House of Commons

European Scrutiny Committee

Fourteenth Report of Session 2010–11

Documents considered by the Committee on 19 January 2011, including the following recommendations for debate:

EU Citizenship

Financial management

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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Legal base	—
Document originated	(All) 27 October 2010
Deposited in Parliament	(All) 5 November 2010
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 17 December 2010
Previous Committee Report	None
To be discussed in Council	21 January 2011
Committee's assessment	Politically important
Committee's decision	For debate in European Committee B

Background

1.1 The Maastricht Treaty introduced the concept of citizenship of the European Union. All nationals of EU Member States are also EU citizens. EU citizenship confers a set of rights which are enshrined in the EU Treaties. These include:

- the right to live and work in another Member State;
- the right, if resident in another Member State, to vote and to stand as a candidate in local and European Parliament elections;
- the right to diplomatic and consular protection if living or travelling outside the EU;
- the right to petition the European Parliament or to apply to the European Ombudsman; and

- the right to participate in a citizens' initiative inviting the Commission to propose draft legislation for consideration by the European Parliament and Council.[1]

1.2 In September 2009, at the beginning of his second term of office, the President of the Commission (Mr Barroso) published a set of political guidelines to inform the work of the new Commission. He said:

> "Revitalising the link between the peoples of Europe and the EU will make it both more legitimate and more effective. Empowering citizens to be involved in decisions affecting their lives, including by ensuring transparency on how they are taken, will help to achieve these aims. This means that the rights of European citizens must have real effect: citizens today should not find that they still face obstacles when they move across borders within the EU."

1.3 He continued:

> "EU citizens still face numerous obstacles when they try to source goods and services across national borders. They should be able to make use of their rights as EU citizens in the same way as they use their rights as national citizens. The Commission will draw up a comprehensive report on these obstacles for citizens and propose how they can best be removed, together with the report on the obstacles still persisting in the internal market."

1.4 Document (a) — EU Citizenship Report 2010: *Dismantling obstacles to EU citizens' rights* — fulfils President Barroso's commitment to identify obstacles which impede EU citizens' enjoyment of rights conferred by EU law and to propose a set of measures to help overcome them. The report is intended to complement the Commission's Communication, *Towards a Single Market Act for a highly competitive social market economy* which suggests ways to improve the functioning of the Single Market so that it meets the needs and expectations of citizens when acting as economic operators (for example, consumers, businesses, workers).[2] The EU Citizenship Report is accompanied by two further documents. Document (b) assesses EU citizens' awareness of, and participation in, the 2009 elections to the European Parliament and includes an analysis of Member States' transposition and implementation of relevant EU legislation. Document (c) fulfils the Commission's obligation, under Article 25 of the Treaty on the Functioning of the European Union (TFEU), to report every three years on the application of the citizenship provisions now contained in Part Two of the TFEU.

Document (a) — EU Citizenship Report 2010

1.5 The Commission says that EU citizens who "extend aspects of their life beyond national borders, through travel, study, work, marriage, retirement, buying or inheriting property, voting or just shopping online from companies established in other Member States should fully enjoy their rights under the Treaties."[3] The EU Citizenship Report

1 See Articles 20 and 24 of the Treaty on the Functioning of the European Union (TFEU). The provision for citizens' initiatives was introduced by the Lisbon Treaty.

2 See HC 428–x (2010–11), chapter 11 (8 December 2010).

3 See page 3 of the EU Citizenship Report 2010.

identifies 25 practical obstacles confronting EU citizens in their different capacities — as private individuals, consumers, residents, students, professionals or political actors — which make it difficult for them to exercise the rights associated with EU citizenship and proposes 25 actions to overcome them. According to the Commission, the actions proposed fall into three categories:

- ensuring the effective enforcement of EU rights;
- making it easier for EU citizens to exercise their rights; and
- raising EU citizens' awareness of their rights.

Citizens as private individuals

1.6 The Commission says that an increasing number of EU citizens are exercising their free movement rights by studying, working and living in a Member State other than their own, but encounter a host of practical difficulties. For example, procedures for securing recognition of civil status documents, such as birth or marriage certificates, can be complex; the law applicable to jointly owned assets, such as bank accounts or property, can be difficult to ascertain; the rights of victims of crime or of suspects or defendants involved in criminal proceedings (including access to lawyer) vary from one Member State to another; EU citizens may be subject to double or discriminatory taxation; and they may experience difficulties accessing healthcare in other Member States. EU citizens who travel outside the EU may require assistance from the diplomatic or consular authorities of Member States represented in the third country, if their own Member State of nationality does not have an embassy there. The Commission proposes eight actions to address these difficulties:

- a law in 2011 to make it easier for married couples or registered partners to know which courts have jurisdiction and which law applies to their property;
- a law in 2013 to facilitate the free circulation of civil status documents;
- developing the e-Justice web portal to provide more multilingual information on civil and criminal law and procedures;
- two laws in 2011 to improve the protection of suspects or defendants in criminal proceedings, including provision for access to a lawyer;
- a law and other measures in 2011 to improve the protection of victims of crime;
- a law in 2011 to simplify the formalities for registering cars previously registered in another Member State and further action to prevent double or discriminatory taxation;
- improving access to cross-border healthcare by providing secure online access to medical health data and ensuring widespread use of telemedicine services by 2020, and recommending a minimum common set of patient data to enable patient data to be accessed or exchanged electronically across borders by 2012; and

- laws in 2011 to increase the effectiveness of EU citizens' right to diplomatic and consular assistance in third countries and developing a dedicated website to raise awareness of this right.

Citizens as consumers

1.7 The Commission says that, while many EU citizens spend their holidays in another Member State, few are aware of their rights. The problems are compounded for EU citizens with disabilities who face additional obstacles of access. Consumers remain reluctant to shop across borders because they believe that levels of consumer protection may be lower and that it will be more difficult to obtain effective redress if goods or services are defective. The Commission proposes the following six actions:

- a law in 2011 to update existing EU rules on package travel and to make it easier to buy packages from other Member States;
- completing the legislative framework to ensure that passengers have a set of common rights regardless of the mode of transport when travelling across the EU and ensuring that citizens have ready access to information about their rights at transport hubs;
- an EU Disability Strategy for 2010–20 to improve access to all means of transport, promote better access to travel insurance, develop EU-wide standards on access to the built environment and establish an annual award for the most accessible European cities;
- organising awareness-raising campaigns for European tourists and monitoring consumer satisfaction with a range of tourism services;
- publishing a Code of EU Online Rights by 2012 setting out the rights of users of online services; and
- a law in 2011 on Alternative Dispute Resolution mechanisms to facilitate out-of-court resolution of consumer complaints, and possible proposals for an EU online dispute resolution system for e-Commerce transactions by 2012.

Citizens as residents, students and professionals

1.8 The Commission says that EU citizens living in other Member States continue to encounter discrimination on grounds of nationality or face unnecessary bureaucratic obstacles. Obtaining recognition of professional qualifications can be costly, complex and slow, existing arrangements for exchanging information on social security are cumbersome and EU rules on social security coordination do not cover, for example, occupational pensions. The Commission proposes the following three actions:

- greater vigilance in enforcing EU free movement rules, including on non-discrimination, and disseminating more information to EU citizens on their free movement rights;
- a law in 2012 to speed up the recognition of professional qualifications; and

- developing a new system for the electronic exchange of social security data to reduce delays.

