
- all payments concerning the economic and financial affairs area were free from material error, except those made under the Sixth Framework Programme, and the two systems were effective; and
- for both administrative and other expenditures and revenue, the transactions were free of material error and the supervisory and control systems were effective.

9.4 On the replies of Member States to the Court's findings the Commission says that:

- the quality and detail of the replies varied which in turn determined the extent to which very specific or general information could be provided in its report — eight Member States (including the UK) provided detailed replies and commentaries;
- the Court's findings indicated the three main types of errors found in areas of shared management as accuracy, eligibility and compliance;
- nearly half of all errors were compliance issues and more than half of these centred on the cohesion policy area, and included public procurement errors, publicity issues and lack of public co-financing, and the rest of the errors were evenly split between accuracy and eligibility;

- almost half of all the eligibility error findings were in Spain and Italy and included fund conditions not being met by projects and beneficiaries, procurement errors and inclusion of costs which are not reimbursable;
- the majority of eligibility error findings were again in the cohesion area; and
- Spain, the UK and Germany together accounted for half of all accuracy errors mostly in the area of agriculture and rural development and mainly linked to over-declarations.

9.5 The Commission continues that:

- judging from their replies, the majority of Member States had taken action with regards to both quantifiable and non-quantifiable errors;
- there was little disagreement from Member States with the Court's findings, with only Lithuania and Slovenia disagreeing with more than five;
- the overall assessment of Member States' replies to errors of eligibility showed that actions had been taken for 40% of the eligibility errors and that Member States mostly agreed with the Court's findings in this area;
- in 20% of cases however, Member States disagreed with the Court and no corrective action was taken — this includes an example from the UK, in the area of agriculture;
- with regards to compliance errors, Member States took action in 35% of cases but no action was taken for the remaining 65%;
- Member States disagreed with 21% of the Court's findings;
- the highest level of action was taken for accuracy findings in 54% of cases; and
- lack of complete data from some Member States made it difficult to assess and further evaluate the full extent of actions undertaken or errors disputed.

9.6 The Commission introduces its comments on Member States' replies to its questionnaire by saying that it consisted of five main themes that focused on specific issues in the Court's report — eligibility and specific risks, simplification, financial corrections and recoveries and annual summaries. On the actual responses the Commission says:

- the first three questions, addressed specifically to Member States' Supreme Audit Institutions, were designed to assess the extent of their role in the Courts audit process;
- responses indicated that 19 such institutions define errors of eligibility as a national audit issue, 18 indicated that they played a role in the auditing and overall monitoring of EU funds in the specific Member State and 13 indicated that they played a role in the follow up of errors identified by the Court — nearly all publish EU-related reports or are involved in activities of the Supreme Audit Institutions Contact Committee's working groups;

- on the Court's key recommendation of adapting simplification as a way forward, less than half of the Member States had introduced simplification measures and some stated that new measures were currently underway;
- on the overall increase and decrease in errors over the years, several Member States outlined that the data for such assessments were not available;
- 22 Member States commented that there had been improvements in the information provided on withdrawals and recoveries for 2007 and 2008 due to a number of factors including designated members of staff for the task, additional training for staff members, increase in staff for the such tasks, provision of checklists and guidelines and better information on definitions of irregularities, recovery procedures and timing;
- Member States indicated that they had continued to build capacity with an average of three staff members involved in the task of reporting and recording information on financial corrections;
- Member States commented that they had carried out various types of analyses to identify risky programmes and projects and addressed issues highlighted in a variety of ways, including establishing an annual programme for on-the-spot verifications, amendments in state legislation, action plans and changes to working procedures;
- Member States and the Commission found generally useful the tripartite discussions (between Member States, the Commission and the Court) on the report's findings in the cohesion chapter, which have been ongoing for the past two years;
- on the value of annual summaries on available audits and declarations, some Member States replied that they regarded these as duplicative and an additional administrative burden with limited additional benefits — others suggested further improvements with more information provided on management and control systems and comparable data being made available;
- Member States highlighted some key issues that they considered necessary for continued progress on the sound and efficient financial management of EU funds including increased cooperation between the Court and the Supreme Audit Institutions, increased use and expansion of the Member States' national audit statements on a voluntary basis and systematic introduction of checklists which focuses on assessing the critical issues as regards eligibility;
- Member States were keen on improving audit coordination and would like to have the results of their audits taken into account by the Commission in its own audit work to prevent duplication, relieve the administrative burden on beneficiaries and advance the concept of the single audit approach; and
- most Member States noted the positive trend over the last four years, but some expressed concern that, for the fifteenth consecutive time, the Court had not given

an unqualified State of Assurance and certain Member States requested further improvements in relation to the Court itself.

