



House of Commons
European Scrutiny Committee

**Third Report of Session
2010–11**

**Documents considered by the Committee on 13 October 2010,
including the following recommendation for debate:**

European Security and Defence Policy: EULEX Kosovo

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 13 October 2010*

HC 428-iii

Published on 27 October 2010
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Staff

The staff of the Committee are Alistair Doherty (Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Leigh Gibson (Clerk Adviser), Peter Harborne (Clerk Adviser), Paul Hardy (Legal Adviser) (Counsel for European Legislation), Hannah Lamb (Senior Committee Assistant), Sarah Colebrook (Committee Assistant), Mrs Keely Bishop (Committee Assistant), Shane Pathmanathan (Committee Support Assistant), Mrs Anna Browning (Committee Assistant), Jim Camp (Committee Assistant) and Paula Saunderson (Office Support Assistant).

Contacts

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

Contents

Report			<i>Page</i>
Documents for debate			
1	FCO	(31984) European Security and Defence Policy: EULEX Kosovo	3
Documents not cleared			
2	BIS	(30708) Internet Governance	9
3	DFT	(31841) Vehicle type approval	17
4	FCO	(31912) EU Relations with Fiji	21
5	HMRC	(31717) Customs and financial management	26
6	HMT	(31644) (31998) Draft Budget 2011	30
7	HMT	(31816) (31818) (31836) Financial services	45
8	HMT	(31843) Financial services	57
9	HO	(31932) Implementation of the Asylum Procedures Directive	60
10	HO	(31801) (31802) Seasonal Workers and Intra-corporate Transfers	65
Documents cleared			
11	DH	(30293) Preventing the counterfeiting of medicinal products	73
12	DH	(31893) Nuclear Medicine	78
13	DWP	(31925) European Year for Active Ageing	82
14	FCO	(31586) EU law and the Sovereign Base Areas	85
15	FCO	(31937) Restrictive measures against Iran	88
16	FCO	(31941) Restrictive measures against the leadership of the Transnistrian region of the Republic of Moldova	95
17	FCO	(32019) EU relations with Belarus	101
18	FCO	(32020) EU restrictive measures against the Republic of Guinea	110
19	FCO	(26607) (30107) (30108) EU-Russia relations	115
		Annex: Joint Statement on the Partnership for Modernisation	128
20	MOD	(31527) European Defence Agency	130
21	ONS	(31518) (31772) Statistics	134

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

22 List of documents 138

Formal minutes 142

Standing order and membership 143

1 European Security and Defence Policy: EULEX Kosovo

(31984)	Council Decision amending Joint Action 2008/124/CFSP on the
—	European Union Rule of Law Mission in Kosovo, EULEX KOSOVO
—	

<i>Legal base</i>	Articles 28 and 43 (2) TEU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 29 September 2010
<i>Previous Committee Report</i>	None; but see HC 428–i (2010–11), chapter 4 (8 September 2010); also see (30652) — HC19 xviii (2008–09), chapter 20 (3 June 2009); and (29379) — and (29380) — : HC 16–x (2007–08), chapter 10 (30 January 2008)
<i>To be discussed in Council</i>	8 October 2010 Justice and Home Affairs Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; for debate in European Committee B alongside (31677), (decision reported 8 September 2010)

Background

1.1 On 30 January 2008, the previous Committee cleared two Joint Actions:

- establishing a European Security and Defence Policy crisis management operation in the field of rule of law in Kosovo; and
- on the appointment and mandate of the European Union’s Special Representative in Kosovo.

1.2 The previous Committee’s reports outline the wider context via which Kosovo moved to independence in 2008, and rehearse the history of the EU’s role in post-conflict Kosovo:¹

- first, as part of the UN Interim Administration Mission in Kosovo, or UNMIK (where the UN led on Police and Justice and Civil Administration, the OSCE led on Democratization and Institution Building and the EU led on Reconstruction and Economic Development); and
- latterly, through the International Civilian Representative (ICR)/EU Special Representative (EUSR) and this civilian ESDP mission, EULEX Kosovo. There was also to be an OSCE mission to support Kosovo’s democratic transition. NATO’s 16,000-strong Kosovo Force (KFOR) would guarantee security.

¹ See headnote.