Citizens as political actors

1.9 The Commission notes the steadily declining turnout for elections to the European Parliament, even though EU citizens who live in another Member State are entitled to vote or stand as a candidate there for local or EP elections, and highlights restrictions in some Member States which make it difficult for nationals of other Member States to join political parties or found their own party. EU law does not confer a right to vote in national elections in the Member State of residence and the Commission notes that some EU citizens (including UK nationals) who move to another Member State may end up being disenfranchised if electoral law in their Member State of origin precludes them from voting in national parliamentary elections.[4] The Commission proposes the following four actions:

- asking Member States to ensure that the results of future EP elections are published at the same time, to avoid any risk that the outcome in one Member State may influence voting in others;

- asking Member States to ensure that EU citizens are informed of their electoral rights in their Member State of residence, that their voting rights are fully enforced and that they are able join or found political parties;

- simplification of the procedure for EU citizens to stand as candidates for election in their Member State of residence and proposals to improve the existing mechanism for the exchange of information to prevent double voting in EP elections; and

- launching a discussion with Member States to consider how to prevent EU citizens who move to another Member State from losing their political rights.

Lack of easily accessible information and assistance for citizens

1.10 The Commission says that many EU citizens are unaware of their rights under EU law and do not know where to find relevant (including country-specific) information which would make it easier for them to exercise their free movement rights. The Commission therefore proposes two actions:

- developing the 'Your Europe' web portal into a one-stop-shop information point on the rights of citizens and businesses in the EU; and

- streamlining the Commission's information networks in Member States to enable citizens to find the right contact point for obtaining information on relevant rules and procedures at national, regional or local level.

4 British citizens resident abroad are eligible to register as overseas electors, and therefore vote in UK parliamentary elections, for a period of 15 years from the time they were last registered to vote as ordinary electors in the UK.

Lack of awareness of the meaning of EU citizenship

1.11 The Commission cites survey evidence indicating that many EU citizens are not well informed about their rights as EU citizens and notes that the citizens' initiative, introduced by the Lisbon Treaty, offers "great potential . . . . for a more active involvement of citizens and civil society in the European project."[5] The Commission proposes the following three actions:

- designating 2013 as the 'European Year of Citizens' to raise awareness of EU citizenship and associated rights;
- simplifying and rationalising EU funding available for promoting EU citizenship; and
- exploring ways to strengthen media coverage of EU affairs, including options for the more sustainable financing of Euronews.[6]

1.12 The Commission says that its EU Citizenship Report is intended to open a debate involving EU institutions, civil society and national parliaments "on how EU citizenship can fulfil its potential in terms of enhancing Europeans' life chances by delivering concrete benefits that will have a visible impact."[7] It will be followed, in 2013, by an evaluation of the impact of the actions proposed and "an ambitious and comprehensive action plan" to remove persistent obstacles impeding citizens' enjoyment of their rights.

Document (b) — Report on the European Parliament elections 2009

1.13 The Commission notes that, despite efforts to mobilise voters, turnout for the 2009 EP elections was low (averaging 43% across the 27 Member States). While an increasing number of EU citizens who live abroad are registering to vote in their Member State of residence, many still choose not to and others prefer to vote in their Member State of origin. Few EU citizens have chosen to exercise their right to stand as a candidate for election to the EP in their Member State of residence.

1.14 The Commission says that most Member States comply with their obligations under EU law to enable EU citizens to vote and stand as candidates for local and EP elections in their Member State of residence. Practical difficulties remain in some Member States which only allow their own nationals to join, or found, political parties. The Commission also notes that not all Member States have enshrined in their domestic laws the obligation to ensure that the results of EP elections are only published after the polls have closed in the last Member State.

1.15 The Commission observes that the existing mechanism to prevent EU citizens voting or standing as candidates in more than one Member State is deficient and says that it intends to propose changes which will make the mechanism more efficient by, for example, establishing common rules on electoral timetables and the collection of voter registration

5 See page 21 of the Commission's Report.

6 Euronews was launched in 1993 as a news channel covering world affairs from a European perspective.

7 See page 23 of the Commission's Report.

data, while avoiding the imposition of disproportionate administrative burdens. The Commission highlights efforts by the European Parliament to establish a uniform procedure or common principles for EP elections, including possible provision for EU-wide transnational party lists, with the EU constituting a single electoral constituency, for the election of a small number of MEPs. Other ideas to be considered include:

- the introduction of out-of-country voting facilities to enable expatriate voters to vote for a party list in their Member State of origin;
- improving the prospects for smaller parties to be represented in the EP by removing the possibility to impose a minimum threshold;
- removing the requirement, where applicable, for political parties or independent candidates to make a financial deposit; and
- bringing forward the deadline for registering voters so there is more time to exchange data to prevent double voting.

1.16 The Commission says that, by proposing to designate 2013 as the European Year of Citizens, it hopes to increase awareness of, and participation in, the 2014 EP elections.

Document (c) — Report on progress towards effective EU citizenship 2007–10

1.17 The Commission's report reviews developments during 2007–10 affecting EU citizenship rights as set out in Part Two of the TFEU (summarised above in paragraph 1.1). It includes information on recent Court of Justice case law clarifying Member States' obligation, when exercising their powers to determine the conditions for the acquisition and loss of nationality, to have due regard to EU law; action taken by the Commission to secure the correct application of EU rules on the free movement and residence of EU citizens and on EP elections; and data on the number of petitions received by the European Parliament and complaints sent to the European Ombudsman. The report also provides useful statistical data on the number of EU citizens living in another Member State for more than a year (estimated at 11.7 million at the beginning of 2009) and describes the funding streams available to promote awareness of EU citizenship and associated rights.

1.18 The Commission says that, from 2011, it will include an assessment of EU citizenship rights in its Annual Report on the application of the EU Charter of Fundamental Rights. The three-yearly report required under Article 25 TFEU will seek to present "a more substantiated diagnosis" of obstacles encountered by EU citizens and propose remedies.

The Government's view

1.19 The Explanatory Memorandum provided by the Minister for Europe (Mr David Lidington) focuses primarily on the policy implications of the proposed actions contained in document (a) — the EU Citizenship Report 2010. He notes that the Report "ranges across civil law, criminal procedure, taxation, health care, consular protection, consumer rights, disability rights, online services, free movement of persons, social security coordination, electoral rights, citizenship, nationality law and communications" and adds

that most of the actions proposed "are already the subject of ongoing discussion within the European Union in sectoral Councils."[8]

1.20 Where EU legislation is proposed, for example, to establish common EU rules on jurisdiction and applicable law for jointly owned property where there is a cross-border dimension, or to facilitate the free circulation of civil status documents, the Minister emphasises the need for a full impact assessment to consider the legal, policy and cost implications. He says that proposed new laws on the rights of suspects or defendants in criminal proceedings and on the protection of victims of crime will be subject to the UK's Opt-In and will be assessed against the criteria set out in the Coalition Agreement "with a view to maximising our country's security, protecting Britain's civil liberties and preserving the integrity of our criminal justice system."[9] He expresses concern about possible legislative proposals on EU citizens' right to consular protection in third countries and says that the Government will seek to ensure that they "respect our clear understanding of the Treaty position, in particular that the provision of consular assistance remains a Member State competence." [10]

1.21 The Minister accepts that there is a strong case for extending the coverage of the existing EU Package Travel Directive to provide additional protection for consumers who book a combination of holiday elements but says that the Government remains to be convinced of the need for further legislative action at EU level to enhance passenger transport rights. In other areas where legislative action is proposed, for example on an alternative dispute resolution mechanism for consumer complaints, the Minister indicates that the Government will provide a detailed analysis of the policy implications once the Commission has presented specific proposals.