9.7 The Commission concludes its report by saying that:

- the 2008 State of Assurance indicated that whilst there had been significant improvement with encouraging results, a number of challenges remain for both Member States and the Commission;
- the Court continued to recommend improvements to the supervisory and control systems, as it had done in previous years — this is an ongoing process in which measures will take some time before they can be regarded as effective;
- the Court said Member States needed to make further improvements to the detection and correction of errors and to subsequent recovery procedures and reporting to the Commission;
- the Commission has included this in its action plan to improve its supervisory role in shared management, reported on its first impact assessment in February 2010 and has indicated it will continue to actively implement the action plan;²⁷
- the Court reiterated the need for the Commission to gain assurance from the annual summaries and *ex ante* declarations of all Member States as well as other voluntary initiatives by certain Member States;
- the Commission will explore how to strengthen the added value of the annual summaries in the upcoming triennial revision of the Financial Regulation, for which it will make a proposal in May or June 2010;
- it has been taking steps to improve coordination with Member States and the Court on establishing a common ground for the treatment of various types of errors and, in the area of structural funds, the obligation for audit authorities to provide annual error rates in the 2007–2013 periods provides a way forward;
- the Court assessed that the extent of the Supreme Audit Institutions' reporting on EU funding attested to their increasing role in monitoring EU funds — however, the objectives and the level of comprehensiveness of the reporting activities as well as the methodologies used were very different; and
- the Court highlighted the need to focus on the expenditure areas with a continuously high level of error, which were, in many instances, a result of onerous and complex rules — the Court believes that simplification, cautiously and correctly implemented, should be a high priority.

The Government's view

9.8 The Economic Secretary to the Treasury (Ian Pearson) says that the Government:

²⁷ (29535) 7323/08: see HC 16–xviii (2007–08), chapter 8 (2 April 2008) and (31356) 6806/10: see HC 5–xiv (2009–10), chapter 7 (17 March 2010).

- welcomes this report and considers the Member States' responses useful in understanding the problems being encountered in the management of the EU budget;
- urges the Commission and Member States to continue to work effectively together in finding solutions especially in those areas of expenditure affected by a material level of error, particularly the cohesion policy area;
- considers that the Commission's report helpfully underlines shared views across Member States with regard to the need for progress towards a single audit approach and simplification of onerous rules and regulations; and
- supports the report's references to the importance of Member States actively working to improve systems and processes in those areas of shared management of the EU funds.

Conclusion

9.9 This report gives useful background to the preparation and conclusions of the European Court of Auditors' 2008 Annual Report and more generally to the audit process. Thus, while content to clear the document, we draw it to the attention of the House.

10 Stability and Growth Pact: excessive deficit procedure

- | | |
|---------------------------------|----------------------------------------------------------------------------------------------------------------------|
| (a)
(31376)
15744/09
— | Council Decision on the existence of an excessive deficit in Austria |
| (b)
(31377)
15745/09
— | Council Decision on the existence of an excessive deficit in Belgium |
| (c)
(31378)
15746/09
— | Council Decision on the existence of an excessive deficit in the Czech Republic |
| (d)
(31379)
15747/09
— | Council Decision on the existence of an excessive deficit in Germany |
| (e)
(31380)
15748/09
— | Council Decision on the existence of an excessive deficit in Italy |
| (f)
(31381)
15749/09
— | Council Decision on the existence of an excessive deficit in the Netherlands |
| (g)
(31382)
15750/09
— | Council Decision on the existence of an excessive deficit in Portugal |
| (h)
(31383)
15751/09
— | Council Decision on the existence of an excessive deficit in Slovenia |
| (i)
(31384)
15752/09
— | Council Decision on the existence of an excessive deficit in Slovakia |
| (j)
(31385)
15753/09
— | Council Recommendation to Austria with a view to bringing an end to the situation of an excessive government deficit |