1.3 The ICR/EUSR, Mr Peter Feith, had a long track record of crisis management in both NATO and the EU and had been closely involved with Kosovo for 10 years. He was to be “the channel for the EU’s advice and support to the political process, promoting EU political coordination in Kosovo, ensuring a coherent public message, and contributing to the consolidation of human rights and fundamental freedoms in Kosovo.” With 2,200 international civilians, EULEX Kosovo was to be the largest civilian ESDP mission to date. It would focus on local ownership and capacity building, through mentoring, monitoring and advice, and aim to advance the goal of a stable, viable, peaceful, democratic, multi-ethnic Kosovo, contributing to regional cooperation and stability and committed to the rule of law and to the protection of minorities.

1.4 The Joint Action² establishing the mission in 2008 provided funding until June 2009. In June 2009, the previous Committee considered a further Joint Action providing funding until the end of mandate in June 2010.

1.5 On 8 September, the Committee considered a Council Decision³ extending EULEX Kosovo’s mandate for a further two years. In his covering Explanatory Memorandum of 2 June 2010, the Minister for Europe (David Lidington) also took the opportunity to outline, and comment upon, some recent changes to EULEX Kosovo’s Operational Plan.

1.6 The Minister said that since assuming the lead on rule of law issues from the UN Mission in Kosovo (UNMIK) and becoming operational on 9 December 2008, EULEX had in his estimation made significant progress. He supported the extension of the mandate for two years and believed that EULEX has “an indispensable role to play”, describing it as “an important international presence in enabling Kosovo to meet EU standards in rule of law and key in tackling organised crime and corruption, which is exported from Kosovo throughout the EU” and now being “the main mechanism to help Kosovo achieve reform in these fields”. A two year mandate extension was “important in providing continuity and increased stability in Kosovo, and the central sign of EU commitment to improving the rule of law in Kosovo in order to support its European perspective.”

1.7 But the mission would need “to deliver the more high profile results that international partners and Kosovans would like to see [and] tackle more effectively the challenges of organised crime and corruption.” Delivering results in the north, a Serb-majority area of Kosovo, would be very important to EULEX’s credibility with the people of Kosovo. To have greater effect, it would be “essential that the mission develops a sharper strategic focus centred on its long term goals, with realistic interim benchmarks of what it will achieve [and] enhanced awareness of the political ramifications of the mission’s technical decisions.” The mission would also need to “ensure that the different components are all pulling together in the same strategic direction and working effectively with each other.”

1.8 Finally, the Minister said:

“In order for the mission to make further progress against its objectives in the next two years, support from Member States and EU Institutions is key. Continued cooperation and coordination with all other actors in theatre, in particular the

2 The pre-Lisbon Treaty term of art.

3 The post-Lisbon Treaty equivalent.

double-hatted EU Special Representative and International Civilian Representative, is crucial to the mission delivering results.”

1.9 With regard to the *Financial Implications*, the Minister said that funding for the technical extension until 14 October 2010 would come from under-spends in the current mission budget of €265 million; and that funding for the mission thereafter would be agreed in the autumn. He also noted that the UK currently provided funding for 31 personnel in the Mission.

1.10 The Minister concluded by noting that this Council Decision would be submitted for agreement to the ECOFIN Council on 8 June 2010.

Our assessment

1.11 We said that it was hard to dispute the view that improving the rule of law in Kosovo is central to stability in the Western Balkans; and that, as the Minister noted, with the ending of UNMIK, EULEX Kosovo was now the only show in town when it comes to helping Kosovo achieve reform in this field. However, though implicit, there were a number of disturbing features in what the Minister said about the changes to EULEX Kosovo’s Operational Plan — not in the sense that the proposals were in any obvious sense misguided, but in the sense that only now were they being brought into being.

1.12 We felt that, to say that the Mission now needed a sharper strategic focus centred on its long term goals, with realistic interim benchmarks of what it could achieve, coupled with an enhanced awareness of the political ramifications of the mission’s technical decisions, strongly suggested that all of this had been lacking over the past year or more. Likewise with the establishment of a mechanism to inform the Head of Mission’s decision making via enhanced “situational awareness and analysis”; if the mission “must also ensure that the different components are all pulling together in the same strategic direction and working effectively with each other”, we felt bound to wonder about the effectiveness of its leadership thus far. And also to wonder why, only now, were mechanisms being established “to enhance cross-component cooperation and the strategic direction of EULEX, particularly relating to organised crime.”