1.22 The Minister says that the Government will examine carefully Commission proposals on double taxation to ensure that they do not extend EU competence or limit future options for developing the UK's car taxation system and will consider the scope for "deregulatory improvements" to make it easier to register in the UK cars previously registered in another Member State.

1.23 The Minister notes that some of the proposed actions, for example, on cross-border healthcare, also feature in the Commission's Digital Agenda for Europe.[11] He reiterates the Government's concern to ensure that online health information systems are safe and secure and says that the feasibility of the Commission's proposals should be tested by means of project pilots which are subject to proper evaluation.

1.24 The Minister generally supports initiatives to raise EU citizens' awareness of their rights. For example, he welcomes the development of the e-Justice and Your Europe web portals to provide a "one-stop-shop" point of access for EU citizens seeking information about their rights or about legal procedures in other Member State, but adds that the funding of individual e-Justice projects will require careful consideration. He also welcomes the publication of a Code of EU Online Rights, provided it merely codifies the

8 See paragraph 1 of the Minister's Explanatory Memorandum.

9 See paragraph 25 of the Minister's Explanatory Memorandum.

10 See paragraph 39 of the Minister's Explanatory Memorandum.

11 See HC 428–i (2010–11), chapter 28 (8 September 2010).

existing rights of on-line consumers rather than creating new ones. He says that funding for the proposed EU Year of Citizens in 2013 should come from existing budgets and supports efforts to rationalise and simplify funding programmes concerning EU citizenship. He expresses caution about possible proposals to secure more sustainable funding for Euronews, adding:

> "Like all publicly funded bodies, care needs to be taken to avoid an unfair advantage over commercial news media in providing access to news content. . . . The UK policy is that there should be open provision of news from independent sources based on plurality of voice and neutrality across communication channels."[12]

1.25 The Minister notes the Government's support for Commission proposals to develop and foster the use of EU-wide standards on accessibility to the built environment as part of the EU's broader Disability Strategy for 2010–20 but also emphasises the importance of seeking to develop international standards, where possible.

1.26 The Minister says that UK electoral law complies with the requirements of EU law concerning the publication of EP election results after polls have closed in all Member States. EU citizens resident in the UK who are nationals of another Member State are able to register to vote and to stand as a candidate in EP or local elections in the UK and to join political parties. He agrees that existing arrangements for exchanging information to prevent voting in more than one Member State have not proved workable in practice and suggests focusing efforts on "raising awareness that double voting and double candidacies are not permitted and highlighting the penalties that persons will incur for any breach of the law."[13] He notes the 15-year limitation currently applicable to UK citizens registered as overseas voters who wish to vote in UK parliamentary elections and says that the Government is considering their position.

1.27 While recognising that the principal purpose of the Citizenship Report is to identify obstacles to the free movement of EU citizens, the Minister believes that it does not adequately address fraud and abuse of free movement rights and suggests that more could be done to monitor and tackle fraud and abuse.

1.28 The Minister says that the financial and legal implications of the actions proposed in the Citizenship Report, as well as regulatory impact assessments, will be provided as and when specific legislative or other measures are proposed by the Commission. He expects the informal meeting of the Justice and Home Affairs Council to consider the Report on 21 January 2011.

Conclusion

1.29 **The three Commission reports provide a broad overview of the rights associated with EU citizenship and of the practical obstacles that EU citizens exercising free movement rights continue to encounter. The Minister's Explanatory Memorandum focuses principally on the EU Citizenship Report 2010 but we note that some of the Commission's ideas for reforming the procedure for elections to the European**

12 See paragraph 75 of the Minister's Explanatory Memorandum.

13 See paragraph 65 of the Minister's Explanatory Memorandum.

Parliament contained in its Report on the 2009 elections and summarised in paragraph 1.15 would also, if implemented, have important implications for UK electoral law.

1.30 **The EU Citizenship Report 2010 illustrates how the rights associated with EU citizenship cut across numerous policy areas. For that reason alone, it is an important document which we wish to draw to the attention of the House. While many of the actions proposed in the EU Citizenship Report seek to raise awareness of existing rights and ensure their more effective enforcement, a significant number involve further EU legislative measures, mainly in the field of civil and criminal law and consumer rights. Most of these measures have been foreshadowed in earlier policy documents, for example the Council Resolution on a Roadmap for strengthening the rights of suspects or defendants in criminal proceedings[14] and the Stockholm Programme establishing priorities for EU action in the field of justice and home affairs.[15] In his Explanatory Memorandum, the Minister says that the Government will only be able to assess the full political (as well as legal and financial) significance of the proposals once the Commission has presented specific legislative or other measures. Nonetheless, he considers that the actions proposed by the Commission "touch on important matters of public interest" and adds that the Government would welcome a debate. We agree and recommend that the Commission reports should be debated in European Committee B.**

14 See HC 19–xxviii (2008–09), chapter 15 (21 October 2009), HC 19–xxvii (2008–09), chapter 12 (14 October 2009) and HC 19–xxvi (2008–09), chapter 10 (10 September 2009).

15 See HC 19–xxiii (2008–09), chapter 1 (8 July 2009).

2 Financial management

(32220) 16662/10 + ADDs 1–2 COM(09) 650	Commission Report on the follow-up to the discharge for the 2008 financial year (Summary)

Legal base	—
Document originated	18 November 2010
Deposited in Parliament	24 November 2010
Department	HM Treasury
Basis of consideration	EM of 18 December 2010
Previous Committee Report	None
To be discussed in Council	Not known
Committee's assessment	Politically important
Committee's decision	For debate on the Floor of the House, together with the Commission's 2009 report on the fight against fraud, the European Court of Auditors' Annual Report for 2009 and other relevant documents

Background

2.1 Each annual audit of the EU's general and other budgets by the European Court of Auditors is concluded by a discharge given to the Commission by the European Parliament on the recommendation of the Council. But the Commission is required to act on and report back on any observations made by the European Parliament in the discharge decisions and any comments accompanying the Council's recommendation. Any results from action on, and follow-up to, observations comments and recommendations feed into subsequent annual audits.

The document

2.2 This document is a summary report from the Commission about its follow-up to the Council and European Parliament's discharge comments and recommendations in relation to the 2008 budget. It is accompanied by two Staff Working Documents, the first of which details the Commission's replies to the Council's requests and the second to the European Parliament's.

2.3 The Commission identifies a total of 364 requests made to it as part of the 2008 Discharge process, of which:

- 238 requests were made by the European Parliament;
- the Commission agrees to take the action requested by the European Parliament for 108 of these;

- it considers that 120 of the requests relate to actions which are ongoing or have already been undertaken, while it considers that ten are not acceptable for legal reasons or due to institutional prerogatives;
- 126 requests were made by the Council;
- the Commission agrees to act upon 61 of them; and
- it considers that 63 of these requests relate to actions which are ongoing or which have already been undertaken, while it cannot accept two of these requests for legal reasons or due to institutional prerogatives.

The Commission notes that, while it addresses the issues concerning EU agencies in its response to the European Parliament and the Council, further horizontal work on agencies is being addressed by an inter-institutional working group, which is expected to report by the end of 2011.