- (k)
(31386)
15754/09
—
Council Recommendation to Belgium with a view to bringing an end to the situation of an excessive government deficit
- (l)
(31387)
15755/09
—
Council Recommendation to the Czech Republic with a view to bringing an end to the situation of an excessive government deficit
- (m)
(31388)
15756/09
—
Council Recommendation to Germany with a view to bringing an end to the situation of an excessive government deficit
- (n)
(31389)
15757/09
—
Council Recommendation to Italy with a view to bringing an end to the situation of an excessive government deficit
- (o)
(31390)
15759/09
—
Council Recommendation to Portugal with a view to bringing an end to the situation of an excessive government deficit
- (p)
(31391)
15760/09
—
Council Recommendation to Slovenia with a view to bringing an end to the situation of an excessive government deficit
- (q)
(31392)
15761/09
—
Council Recommendation to Slovakia with a view to bringing an end to the situation of an excessive government deficit
- (r)
(31393)
15762/09
—
Council Recommendation to France with a view to bringing an end to the situation of an excessive government deficit
- (s)
(31394)
15763/09
—
Council Recommendation to Ireland with a view to bringing an end to the situation of an excessive government deficit
- (t)
(31395)
15764/09
—
Council Recommendation to Spain with a view to bringing an end to the situation of an excessive government deficit

(u) (31397) 15758/09 —	Council Recommendation to the Netherlands with a view to bringing an end to the situation of an excessive government deficit
(v) (31398) 15766/09 —	Council Decision establishing whether effective action has been taken by Greece in response to the Council Recommendation of 27 April 2009

<i>Legal base</i>	(a)-(i) Article 126(6) TFEU; —; QMV, with the Member State concerned not voting (j)-(u) Article 126(7) TFEU; —; QMV, with the Member State concerned not voting (v) Article 126(8) TFEU; —; QMV, with the Member State concerned not voting
<i>Deposited in Parliament</i>	9 March 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 22 March 2010
<i>Previous Committee Report</i>	None
<i>Discussed in Council</i>	2 December 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

10.1 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%.²⁸ Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State.²⁹ 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.

10.2 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

²⁸ 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.

²⁹ 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.

provided for in Article 126 TFEU and the relevant Protocol. This procedure consists of Commission reports followed by a stepped series of Council Recommendations (the final two steps do not apply to non-members of the eurozone). Failure to comply with the final stage of Recommendations allows ECOFIN to require publication of additional information by the Member State concerned before issuing bonds and securities, to invite the European Investment Bank to reconsider its lending policy for the Member State concerned, to require a non-interest-bearing deposit from the Member State concerned whilst its deficit remains uncorrected, or to impose appropriate fines on the Member State concerned.

The documents

10.3 On 2 December 2009 the ECOFIN Council adopted Decisions and Recommendations for a number of Member States new to the excessive deficit procedure and adopted revised Recommendations for those already in the procedure.

10.4 In relation to Austria the Council adopted a Decision and a Recommendation, documents (a) and (j). In the Decision the Council noted that:

- according to Austrian data the general government deficit is planned to reach 3.9% of GDP in 2009, thus above and not close to the reference value of 3%;
- the excess over the reference value can be deemed exceptional as it results from, among other things, a severe economic downturn, in Treaty and Stability and Growth Pact terms;
- the Commission's 2009 Autumn forecast projects that the deficit is expected to increase to 5.5% in 2010, before it declines slightly to 5.3% in 2011 — therefore the deficit criterion is not fulfilled cannot be considered temporary;
- according to Austrian data the general government gross debt is planned to stand at 68.2% of GDP in 2009;
- the Autumn 2009 forecast projects this to increase to 77% of GDP in 2011;
- according to Council Regulation 1467/97, “relevant factors” can only be taken into account if the deficit remains close to the reference value and is temporary;
- this double condition is not deemed to exist in the case of Austria; and
- therefore the Council considered that Austria is in excessive deficit.

In the Recommendation the Council said Austria should:

- consolidate on a medium-term framework by 2013;
- ensure an average annual fiscal effort of 0.75% of GDP over the period 2010–2013;
- accelerate the reduction of the deficit and the gross debt value if there is any improvement in economic conditions; and
- take effective action by 2 June 2010.