1.13 We were also unclear as to precisely what the Minister means when he referred to “support from Member States and EU Institutions [as] key” — the suggestion being that this had been lacking. And when he talked of “continued cooperation and coordination with all other actors in theatre, in particular the double-hatted EU Special Representative and International Civilian Representative as being “crucial to the mission delivering results”, we were again unclear as to what cooperation had been lacking with whom, and why, and who it was that was, presumably, failing to cooperate and coordinate with the EUSR/ICR.

1.14 We felt that this ambiguity might, of course, be hinting at a wider backdrop, namely the major countries and five European Union members who still refuse to recognise Kosovo’s independence; the reference by Serbia of Kosovo’s declaration of independence to the International Court of Justice in The Hague, leaving open the possibility of an advisory opinion whose ambiguity might encourage Serbia to ask the United Nations General Assembly to pass a resolution demanding new talks on Kosovo’s status; and well-informed

media discussion of many Kosovars being “happy to be shot of their indigestible north”, with talk of trading it for Albanian-inhabited parts of south Serbia, while many Serbs believed that their country could give up its claim on Kosovo south of the Ibar river.⁴ Even if exaggerated, it seemed that the political undercurrents in Kosovo were such that, regardless of the proposed internal administrative changes, EULEX Kosovo would continue to have a very hard row to hoe.

1.15 At a more practical level, we were also puzzled as to how a budget that the then Minister for Europe told the previous Committee in June 2009 would be a total of €145 million from then until the expiry of the mission’s mandate on 14 June 2010 had now grown to €265 million.

1.16 Even though, by then, this Council Decision had been adopted, we felt that the Council Decision should nonetheless be debated in the European Committee, so that the new Minister for Europe might have the opportunity to respond to our observations and interested Members be given the opportunity of raising with him any concerns of their own about Kosovo and the EU’s role there.⁵

The draft Council Decision

1.17 In his Explanatory Memorandum of 29 September 2010, the Minister for Europe (David Lidington) says that this further Council Decision sets out funding of €165 Million for EULEX Kosovo between 15 October 2010 and 14 October 2011.

1.18 He goes on to say that:

“The current total mission budget, set until 14 October 2010, is €265 million. This includes allocations of €120 million to fund EULEX between June 2008 and November 2009, and €145 million until June 2010. Underspends from the budget to June have been used to extend the funding period until 14 October 2010. The mission’s required budget has increased since it achieved Full Operating Capability in March 2009 and took up the full range of its mandate.”

1.19 Further funding will, the Minister says, “be allocated to the mission at a later date, for the period of its mandate after 14 October 2011.”

The Government’s view

1.20 The Minister reiterates his support for EULEX Kosovo and its “vital role in enabling the Kosovan rule of law institutions to reach EU standards.” As an example of the “significant progress since it took over the rule of law functions from UNMIK in December 2008” mentioned in his earlier Explanatory Memorandum, the Minister says in his Explanatory Memorandum of 29 September 2010:

“This includes responding calmly and effectively to public order disturbances; taking forward a number of high profile corruption cases and war crimes cases; and

4 See “Serbia and Kosovo: the border question” in the 5–11 June 2010 edition of *The Economist*.

5 See headnote: HC 428–i (2010–11), chapter 4 (8 September 2010).

supporting Kosovan police as they have taken over primary responsibility for security in areas such as sections of the border and cultural heritage sites.”

1.21 In the next period of its mandate, the Minister says:

“EULEX aims to increase its activity in the north of Kosovo and continue to focus on making concrete progress against organised crime and corruption. EULEX will also have an important role in supporting the upcoming EU-facilitated dialogue on issues of practical concern between Kosovo and Serbia. This dialogue, which was welcomed by a 9 September UN General Assembly resolution, will cover many rule of law issues, such as the restoration of full customs controls.”