2.4 The Commission's replies to the European Parliament and the Council are divided into two broad categories — horizontal issues and sectoral issues. On horizontal issues the Commission:

- notes a positive trend in terms of reduced error rates in the European Court of Auditor's reports in the years preceding the 2008 discharge, although it also recognises that error rates in some parts of the budget (such as Cohesion Policy) remain too high;
- sets an aspiration that the proportion of the budget which receives a "green light", that is less that a 2% likely error rate, should increase by a further 20% by 2014;
- notes that the Commissioner with responsibility for audit and financial management presented an "agenda for discharge and audit" to the European Parliament's Budgetary Control Committee in May 2010 — this includes measures to simplify legislation, to establish European Trust Funds, management assurance from Member States, cooperation with supreme audit institutions and national parliaments and action on recoveries and financial corrections;
- suggests that the concept of tolerable risk of error is an important way to balance risks by ensuring that controls are both effective while also containing costs;
- refers to its Communication *More or less controls? Striking the right balance between administrative costs of control and the risk of error*,[16] in which it proposes tolerable risk levels for the policy areas rural development and research, energy and transport;
- commits itself to bringing forward tolerable risk of error levels for other policy areas in late 2010 and in 2011, but points out that improvements to tolerable risk of error may take a long time to filter through into real results;

16 (31652) 10346/10 + ADDs 1–2: see HC 428–ii (2010–11), chapter 1 (15 September 2010) and HC 428–x (2010–11), chapter 2 (8 December 2010).

- considers that continued improvements to the reliability of the EU's accounts has improved the underlying data used to prepare the 2009 accounts;
- suggests that improvements to its own budgeting and forecasting have translated into more realistic draft budgets;
- notes that the 2009 accounts include more detailed information on the recovery of undue payments and suggests that a standard procedure for the 2007–2013 programming period should result in improved quality of information;
- says it has speeded up the suspension of payments where irregular activity is discovered;
- expects, in relation to enhancing Member State accountability, annual management declarations of assurance from accredited national management bodies to improve the quality of data submitted by Member States;
- considers that such declarations would be more appropriate instruments than national declarations signed at political level and continues to encourage all Member States to submit voluntary declarations on the use of EU funds;
- notes that it has taken steps to increase the quality of internal audit via improvements to its Annual Activity Reports;
- considers that this system has now reached maturity;
- points to improvements in the publication of financial information, notably through refinements to its "Financial Transparency System" website;
- undertakes to organise a stakeholder conference in April 2011, concerning a new partnership for improving to the Statement of Assurance process; and
- aims, in relation to reforming the European Anti-Fraud Office (OLAF), to present an amended legislative proposal by the end of 2010, with a view to concluding the legislative process by the end of 2011.

2.5 The Commission's response to the sectoral issues raised by the European Parliament and the Council are dealt with on a heading-by-heading basis:

- on Own Resources it notes that the number of outstanding reservations on VAT-based Own Resources has reduced from 35 to 12 and that direct verification of Gross National Income-based Own Resources is now applied in almost all Member States;
- on Agriculture and Natural Resources it points out that continuous improvements are being made to the Integrated Administration and Control System and that these improvements are reflected in conformity audits and in low error rates reported by Member States;
- on Cohesion, Employment and Social Affairs it notes that the European Court of Auditors' 2008 report was based solely on a sample of expenditure from the 2000–2006 programming period and that it therefore expects that the improvements to

financial management which were introduced for the current 2007–2013 programming period should translate into reduced error rates in subsequent Court reports;

- on Internal Policies, including research, it considers that controls applied to research are generally robust, points out that further efforts have been made to simplify research framework programmes, through its Communication on simplifying the funding of research and development,[17] and expects that these proposals may then be implemented in the Eighth Framework Programme;
- on External Actions, including the European Development Funds and enlargement, it commits itself to continued improvement of supervisory and control systems including improvements to audit strategy and planning, says that, where EU funds are routed through United Nations organisations, it is cooperating with them in order to obtain the necessary supporting evidence, expects to revise its Guidelines on Budgetary Support by the end of 2010 and undertakes to improve management of pre-accession funds to ensure a better link between financial assistance and political priorities; and
- on Administrative Expenditure it points out that the Office for Administration and Payment of Individual Entitlements has reinforced its internal control procedures.

The Government's view

2.6 The Economic Secretary to the Treasury (Justine Greening) says that the Government is very disappointed that the European Court of Auditors' annual report on the 2008 EU budget failed to provide a positive Statement of Assurance on the financial management of EU funds and that it notes with concern that the Court's recently published report on the 2009 EU Budget also failed to provide a positive Statement of Assurance. The Minister comments further that:

- this document provides a useful summary of the actions taken by the Commission to respond to the concerns raised by the European Parliament and the Council;
- while these actions should lead to improvements to the management of the EU Budget, the Government notes that the pace of improvements in EU financial management remains very slow;
- the Government considers, for instance, that increasing the proportion of the EU Budget with an error rate of 2% or less by 2014 is not an ambitious enough target;
- considerable further effort is therefore required by all concerned, notably the Commission and Member States;
- the Government notes the Commission's comments on improved budgeting — it considers that over-budgeting by the Commission and persistent problems with

17 (31598) 9348/10: see HC 428–i (2010–11), chapter 81 (8 September 2010).

absorption capacity in some Member States lead to the EU Budget being under spent;

- it notes with concern that some of the actions set out in the document are only likely to lead to tangible improvements in terms of reduced error rates over the longer term;
- it remains committed to improving its management of EU expenditure and will publish the third consolidated statement on the use of EU funds in the UK, which is audited by the National Audit Office and presented to Parliament; and
- the document has no direct financial implications—however, the recommendations and the actions outlined by the Commission may lead to improvements in the EU's financial management, which should increase the effectiveness and efficiency of the EU Budget.

Conclusion

2.7 **This document usefully summarises Commission attempts to improve management of the Community's finances. As such we recommend that it should be debated together with the Commission's 2009 report on the fight against fraud, the 2009 report of the European Court of Auditors and other relevant documents, which we have already recommended for debate on the Floor of the House.**[18]

3 Energy market integrity and transparency

(32345) 17825/10 + ADDs 1–2 COM(10) 726	Draft Regulation on energy market integrity and transparency

Legal base	Article 194(2) TFEU; co-decision; QMV
Document originated	8 December 2010
Deposited in Parliament	16 December 2010
Department	Energy & Climate Change
Basis of consideration	EM of 7 January 2011
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

18 (31822) 12393/10 + ADDs 1–2 (31913) 13075/10 + ADD 1 (31952) —: see HC 428–vi (2010–11), chapter 1 (3 November 2010 and (32162) — (32166) —: see HC 428–x (2010–11), chapters 1 and 3 (8 December 2010).

Background

3.1 According to the Commission, one of the benefits from the liberalisation of the electricity and gas markets has been the development of power exchanges and standardised over-the-counter contracts involving generators and suppliers, large energy users, pure traders, financial institutions and other trade facilitators, which it says has supported innovation and efficiency and enabled businesses to respond flexibly to changes in market conditions. However, it also says that, since wholesale energy markets not only serve as a benchmark for retail prices, but also send important signals for future investments in energy infrastructure, there must be confidence in the integrity of those markets, since the potential for unfair trading practice—arising (among other things) from the cross-border nature of the markets, the involvement off both physical and derivative trading, and the separation of trading locations from where the energy is delivered and consumed—is liable to undermine trust, deter investment, and increase the volatility of energy prices, leading to higher energy prices in general.