10.5 In relation to Belgium the Council adopted a Decision and a Recommendation, documents (b) and (k). In the Decision the Council noted that:

- according to Belgian data the general government deficit reached 59% of GDP in 2009, thus exceeding (and not close to) the 3% of GDP reference value;
- the excess over the reference value can be deemed exceptional as it results from, among other things, a severe economic downturn, in Treaty and Stability and Growth Pact terms;
- the Commission's Autumn 2009 forecast projects that the deficit is expected to stabilise at 5.8% of GDP in 2010 and 2011 — therefore the deficit cannot be considered temporary;
- in 2008 general government debt reached 90% largely as a result of interventions in the financial sector;
- according to Belgian data the general government gross debt is planned to stand at 97.6% of GDP in 2009;
- the Autumn 2009 forecast projects this to increase to 101% in 2010 and 104% in 2011;
- according to Council Regulation 1467/97, the Regulation governing implementation of the excessive deficit procedure, "relevant factors" can only be taken into account if the deficit remains close to the reference value and is temporary;
- this double condition is not deemed to exist in the case of Belgium; and
- therefore the Council considered that Belgium is in excessive deficit.

In the Recommendation the Council said Belgium should:

- correct the deficit by 2012 on the basis of a multi-annual path of consolidation;
- ensure an average annual fiscal effort of 0.75% of GDP over the period 2010–2012;
- use any windfalls from an improvement in economic conditions to accelerate the reduction of the deficit; and
- take effective action by 2 June 2010.

10.6 In relation to the Czech Republic the Council adopted a Decision and a Recommendation, documents (c) and (l). In the Decision the Council noted that:

- according to Czech data the general government deficit is planned to reach 6.6% of GDP in 2009, thus above and not close to the reference value of 3%;
- the excess over the reference value can be deemed exceptional as it results from, among other things, a severe economic downturn, in Treaty and Stability and Growth Pact terms;

- the Commission's 2009 Autumn forecast projects that the deficit is expected to reach 5.5% of GDP in 2010 and 5.7% in 2011 — therefore the deficit cannot be considered temporary;
- in 2008 general government debt remained well below the 60% of GDP reference value;
- according to Czech data the general government gross debt is planned to stand at 35.5% of GDP in 2009;
- the Autumn 2009 forecast projects this to increase to 44% of GDP in 2011;
- according to Council Regulation 1467/97, “relevant factors” can only be taken into account if the deficit remains close to the reference value and is temporary;
- this double condition is not deemed to exist in the case of the Czech Republic; and
- therefore the Council considered that the Czech Republic is in excessive deficit.

In the Recommendation the Council said the Czech Republic should:

- consolidate on a medium-term framework by 2013;
- ensure an average annual fiscal effort of 1% of GDP over the period 2010–2013;
- use any windfalls from an improvement in economic conditions to accelerate the reduction of the deficit;
- rigorously enforce its medium-term budgetary framework and improve the monitoring of budgetary execution to avoid overruns compared to budget and multi-annual plans;
- pursue structural reforms in the pension and healthcare systems; and
- take effective action by 2 June 2010.

10.7 In relation to Germany the Council adopted a Decision and a Recommendation, documents (d) and (m). In the Decision the Council noted that:

- according to German data the general government deficit is planned to reach 3.7% of GDP in 2009, thus above and not close to the reference value of 3%;
- the excess over the reference value can be deemed exceptional as it results from, among other things, a severe economic downturn, in Treaty and Stability and Growth Pact terms;
- the Commission's 2009 Autumn forecast projects that the deficit is expected to reach 5.0% of GDP in 2010 and 4.6% in 2011 — therefore the deficit cannot be considered temporary;
- according to German data the general government gross debt is planned to stand at 74.2% of GDP in 2009;

- the Autumn 2009 forecast projects this to increase to 79.7% of GDP in 2011;
- according to Council Regulation 1467/97, “relevant factors” can only be taken into account if the deficit remains close to the reference value and is temporary;
- this double condition is not deemed to exist in the case of Germany; and
- therefore the Council considered that Germany is in excessive deficit.

In the Recommendation the Council said Germany should:

- consolidate on a medium-term framework by 2013;
- ensure an average annual fiscal effort of 0.5% of GDP over the period 2010–2013;
- use any windfalls from an improvement in economic conditions to accelerate the reduction of the deficit; and
- take effective action by 2 June 2010.