1.22 The Minister also draws attention to some important personnel changes:

“the EULEX management team will change in October 2010. The French Lieutenant General, Xavier de Marnhac, is taking over from Yves de Kermabon as Head of the Mission, and Her Majesty’s Ambassador in Pristina, Andy Sparkes, will leave his current role to replace Roy Reeve as Deputy Head of Mission”.⁶

1.23 With regard to the Financial Implications, the Minister says that this funding supports a mission with 1,950 international staff, and continues as follows:

“Funding for the common costs of the mission is met from the Common Foreign and Security Policy budget. The UK contributes 13.8% to the overall EU budget in 2010.

“The funding of €165 million covers the common costs of the mission. This covers mainly HQ, in-country transport, office equipment and personnel costs. The UK has actively pressed the European Commission to reduce the proposed increase in next year’s budget (which was originally set at €168 million) and has actively questioned and challenged much of the proposed budget spend. Despite very limited support from other Member States, during negotiations the UK has secured €3 million of savings and agreement that the average spend over the two years from November 2009 to October 2011 will not exceed €290 million. This means that the average spend in each of the years will not exceed last year’s agreed annual budget of €145 million.

“The UK also secured agreement that the operational need for some of the mission’s larger proposed capital spending will be reviewed again at the relevant policy committee before final commitments are made in these areas, providing an opportunity to further review costs. This is a departure from previous financial processes, but something the UK has been insistent on to ensure that financial decisions are scrutinised more thoroughly, in line with policy requirements.

⁶ A member from 1968, Mr. Reeve was Ambassador to Ukraine on his retirement from HM Diplomatic Service in 1999. He then headed the OSCE Office in Yerevan, Armenia, from September 1999 to July 2003. On 1 August 2003 he was appointed as the Head of the OSCE Mission to Georgia, a position he held until 2007. From December 2007 until June 2009, Mr Reeve was the Head of the European Union Planning Team for Kosovo and subsequently the Deputy Head of Mission EULEX Kosovo. See <http://www.eulex-kosovo.eu/en/info/Biography--RoyReeve.php> for further information.

“The UK continues to argue strongly that the mission must deliver value for money, particularly as the largest civilian CSDP mission. Further, the UK has stressed the importance of effective budget management and accurate forecasting to mitigate the risk of another underspend.”

Conclusion

1.24 We commend the Minister for his endeavours in what would appear to have been an uphill struggle in persuading the majority of other Member States of the need to include economy and financial discipline in the EULEX remit. We agree that, particularly as the largest civilian CSDP mission, and notwithstanding the importance of its task, EULEX must also deliver value for money, effective budget management and accurate forecasting.

1.25 Since our previous meeting, as the Minister mentions, on 9 September the UN General Assembly adopted by acclamation a non-binding resolution sponsored by Serbia and all 27 EU Member States, acknowledging the advisory opinion of the International Court of Justice that Kosovo’s 2008 declaration of independence did not violate international law, and calling for EU-backed dialogue aimed at promoting co-operation between Belgrade and Pristina, as a factor for peace, security and stability in the region, and “to promote co-operation, achieve progress on the path to the European Union and improve the lives of the people.” There have been associated discussions involving both the High Representative and the US Secretary of State, who is said to be planning to visit both capitals imminently. There is thus all the more reason for the House to be given an opportunity to hear from the Minister and discuss with him the next phase of EULEX, which will begin at what would appear to be a particularly promising, and thus in many ways even more challenging moment.

1.26 The Council Decision on the mandate extension having been recommended for debate, we accordingly recommend that this associated Council Decision be debated with it.

1.27 However, we now understand that, subsequent to his Explanatory Memorandum, the Minister has been able to have adoption of the Decision delayed until 14 October (i.e., the date upon which the current budget is due to end and the new mandate is due to begin) in order to facilitate scrutiny. In these circumstances, we are willing to exercise the discretion given to us by paragraph 3(b) of the House’s Scrutiny Reserve Resolution, which will allow the Minister to give agreement to the proposal notwithstanding that it will still be awaiting consideration by the House.