3.2 In view of this, the Commission sought advice in 2007 from the Committee of European Securities Regulators (CESR) and the European Regulators Group for Electricity and Gas (ERGEG) on issues of transparency and market abuse. This in turn led to the suggestion that it should consider developing proposals for a basic tailor-made market abuse framework for all electricity and gas products not covered by the Market Abuse Directive (2003/6/EC), which applies to financial instruments, but not to physical energy market products or to energy derivatives unless they are admitted to trading on a regulated market.

The current proposal

3.3 In the light of that recommendation, the Commission has now put forward this draft Regulation, which applies to trading in wholesale energy products (other than those to which Directive 2003/6/EC applies), including contracts for the supply and transport of natural gas or electricity and related derivates. In doing so, the Commission reiterates that action at EU level is justified, as energy markets increasingly cross national boundaries. As a result, prices are set on the basis of supply and demand in several countries, and abuses on a specific market will not be confined to a single Member State, requiring authorities to have access to information across the EU, and action at EU level.

3.4 The proposal establishes rules prohibiting abusive practices, notably insider trading and market manipulation, which are consistent with those applying in financial markets, whilst giving the Commission the power to amend the relevant definitions to take into account future developments in wholesale energy markets. In particular, it would:

- provide for the monitoring of wholesale energy markets by the Agency for the Cooperation of Energy Regulators (ACER) established under Regulation (EC) No 713/2009, in order to detect and prevent abusive practices;
- specify that the Agency should ensure such action is taken in cooperation with national regulatory authorities designated under Directives 2009/72/EC and 2009/73/EC and competent financial authorities designated under Directive 2003/6/EC, in order to ensure a coordinated approach to enforcement;

- require the Agency to establish mechanisms enabling national regulatory authorities to have access to relevant information held by it (subject to suitable systems being in place to protect the confidentiality of data);
- require Member States to ensure that the relevant national regulatory authorities have the investigatory powers needed to enforce fully the prohibitions on abusive practices, including access to any relevant documents or information;
- require national regulatory authorities to cooperate with the Agency and with each other, and in particular to inform the Agency if they have reasonable grounds to suspect that market abuse is occurring: they must also inform the Agency and their own financial authorities if they suspect an offence under the Market Abuse Directive has occurred in wholesale energy markets and affects financial instruments (with a similar obligation on the Agency to inform European Securities and Markets Authority (ESMA) and the appropriate financial authorities), whilst a Member State's competent financial authority must inform EMSA and the Agency if it suspects that a breach has occurred;
- enable the Authority, after consulting interested parties, including the EMSA and relevant national authorities, to make recommendations regarding the records of transactions it considers are necessary to monitor wholesale energy markets effectively and efficiently;
- specify that participants in the wholesale energy market should provide the Agency with a record of transactions, with the Commission setting out in delegated acts the timing, form and content of this information (as well as, where appropriate, the thresholds for the reporting of transactions, and the types of contracts for which reporting is required);
- require anyone professionally arranging transactions in wholesale energy markets to notify the national regulatory authority if they suspect that a breach of the Regulation has occurred.

The Government's view

3.5 In his Explanatory Memorandum of 7 January 2011, the Minister of State for Energy and Climate Change (Mr Charles Hendry) says that the increasing level of cross-border trading means that market abuse will inevitably have an impact across the EU, and that there is therefore a need for consistent rules across the EU and EU-level data collection, monitoring and coordination by ACER. However, he points out that Member State regulatory authorities have a detailed understanding of their own energy markets, and so must have access to this data and responsibility to enforce the prohibition on market abuse and insider trading, whereas the proposal would make national regulatory authorities responsible for enforcing the provisions of the Regulation, but also puts a duty on ACER to ensure that they carry out their tasks in a coordinated way. He says that, in order to do this, ACER is required to request national regulatory authorities to investigate possible breaches and take action to remedy any such breaches, and that national regulatory authorities must comply immediately with any such request, thus effectively giving ACER a power of direction, which he considers is not consistent with the principle of subsidiarity.

3.6 More generally, the Minister says that the Government welcomes this proposal, and supports the Commission in its work to ensure that wholesale energy markets are monitored effectively to deter and prevent abuse. He notes that the proposal forms part of the Commission's review of three financial Regulations and Directives, which aims at strengthening the regulation of financial markets where justified and proportionate, with it having already published a proposal[19] for a Regulation on over-the-counter derivatives, central counterparties and trade repositories, and is intending to propose in 2011 revisions of the Market Abuse Directive and the Markets in Financial Instruments Directive. He says that the UK will need to ensure that the two regimes are coherent, and do not conflict or impose undue regulatory burdens, and to consider whether Ofgem will require further enforcement powers. In the meantime, further detailed analysis of the proposal will be carried out.

3.7 The Minister adds that, due to the complex nature of this proposal, it has not been possible to produce an impact assessment and financial assessment within the usual time given for response, but that the impact assessment will be forwarded separately by 28 January.

Conclusion

3.8 **This proposal obviously deals with an area of some economic and social importance, and, for that reason, we are reporting it to the House. In doing so, we note that, whilst the Government has generally welcomed the proposal, it has some subsidiarity concerns about the potential relationship between the Agency for the Cooperation of Energy Regulators and national regulators, and that it intends shortly to produce an Impact Assessment. In view of this, we propose to consider the proposal further when we have received that Assessment, and in the meantime we are holding it under scrutiny.**

19 (31988) 13917/10: see HC 428–iv (2010–11), chapter 4 (20 October 2010).

4 Global navigation satellite system

(32068) 14701/10 COM(10) 550	Draft Decision on the detailed rules for access to the public regulated service offered by the global navigation satellite system established under the Galileo programme

Legal base	Article 172 TFEU; co-decision; QMV
Department	Transport
Basis of consideration	Minister's letter of 13 January 2011
Previous Committee Report	HC 428–viii (2010–11), chapter 5 (17 November 2010)
To be discussed in Council	Not yet known
Committee's assessment	Politically important
Committee's decision	Not cleared; further information awaited

Background

4.1 The EU has a two-phase policy for developing a global navigation satellite system (GNSS). The first phase, GNSS 1, is the European Geostationary Navigation Overlay System (EGNOS) programme. The second phase, GNSS 2, is the programme, named Galileo, to establish a new satellite navigation constellation with appropriate ground infrastructure. Galileo is based on the presumption that Europe ought not to rely indefinitely on the GPS (the US Global Positioning System) and GLONASS (the Russian Global Navigation Satellite System) systems, augmented by EGNOS. Galileo is being carried out in conjunction with the European Space Agency[20] and there are a number of agreements in place or being negotiated with third countries about cooperation in the project.

4.2 It is intended that Galileo will allow provision of five services. These are known as the:

- Open Service (OS), free of charge at the point of use — a basic service, but it is expected to potentially offer greater accuracy and coverage than GPS;
- Commercial Service (CS), offering for a fee added value for more demanding uses — that is expected to be professional users who need superior accuracy and guaranteed service;
- Safety of Life Service (SoL), for safety-critical applications that require high integrity — this will have the same accuracy as the Open Signal, but with a service guarantee providing high reliability;
- Search and Rescue Service (SAR), to complement the current COSPAS-SARSAT system (International Satellite Search and Rescue System founded by Canada, France, the former USSR and the USA in 1988 and with 33 countries now

20 See http://www.esa.int/SPECIALS/About_ESA/SEMW16ARR1F_0.html and http://www.esa.int/esaNA/index.html.

participating) — the service is more advanced than any comparable existing service: it relays the distress signal and location to the nearest rescue centre and informs the sender that that signal has been received and that help is on its way; and

- Public Regulated Service (PRS), a high-performance, encrypted service for authorised civil government applications — such as for such as national security, law enforcement agencies, customs and excise. The potential users will need a service which is useable, available, reliable and secure. The main benefit of this service will be its greater resistance to jamming and interference than the other four services, the fact that it will remain operational if other services are turned off or locally denied (jammed) in times of crisis and the ability to deny signals to specific receivers and user groups.