10.8 In relation to Italy the Council adopted a Decision and a Recommendation, documents (e) and (n). In the Decision the Council noted that:

- according to Italian data the general government deficit is planned to reach 5.3% of GDP in 2009, thus above and not close to the reference value of 3%;
- the excess over the reference value can be deemed exceptional as it results from, among other things, a severe economic downturn, in Treaty and Stability and Growth Pact terms;
- the Commission’s 2009 Autumn forecast projects that the deficit is expected to increase further in 2010 — therefore the deficit cannot be considered temporary;
- according to Italian data the general government gross debt is planned to stand at 115.1% of GDP in 2009;
- the Autumn 2009 forecast projects this to increase to 117.8% of GDP in 2011;
- according to Council Regulation 1467/97, “relevant factors” can only be taken into account if the deficit remains close to the reference value and is temporary;
- this double condition is not deemed to exist in the case of Italy; and
- therefore the Council considered that Italy is in excessive deficit.

In the Recommendation the Council said Italy should:

- consolidate on a medium-term framework by 2012;
- ensure an average annual fiscal effort of 0.5% of GDP over the period 2010–2012;
- use any windfalls from an improvement in economic conditions to accelerate the reduction of the deficit; and

- take effective action by 2 June 2010.

10.9 In relation to the Netherlands the Council adopted a Decision and a Recommendation, documents (f) and (u). In the Decision the Council noted that:

- according to Dutch data the general government deficit is planned to reach 4.8% of GDP in 2009, thus above and not close to the reference value of 3%;
- the excess over the reference value can be deemed exceptional as it results from, among other things, a severe economic downturn, in Treaty and Stability and Growth Pact terms;
- the Commission's 2009 Autumn forecast projects that the deficit is expected to increase to 6.1% in 2010, before it declines slightly to 5.6% in 2011 — therefore the deficit cannot be considered temporary;
- according to Dutch data the general government gross debt is planned to stand at 59.7% of GDP in 2009;
- the Autumn 2009 forecast projects this to increase to 70% of GDP in 2011;
- according to Council Regulation 1467/97, “relevant factors” can only be taken into account if the deficit remains close to the reference value and is temporary;
- this double condition is not deemed to exist in the case of the Netherlands; and
- therefore the Council considered that the Netherlands is in excessive deficit.

In the Recommendation the Council said the Netherlands should:

- consolidate on a medium-term framework by 2013;
- ensure an average annual fiscal effort of 0.75% of GDP over the period 2010–2012;
- accelerate the reduction of the deficit if there is any improvement in economic conditions; and
- take effective action by 2 June 2010.

10.10 In relation to Portugal the Council adopted a Decision and a Recommendation, documents (g) and (o). In the Decision the Council noted that:

- according to Portuguese data the general government deficit is planned to reach 5.9% of GDP in 2009, thus above and not close to the reference value of 3%;
- the excess over the reference value can be deemed exceptional as it results from, among other things, a severe economic downturn, in Treaty and Stability and Growth Pact terms;
- the Commission's 2009 Autumn forecast projects that the deficit is expected to increase to 8% in 2010, with no improvement thereafter — therefore the deficit criterion is not fulfilled cannot be considered temporary;

- according to Portuguese data the general government gross debt is planned to stand at 74.5% of GDP in 2009;
- the Autumn 2009 forecast projects this to increase to 91.1% of GDP in 2011;
- according to Council Regulation 1467/97, “relevant factors” can only be taken into account if the deficit remains close to the reference value and is temporary;
- this double condition is not deemed to exist in the case of Portugal; and
- therefore the Council considered that Portugal is in excessive deficit.

In the Recommendation the Council said Portugal should:

- consolidate on a medium-term framework by 2013;
- ensure an average annual fiscal effort of 1.25% of GDP over the period 2010–2013;
- accelerate the reduction of the deficit and the gross debt value if there is any improvement in economic conditions;
- strengthen the enforceable nature of its medium-term budgetary framework and improve the monitoring of budgetary execution; and
- take effective action by 2 June 2010.

10.11 In relation to Slovenia the Council adopted a Decision and a Recommendation, documents (h) and (p). In the Decision the Council noted that:

- according to Slovenian data the general government deficit is planned to reach 5.9% of GDP in 2009, thus above and not close to the reference value of 3%;
- the excess over the reference value can be deemed exceptional as it results from, among other things, a severe economic downturn, in Treaty and Stability and Growth Pact terms;
- the Commission’s 2009 Autumn forecast projects that the deficit is expected to increase to 7% in 2011, with no improvement thereafter — therefore the deficit criterion is not fulfilled cannot be considered temporary;
- according to Slovenian data the general government gross debt is planned to stand at 34.2% of GDP in 2009;
- the Autumn 2009 forecast projects this to increase to 48% of GDP in 2011;
- according to Council Regulation 1467/97, “relevant factors” can only be taken into account if the deficit remains close to the reference value and is temporary;
- this double condition is not deemed to exist in the case of Slovenia; and
- therefore the Council considered that Slovenia is in excessive deficit.