2 Internet Governance

(30708) Commission Communication: *Internet governance: the next steps*
 11222/09
 COM(09) 277

<i>Legal base</i>	—
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	Minister’s letter of 12 August 2010
<i>Previous Committee Report</i>	See HC 5–xii (2009–10), chapter 1 (3 March 2010) and HC 19–xxv (2008–09), chapter 1 (21 July 2009)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

Background

2.1 On its website, the Internet Corporation for Assigned Names and Numbers (ICANN) explains that “to reach another person on the Internet you have to type an address into your computer — a name or a number. That address has to be unique so computers know where to find each other. ICANN coordinates these unique identifiers across the world. Without that coordination we wouldn’t have one global Internet.”⁷

2.2 ICANN was formed in 1998 by the US Administration. It is a not-for-profit public-benefit corporation with participants from all over the world. It coordinates and oversees the day-to-day management of the domain name system (the DNS) of unique identifiers for communicating on the Internet. It says it is:

“dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet’s unique identifiers. ICANN doesn’t control content on the Internet. It cannot stop spam and it doesn’t deal with access to the Internet. But through its coordination role of the Internet’s naming system, it does have an important impact on the expansion and evolution of the Internet.”⁸

The Commission Communication

2.3 The Communication provides an analysis of progress on Internet governance in the last ten years, the public policy issues involved — from finding ways to ensure that citizens can benefit fully from the Internet’s potential as well as dealing with inappropriate content, consumer protection and jurisdiction in an increasingly global world — and the role of governments in the process, where “users will inevitably turn to their governments if there is any major national disruption to their Internet service, and not to the various Internet governance bodies.”

⁷ See <http://www.icann.org/en/about/>.

⁸ Ibid.

2.4 It identifies three basic factors in the success of the Internet’s rapid development:

- *An open and interoperable architecture*, based on the origins of the Internet in research and academia;
- *Private sector leadership*, which facilitated the move of the Internet from academia to society at large and which “continues to deliver important policy objectives and needs to be maintained and supported”;
- *The multi-stakeholder model*, which has led to “processes to initiate and develop consensus in Internet governance policies.”

2.5 The Internet’s growing importance for society as a whole “increasingly requires governments to be more actively involved in the key decision-making that underlies the Internet’s development”. But “private sector initiative must be maintained ... Private sector leadership and effective public policies are not mutually exclusive”.

2.6 The Commission then reviews its involvement since 1998 in Internet governance, including the development of ICANN, and seeks to identify a number of public policy principles and proposes an approach for moving forward international discussions on these matters, with calls for more transparency and multilateral accountability in the governance of the Internet. The technical aspects are summarised and analysed in the previous Committee’s Report of 21 July 2009.⁹

2.7 The Communication anticipates the expiry in September 2009 of an agreement known as the Joint Project Agreement (JPA) between ICANN and the US Department of Commerce that has provided the National Telecommunications and Information Administration (NTIA) with oversight of ICANN’s affairs. The expiry of the JPA does not affect the US Government’s oversight of changes to the root zone file¹⁰ managed by the Internet Assigned Numbers Authority — IANA (which is part of ICANN).

2.8 In his accompanying 9 July 2009 Explanatory Memorandum, the then Minister (Lord Carter of Barnes) endorsed the Commission’s attribution of the success of the Internet over the last 20 years to “private sector leadership and unhindered innovation at the edge, rather than through any central command structure.” He noted that this private sector-led, bottom up model for Internet governance is consistent with Paragraph 48 of the Declaration of Principles by the UN World Summit on the Information Society (WSIS, 2003–2005) which states that the “*international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organisations.*”¹¹

9 See headnote: HC 19–xxv (2008–09), chapter 1 (21 July 2009).

10 According to the Internet Society, DNS root name servers “are a small but essential part of the Internet Domain Name System (DNS)... The root zone file is at the apex of a hierarchical distributed database called the Domain Name System (DNS). This database is used by almost all Internet applications to translate worldwide unique names like www.isoc.org into other identifiers; the web, e-mail and many other services make use of the DNS. The root zone file lists the names and numeric IP addresses of the authoritative DNS servers for all top-level domains (TLDs) such as ORG, COM, NL and AU”. For further information see <http://www.isoc.org/briefings/019/>.

11 See (27466) 8841/06 HC 41–xxi (2006–07), chapter 15 (9 May 2007) for the Committee’s consideration of the Commission Communication: *Towards a global partnership in the information society: follow-up to the Tunis phase of the World Summit on Information Society (WSIS)*.