4.3 From early in 1999 previous Committees have reported to the House on many aspects of the Galileo project, most recently in October 2009.[21] The matter has been debated four times in European Standing Committee, most recently on 26 November 2007,[22] and once on the Floor of the House.[23] We ourselves have reported on a Commission Communication: *Action plan on global navigation satellite system (GNSS) applications*.[24]

4.4 Most recently, in October 2010, the Commission presented this draft Decision relating to the PRS, which will provide a highly accurate positioning service to specific government-designated users requiring a high continuity of service and access to which will be controlled. The draft Decision sets out the proposed high-level rules governing access to the PRS. Member States will be able to take their own decisions regarding the use, or not, of the PRS and the nature of its use. When we considered this document, in November 2010, we heard that:

- the Government was considering its approach to the PRS in the light of this proposal, including the potential user organisations in the UK, the likely costs and potential charges for the PRS and the most appropriate organisation to deliver PRS management in the UK;

- the Government would also consider the issue of security-related use of the PRS — an important factor in this assessment was the successful joint bid by the UK and France to host the Galileo Security Monitoring Centre, referred to in the proposed Decision as the "Security Centre"; and

- the Commission's Explanatory Memorandum noted that the draft Decision had not been subjected to an impact assessment and the Government would push for transparency over the assessments made by the Commission in support of its proposal.

21 (30902) 13066/09: see HC 19–xxix (2008–09), chapter 8 (28 October 2009).

22 See *Gen Co Debs*, European Standing Committee, cols. 3–40.

23 See *HC Deb,* 2 July 2007, cols. 763–87.

24 (31718) 11137/10 + ADDs 1–2: see HC 428–ii (2010–11), chapter 19 (15 September 2010).

We noted that the Government was considering its position in relation to the Public Regulated Service and security-related use of the service and was pressing the Commission for information which should have been in an impact assessment. So we said that before considering this draft Decision further we wanted to hear from the Government about developments on these matters. Meanwhile the document remained under scrutiny.[25]

The Minister's letter

4.5 The Minister of State, Department for Transport (Mrs Theresa Villiers) tells us that a progress report on the draft Directive was given to the December 2010 Transport Council. She says that:

- the Government referred to the lack of a Commission impact assessment and expressed disappointment at the lack of visibility on costs;
- in order for the Government to assess potential uses of the PRS in the UK, greater clarity is required on the estimated infrastructure and operational costs as well as an indication from the Commission on whether it proposes to charge Member States for access to the PRS; and
- the Commission has undertaken to provide a paper on costs at the next Transport Council Working Group, scheduled for 20 January 2011.

The Minister continues that:

- following receipt of the Commission's paper on costs the Government will seek to identify possible groups of users of the PRS in the UK;
- in the meantime, it is working closely with the Commission and the Hungarian Presidency to ensure that the provisions in the draft Decision relating to the manufacture of PRS receivers and associated security modules are not overly restrictive;
- UK industry is regarded as an expert in the field of PRS technology and the Government is keen to facilitate industrial return; and
- its aim is to negotiate a suitable form of wording which balances the need for appropriate security controls of manufacturers against favourable conditions in which a market for PRS receivers can grow.

Conclusion

4.6 **We are grateful to the Minister for this interim account of where matters stand on this draft Decision. However we shall continue to hold the document under scrutiny whilst awaiting further information on the Commission's paper on costs and the Government's position in relation to the Public Regulated Service and security-related use of the service.**

25 See headnote.

5 Carriage of passengers and luggage by sea

(32332) 17511/10 COM(10) 686	Amended draft Council Decision concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974

Legal base	Articles 100(2) and 218 TFEU; co-decision; QMV
Document originated	30 November 2010
Deposited in Parliament	13 December 2010
Department	Transport
Basis of consideration	EM of 5 January 2011
Previous Committee Report	None
Discussion in Council	Possibly March 2010
Committee's assessment	Politically and legally important
Committee's decision	Not cleared; further information requested

Background

5.1 In November 2002 the Athens Protocol was adopted by the International Maritime Organization (IMO) to amend the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (to which the UK is a State Party). The Protocol introduces compulsory insurance to cover passengers on ships and raises the limits of liability. It also introduces other mechanisms to assist passengers in obtaining compensation, based on well-accepted principles applied in existing liability and compensation regimes dealing with environmental pollution. These include replacing the fault-based liability system with a strict liability system for shipping related incidents (backed by the compulsory insurance requirement) and introducing the right of direct action against the insurer.

5.2 The Protocol has a provision allowing Regional Economic Integration Organizations, such as the EU, to become Contracting Parties to the Protocol.

5.3 The Protocol has provisions on jurisdiction and the recognition and enforcement of judgements, in respect of which the EU has internal rules under Council Regulation (EC) No 44/2001, thereby giving it an exclusive external competence in respect of at least part of the subject matter of the Protocol.

5.4 In June 2003 the Commission proposed a draft Decision to authorise the (then) Community to become a Party to the Protocol and to make the required declaration of competence in relation to the exclusive competence provisions. In July 2003 a previous Committee cleared that draft Decision from scrutiny.[26]

26 (24691) 10979/03: see HC 63–xxx (2002–03), chapter 14 (16 July 2003).

5.5 Negotiations on the draft Decision were suspended in December 2003 because Spain had questioned the arrangements for communicating with the competent authorities in Gibraltar. This matter was resolved in 2008 when a system of 'post-boxing' was put in place for communications between Spanish and Gibraltar authorities.

5.6 To expedite ratification of the Protocol by the EU and the Member States, Regulation (EC) No 392/2009 was adopted. It extended the requirements of the Protocol, including compulsory insurance requirements for international voyages, to domestic carriage by sea within a single Member State on board ships of a certain category and, if a Member State so decides, to all domestic sea-going voyages and introduced a number of supplementary measures intended to further enhance the provision of compensation to passengers. The Regulation applies from the date of the entry into force of the Athens Convention for the EU, and in any case from no later than 31 December 2012.[27]

The document

5.7 This draft Decision is a revised version of the Commission's 2003 proposal. The amended draft Decision:

- takes account of the IMO Reservation and Guidelines for Implementation of the Athens Convention adopted by the Legal Committee of the IMO in October 2006, of adoption of Regulation (EC) No 392/2009 and of the Treaty of Lisbon;
- sets out the basis for the EU's competence in respect of the Athens Convention;
- authorises the Council to conclude the Protocol on behalf of the EU and defines the basis upon which Member States are able to become Parties to the Protocol in their own right, as regards those areas which are within Member State competence;
- provides for the EU, at the time of its accession, to make the required declaration to the Secretary-General of the IMO specifying the matters governed by the Protocol, in respect of which competence has been transferred to the EU by its Member States, which are signatories or Parties to the Protocol, and any other relevant restrictions as to the scope of that competence; and
- contains a provision on timing, which requires Member States to become a Party to the Protocol on 31 December 2011, whilst the preamble indicates that Member States should deposit their instruments of ratification or accession simultaneously.