In the Recommendation the Council said Slovenia should:

- consolidate on a medium-term framework by 2013;
- ensure an average annual fiscal effort of 0.75% of GDP over the period 2010–2013;
- accelerate the reduction of the deficit and the gross debt value if there is any improvement in economic conditions;
- reform the pension system, with a view to the long-term sustainability of public finances; and
- take effective action by 2 June 2010.

10.12 In relation to Slovakia the Council adopted a Decision and a Recommendation, documents (i) and (q). In the Decision the Council noted that:

- according to Slovakian data the general government deficit is planned to reach 6.3% of GDP in 2009, thus above and not close to the reference value of 3%;
- the excess over the reference value can be deemed exceptional as it results from, among other things, a severe economic downturn, in Treaty and Stability and Growth Pact terms;
- the Commission's 2009 Autumn forecast projects that the deficit is expected to increase to 6% in 2010, with no improvement thereafter — therefore the deficit criterion is not fulfilled cannot be considered temporary;
- according to Slovakian data the general government gross debt is planned to stand at around 30% of GDP in 2009;
- the Autumn 2009 forecast projects this to increase to 42.7% of GDP in 2011;
- according to Council Regulation 1467/97, “relevant factors” can only be taken into account if the deficit remains close to the reference value and is temporary;
- this double condition is not deemed to exist in the case of Slovakia; and
- therefore the Council considered that Slovakia is in excessive deficit.

In the Recommendation the Council said Slovakia should:

- consolidate on a medium-term framework by 2013;
- ensure an average annual fiscal effort of 1% of GDP over the period 2010–2013;
- accelerate the reduction of the deficit and the gross debt value if there is any improvement in economic conditions; and
- take effective action by 2 June 2010.

10.13 In relation to France the Council adopted a Recommendation, document (r). In the Recommendation the Council noted that:

- in April 2009 it had decided that an excessive deficit existed in France;

- France was issued with a Recommendation to correct its excessive deficit by 2012, implying an average annual fiscal effort of at least 1% over the period 2010–201;
- the deficit in France is now expected to reach 8.25% of GDP in 2009, compared to the 5.6% in the January 2009 interim forecast;
- government gross debt is forecast to increase to 91.25% in 2013;
- overall effective action has been taken by France in response to the April 2009 Recommendation;
- given, however, the deterioration in the growth outlook for the coming year, unexpected adverse economic events with unfavourable consequences for government finances are deemed to have occurred after adoption of that Recommendation; and
- on this basis revised recommendations are deemed to be justified.

So the Council continued that France should:

- bring the deficit below the 3% of GDP reference value in a medium-term framework by 2013;
- ensure an average annual fiscal effort of above 1% of GDP over the period 2010–2013; and
- take effective action by 2 June 2010.

10.14 In relation to Ireland the Council adopted a Recommendation, document (s). In the Recommendation the Council noted that:

- in April 2009 it had decided that an excessive deficit existed in Ireland;
- Ireland was issued with a Recommendation to correct its excessive deficit by 2013, implying an average annual fiscal effort of 1.5% over the period 2010–2013;
- the deficit in Ireland is now expected to reach 14.7% of GDP in 2010, compared to the 13% in the January 2009 interim forecast;
- government gross debt is forecast to increase to 96% in 2011;
- overall effective action has been taken by Ireland in response to the April 2009 Recommendation;
- given, however, the deterioration in the growth outlook for the coming year, unexpected adverse economic events with unfavourable consequences for government finances are deemed to have occurred after adoption of that Recommendation; and
- on this basis revised recommendations are deemed to be justified.

So the Council continued that Ireland should:

- bring the deficit below the 3% of GDP reference value in a medium-term framework by 2014;
- ensure an average annual fiscal effort of 2% of GDP over the period 2010–2014;
- strengthen the enforceable nature of its medium-term budgetary framework and closely monitor the adherence to the budgetary targets throughout the year, so as to limit risks to the adjustment;
- pursue further reforms to the social security system as soon as possible, so as to reduce risks to the long-term sustainability of public finances; and
- take effective action by 2 June 2010.