The Government's view

5.8 The Parliamentary Under-Secretary of State, Department for Transport (Mike Penning) first tells us that Recital 12 and Article 3 of the draft Decision raise subsidiarity issues, as these provisions require Member States to deposit their instruments of accession or ratification on 31 December 2011 and suggest that Member States should deposit such instruments simultaneously. The Minister says that:

27 (27323) 6827/06 and (29040) 14302/07: see HC 34–xxxvi (2005–06), chapter 7 (19 July 2006) and HC 16–iv (2007–08), chapter 24 (28 November 2007).

- ratification of or accession to a mixed competence agreement by individual Member States, where they retain competence, is by definition not a matter of EU competence;
- the Government considers that such matters should not be dealt with in a Council Decision;
- instead an agreement by Member States to aim at parallel ratification should be dealt with outside the Council, or at most be a matter for a statement in the minutes, so it becomes a political rather than a legal matter;
- it is unlikely that there will be support to have the matter dealt with outside of the Council;
- but the Government will press for the wording of Recital 12 and Article 3 to refer to Member States making efforts to deposit their instruments of ratification or accession, rather than being required to deposit them;
- it would suggest words of exhortation in Article 3 similar to those in respect of the Council Decision 2002/762/EC authorising Member States to become parties to the Bunkers Convention;[28] and
- if Recital 12 is not amended similarly there will be a further significant delay to entry into force of the Protocol as some Member States (such as those that are land-locked) are unlikely to be in a position to ratify/accede to the Protocol by the end of 2011.

5.9 Turning to the other policy implications of the proposal the Minister says, in relation to timing, that

- the Government considers that it is important that the EU and its Member States are able to become Party to the Protocol at the end of 2011;
- to date only four States (Albania, Latvia, St. Kitts and Nevis and the Syrian Arab Republic) have become Party to the Protocol;
- if another six Member States deposit instruments of ratification or accession on, or before, the end of 2011, the entry into force provisions of the Protocol will be triggered — it enters into force twelve months following the date on which a total of ten States have become Party to it and the Protocol would therefore enter into force at the same time as Regulation (EC) No 392/2009 applied to Member States;
- this synergy is important — if the EU and its Member States are not able to become Party to the Protocol by the time the Regulation applies, Member States will be required to issue State Certificates, which are identical to those required by the Protocol, even though the UK and the other Member States would not be Party to the Protocol;

28 See http://europa.eu/legislation_summaries/environment/water_protection_management/l24090_en.htm.

- this would create a risk that EU-flagged vessels calling into non-EU ports might be detained by coastal States' Port State Control Authorities, as the nuances would not be understood;
- there is also a greater risk that carriers would not be able to obtain insurance to cover the liability because the International Group of P&I Clubs,[29] which provide insurance to the majority of the worlds shipping fleet, have a long standing policy of only providing cover to vessels on the back of international rather than regional or domestic agreements;
- the Government therefore welcomes the amended draft Decision — it is of the view that entry into force of the Protocol will result in a significant enhancement to the existing liability regime; and
- the Government is working toward ratification of the Protocol by 31 December 2011.

5.10 The Minister next discusses competences, saying that:

- the amended draft Decision states that Member States have conferred competences on the EU as regards matters covered by Article 100 TFEU, that is Articles 1 and 1bis, 2(2), 3 to 16 and 18, 20 and 21 of the Athens Convention (as amended by the Protocol) and the provisions of the IMO Guidelines;
- this competence was exercised by the adoption of Regulation (EC) No 392/2009;
- the Government agrees with this statement and supports the need for a Council Decision under Article 218 TFEU to authorise the Council to conclude the Protocol on behalf of the EU;
- Recital 3 of the amended draft Decision prescribes that Member States retain their competence in a number of areas, giving the example of the ability to fix limits of liability higher than those prescribed under the Protocol;
- in emphasising this area of Member State competence, however, the draft Decision indicates that Member States should act in a coordinated way; and
- in the Governments opinion that is incorrect — the Decision cannot apply the duty of sincere cooperation under Article 4(3) TEU to areas of non-EU competence and Member States must act in a coordinated way only to the extent that to do otherwise would undermine the EU position.

5.11 In relation to the IMO Reservation and Guidelines for Implementation of the Athens Convention the Minister says that:

- whilst the Government notes that Article 3 of Regulation (EC) No 392/2009 indicates that the liability regime shall be governed, in part by the provisions of the

29 See http://www.igpandi.org/ — protection and indemnity clubs are associations of shipowners and charterers, owned and controlled by their members, operating on a non-profit making mutual basis in order to meet losses suffered by each individual member.

IMO Guidelines, it is surprised that the Explanatory Memorandum accompanying the amended draft Decision indicates that the EU, rather than its Member States, will make the IMO Reservation, when acceding to the Protocol;

- in 2006 it was agreed by the IMO's Legal Committee that carriers will be liable for terrorism related incidents to a limit of 250,000 units of account[30] per passenger, subject to an overall limit if $500 million;
- in response to this the IMO Reservation and Guidelines for Implementation of the Athens Convention was adopted by the Legal Committee and endorsed by the IMO Assembly — the Reservation sets out in detail how Governments are to ratify the Protocol, such that the original provisions of the Protocol will be modified to give effect to this scheme;
- certain sections of the Reservation, which relate to areas of EU competence, are of specific relevance to Member States, for example section 1.10 to 1.12 of the Reservation would reserve the Government's right to accept and issue insurance certificates — this would appear to be of more relevance to individual Member States than the EU; and
- detailed consideration of the practicalities of the EU making the IMO Reservation when acceding to the Protocol is therefore required.

5.12 On the legal basis for the Decision the Minister tells us that the Government considers that Article 81 TFEU should be cited additionally, saying that:

- this is on the grounds that Article 81 relates to judicial cooperation in civil matters and Recital 5 of the draft Decision indicates that Article 10 of the Protocol (which relates to rules on jurisdiction) will take precedence over the relevant internal rules of the EU; and
- the Government therefore considers that the Protocol to Title V TFEU (on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice) applies, so that the UK has an option whether to opt in or opt out of the proposal.

Conclusion

5.13 **Clearly it is important, in relation to Regulation (EC) No 392/2009, that the EU and Member States accede to the Athens Protocol before 31 December 2011. However before considering this amended draft Decision we should like to hear what progress the Government has made in working group negotiations about:**

- **subsidiarity (Recital 12 and Article 3 of the proposal);**
- **Recital 3 and Article 4(3) TEU;**

30 The unit of account in the Protocol is the International Monetary Fund's Standard Drawing Right, which is based on a basket of currencies.