10.15 In relation to Spain the Council adopted a Recommendation, document (t). In the Recommendation the Council noted that:

- in April 2009 it had decided that an excessive deficit existed in Spain;
- Spain was issued with a Recommendation to correct its excessive deficit by 2012, implying an average annual fiscal effort of 1.25% over the period 2010–2013;
- the deficit in Spain is now expected to reach 11.2% of GDP in 2009, compared to the 6.2% in the January 2009 interim forecast;
- government gross debt is forecast to increase to 74% in 2011;
- overall effective action has been taken by Spain in response to the April 2009 Recommendation;
- given, however, the deterioration in the growth outlook for the coming year, unexpected adverse economic events with unfavourable consequences for government finances are deemed to have occurred after adoption of that Recommendation; and
- on this basis revised recommendations are deemed to be justified.

So the Council continued that Spain should:

- bring the deficit below the 3% of GDP reference value in a medium-term framework by 2013;
- ensure an average annual fiscal effort of 1.5% of GDP over the period 2010–2013; and
- take effective action by 2 June 2010.

10.16 In relation to Greece the Council adopted a Decision, document (r). In the Decision the Council noted that:

- in April 2009 it had decided that an excessive deficit existed in Greece;

- Greece was issued with a Recommendation to put an end to the situation by 2010 at the latest, taking effective action by 27 October 2009 at the latest;
- Greece's progress in improving the collection of statistical data deficient;
- revision of the October 2009 fiscal notification had not been received due to uncertainties over the figures presented;
- the procedures in place to ensure that this data is supplied in accordance with the legal framework were considered to be manifestly inadequate;
- although the deficit reducing measures included in the 2009 update of the Greek Stability Programme had been implemented the deterioration in the government finances was, as a result of the stronger-than-expected downturn, more pronounced than could have been expected;
- the additional deficit-reducing measures announced in June 2009 were yet to be implemented and these were not permanent measures as recommended in the April 2009 Recommendation;
- the fiscal consolidation measures implemented in 2009 were not sufficient to achieve the general government deficit target of 3.7% of GDP in 2009;
- the large projected increase in the debt-to-GDP ratio exceeded the impact of the deterioration in the general government's borrowing position, indicating insufficient efforts to control factors other than net borrowing; and
- overall Greece had not taken effective action in response to the April 2009 Recommendation.

The Government's view

10.17 The Economic Secretary to the Treasury (Ian Pearson) says that:

- the Government believes in a prudent interpretation of the Stability and Growth Pact;
- the European Council has agreed that the flexibility provided for in the Stability and Growth Pact should be used in the current exceptional circumstances;
- this is important, not only in allowing space for fiscal policy to support the economy in the short-term, but also in ensuring an appropriate pace of consolidation over the medium-term; and
- the Government therefore supports, where appropriate, a medium-term framework for Member States to address their excessive deficits.

10.18 These documents were deposited for scrutiny three months after adoption of the Council Decisions and Recommendations on 2 December 2009 and, in this connection, the Minister says that:

- the reason for a delay in deposit results from the documents' classification as *limité* (restricted);
- although they are dated 30 November 2009 they did not become publicly available until 6 December 2009, after Council agreement;
- as there has been no formal system to notify departments when *limité* documents become publicly available they were not deposited for scrutiny;
- so HM Treasury has assessed the handling of Explanatory Memoranda on Council Decisions and Recommendations related to excessive government deficits (as well as stability and convergence programmes) and will in future produce unnumbered Explanatory Memoranda ten working days after the Council has considered them; and
- this process will ensure that we, and the Lords EU Committee, can consider such documents within a more appropriate timeframe.

Conclusion

10.19 Whilst clearing these documents we draw them to the attention of the House for the information they give about the present fiscal situation of the Member States concerned.

10.20 Although the Minister did not feel it necessary to apologise for the delay in depositing these documents, nor the one related to the UK dealt with elsewhere in this report,³⁰ we note his explanation and the arrangement to avoid repetitions — we trust that this will be successful.

30 See chapter 9.

11 Standing of victims in criminal proceedings

(30638) 9808/09 COM(09) 166	Commission Report on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)
+ ADD1	Commission Staff Working Document — accompanying document to the Commission’s report

<i>Legal base</i>	—
<i>Department</i>	Justice
<i>Basis of consideration</i>	Minister’s letter of 25 March 2010
<i>Previous Committee Report</i>	HC 19–xxiv (2008–09), chapter 6 (15 July 2009)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Cleared

Background

11.1 The Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings sets out a number of rights attaching to victims in criminal proceedings and for their protection and compensation. These include the possibility of testifying in court (Article 3); the right to receive various types of information relevant to the protection of victims (Article 4); the right to advice concerning the role of victims in proceedings (Article 6); reimbursement of expenses (Article 7); the right to a suitable level of protection for victims and their families (Article 8); and the right to compensation (Article 9).

11.2 Article 18 of the Framework Decision requires each Member State to forward to the Council and the Commission the text of the provisions enacting its requirements into national law. The Council is to assess the measures taken by the Member States by means of a report from the General Secretariat of the Council based on information provided by the Member States and a written report from the Commission.

The Commission’s report

11.3 The document under scrutiny is the Commission’s second report pursuant to Article 18 of the Framework Decision. In it the Commission concludes that the implementation of the Framework Decision is unsatisfactory: national legislation in Member States contains numerous omissions and largely reflects legislation adopted prior to the Framework Decision coming into force. The aim of harmonising legislation in this field has therefore not been achieved. Moreover, many of the provisions have been implemented through non-binding guidelines and recommendations, so the Commission could not assess whether these had been adhered to in practice. The Commission invited Member States to consider the report and provide all further relevant information.

Previous scrutiny

11.4 In our meeting of 15 July 2009 we reported on the Government's response to the Commission's report. The Parliamentary Under-Secretary of State at the Ministry of Justice (Lord Bach) told us that, overall, there were a number of issues on which the Commission's report either did not reflect the current position in the UK or was mistaken in its assessment of implementation.³¹ Although updated information on the UK's transposition of the Framework Decision was sent to the Commission during 2008, the report did not entirely reflect this. The Minister informed us that the Government would be writing to the Commission and the Council, as invited in the report, to provide them with the latest information on the UK's implementation of the Framework Decision.

11.5 We found it surprising that the Commission's report should have misconstrued so many national provisions in relation to victims in criminal proceedings, and queried the value that could be placed on it as a consequence. We asked to be made aware of the Commission's response to the Minister's letter before clearing the Commission report from scrutiny.

Minister's letter of 25 March 2010

11.6 The Minister apologises for not having been able to respond sooner. Following publication of the Commission's report, officials gathered detailed evidence of the UK's compliance with every Article in the 2001 Framework Decision. This evidence covered procedures in England and Wales, Scotland and Northern Ireland. It was then submitted to the Commission in December 2009.

11.7 The Commission has now responded to the Government's submission of additional evidence. It has said that although it will not be issuing a revised version of the report, it is currently carrying out research in order to draft a new instrument in support of victims, to be proposed in 2011. The Commission's response concluded that the UK's submission of additional evidence would be "very much valued as part of this process". As a result, the Minister is confident that the UK's position with regards to support for victims will be reflected "accurately and in full" in the Commission's preparations for a new instrument. He hopes that this response will reassure the Committee that its concerns about the inaccuracies in the Commission's original report have been acknowledged and acted upon.

Conclusion

11.8 We thank the Minister for his letter. We are disappointed that the Commission's erroneous assessment of the UK's implementation of this Framework Decision could not be put right in a revised report, but we note the Government's submission of evidence will be taken into account in the proposal for a new Directive on the standing of victims in criminal proceedings, which the Commission intends to launch next year.

11.9 We now clear the Commission's report from scrutiny.

³¹ Full details of these are set out in paragraphs 6.14–6.21 of the Committees' Report (HC 19–xxiv (2008–09), chapter 6 (15 July 2009)).

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

2. 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 7.22 read and agreed to.

Paragraph 8, Headnote read. Amendment proposed, in line 123, to leave out the word “Cleared” and to insert the words “For debate in European Committee B”—(*Mr William Cash*.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash

Mr James Clappison

Kelvin Hopkins

Noes, 4

Mr Adrian Bailey

Jim Dobbin

Keith Hill

Mr Bob Laxton

Paragraph 8.1 to 11.9 read and agreed to.

Resolved, That the Report be the Nineteenth 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*)