- **the question of who should make the IMO Reservation; and**
- **the additional legal base (Article 81 TFEU).**

5.14 **We regard the subsidiarity issue as particularly significant because the duty on the EU and Member States to cooperate in mixed agreements does not, in our view, allow the EU to decide when a Member State must accede to a Treaty—this remains a sovereign matter for the Member States, however, we are not able to issue a Reasoned Opinion under Protocol (No. 2) because, pursuant to Article 218 TFEU, the procedure for the conclusion of an international agreement by the EU is non-legislative, so not a "legislative act". We regard this as an unsatisfactory state of affairs.**

6 Financial instruments for EU external action

(a) (30572) 9213/09 COM(09) 196	Commission Communication: *Mid-term review of the financial instruments for external actions*
(b) (30573) 9225/09 SEC(09) 530	Commission Staff Working Document: *Report evaluating the implementation of the financial instruments for external action*
(c) (32407) 16440/10 + ADD 1 —	Council Regulation amending Regulation (EC) No.1934/2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories
(d) (32408) 18129/10 COM(10) 786	Commission Communication concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EC) No.1934/2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories

Legal base	(a) and (b) — (c) and (d) Article 207(2) and 209(1) TFEU; QMV; ordinary legislative procedure
Documents originated	(d) 13 December 2011
Deposited in Parliament	—
Department	Foreign and Commonwealth
Basis of consideration	(a) and (b)Minister's letter or 10 January 2011 (c) and (d) EM of 10 January 2011
Previous Committee Report	(a) and (b) (30572) (30573) (30612) (30639): HC 19–xxiv (2008–09), chapter 5 (15 July 2009) (c) and (d) None; but see (32201) and (32175): HC 428–xi (2010–11), chapters 8 and 9 (15 December 2010)
Discussed in Council	(a) and (b) July 2009
To be discussed in Council	(c) and (d) To be determined
Committee's assessment	Politically important
Committee's decision	(a) and (b) Cleared; further information requested (c) and (d) Not cleared; further information awaited

Background

6.1 In preparation for the 2007–13 financial perspective, the Commission, Council and the European Parliament simplified a plethora of different financial regulations, or Instruments. The main elements are as follows:

European Neighbourhood and Partnership Instrument (ENPI)

The ENPI provides EU assistance to 17 countries: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Russia, Syria, Tunisia and Ukraine. It comprises a specific cross-border co-operation component covering border regions in the European Union Member States.

Development Co-operation Instrument (DCI)

The DCI covers three main components. The first is to provide assistance to South Africa and 47 developing countries in Latin America, Asia and Central Asia, and the Middle East (only those countries not covered by the European Neighbourhood and Partnership Instrument or the European Development Fund).[31] Secondly, it supports the restructuring of sugar production in 18 ACP countries. Thirdly, it runs five thematic programmes: *investing in people*; *environment and sustainable management of natural resources including energy*; *non-state actors and local authorities in development*; *food security*; as well as *migration and asylum*.

The five DCI thematic programmes support actions in all developing countries (including those covered by ENPI and the EDF), global actions and external projections of as well as the fleshing out of Commission internal policies.

European Instrument for Democracy & Human Rights (EIDHR)

The EIDHR contributes to the development of democracy, the rule of law, respect for human rights and fundamental freedoms. It was designed to complement the various other tools for implementation of EU policies in this area, which range from political dialogue and diplomatic demarches to various instruments of financial and technical co-operation, including both geographic and thematic programmes. It also complements the more crisis-related interventions of the new Stability Instrument.

Instrument for Stability (IfS)

The IfS aims to contribute to stability in countries in crisis by providing an effective response to help preserve, establish or re-establish the conditions essential to the proper implementation of the EU's development and co-operation policies.

31 European Development Fund (EDF); based on the Cotonou agreement, which provides the bedrock of EU co-operation with African, Caribbean and Pacific countries, the EDF supports assistance to the Union's 78 ACP partner countries and the overseas countries and territories of Member States. The 10th EDF entered into force in January 2008.

Nuclear Safety Co-operation Instrument (NSCI)

NSCI finances measures to support a higher level of nuclear safety, radiation protection and the application of efficient and effective safeguards of nuclear materials in third countries.

The Instrument for Cooperation with Industrialised Countries (ICI)

The ICI promotes cooperation between the European Union and seventeen industrialised and other high-income countries and territories in North America, the Asia-Pacific region and the Gulf region

The Instrument for Pre-accession Assistance (IPA)

This is the vehicle by which pre-accession technical assistance is delivered to candidate countries.

The Humanitarian Aid Regulation

The extant Humanitarian Aid Regulation was not amended. [32]

6.2 The Committee considered these on several occasions during the gestation process, culminating in a debate in the European Standing Committee on 10 November 2005,[33] and subsequently, particularly during the formulation of the thematic programmes.

The Commission Communication

6.3 The Communication and accompanying Staff Working Document were published by the Commission on 21 April 2009, and considered by the previous Committee on 15 July 2009.

6.4 The Commission noted that the new instruments were being implemented through Country Strategy Papers, Regional Strategy Papers, Thematic Strategy Papers and, for the IPA, Multi-annual Indicative Planning Documents.

6.5 The Commission further noted that:

— they are required under these regulations to submit a report on their implementation by 31 December 2010, and to propose any necessary amendments;

— in final negotiations before the instruments were adopted, the Commission agreed—at the European Parliament's request—to carry out the review before the 2009 European Parliament elections and to take Parliament's reports and recommendations into account;

— this mid-term review (MTR) would cover the legal instruments only;

32 See http://ec.europa.eu/europeaid/how/finance/index_en.htm for full details.

33 See http://www.publications.parliament.uk/pa/cm200506/cmstand/euro/st051110/51110s01.htm for the record of this debate.

— European Parliament recommendations not affecting the legal texts would be considered in the mid-term review of the strategy and programming documents;

— that latter review would assess performance so far and update the strategies in the light of developments in partner countries, when "particular attention" would be paid at that point to civil society participation and aid effectiveness;

— the review process and updated strategy papers, together with multi-annual indicative programmes allocating the budget for 2011–13 by sector, was expected to be completed by the end of 2009;

— the IPA was governed by a different strategy and programming framework covering a rolling three–year period updated annually in line with the Enlargement Strategy Paper.

6.6 This present MTR aimed "to verify that the instruments are meeting the objectives set for the reform, partly through major simplification". Thereafter, "simplification being an ongoing process, the Commission will also consider the scope for further improvements, including amendments to the Financial Regulation, in particular as regards the control environment."

6.7 The Commission Staff Working Paper reported in more detail on the individual instruments; and outlined two legislative proposals, where the Commission had concluded from the review that certain amendments were necessary.

6.8 The previous Committee's earlier Report contains the helpful and extensive analysis and comments of the then Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead, as set out in her EM of 7 July 2009).

6.9 The then Minister strongly supported the need for reviews of Instruments funded from the EC Budget, to ensure sound financial management and that objectives were being met, professed herself generally satisfied with progress to date, and looked forward to the mid term performance reviews of each Instrument.

6.10 She noted that the European Parliament had taken the view that some activities programmed by the Commission under the DCI were not sufficiently geared to poverty eradication and the Millennium Development Goals or did not fulfil the criteria for Official Development Assistance (ODA). The Commission propose to address this by amending the ICI regulation to extend its geographical scope to include DCI countries. How the activities were funded under the revised ICI needed to be closely monitored. The UK would be opposed to any reduction in the financial allocation for the DCI, so any proposed amendment to the ICI would need to be framed within the ICI's current financial ceiling.

6.11 Looking ahead, the Minister said that discussion of the overview Communication was expected to begin in July 2009, with discussions on the individual proposals to amend the various instruments expected to commence that autumn.

The previous Committee's assessment

6.12 The previous Committee noted that, as the Commission had made clear, the Mid-Term Review that was to be completed by the end of 2009 was perhaps the more important of these two exercises. Even so, the Minister had indicated that the proposed amendments to the regulations were not entirely straightforward. They therefore asked the Minister to write after the "overview" Communication had been considered by the Council; and also to keep it informed about discussions with the European Parliament.

6.13 In the meantime, the documents were retained under scrutiny.

The Minister's letter of 10 January 2011

6.14 The Minister for Europe (Mr David Lidington) begins his letter by saying that "it has come to my attention" that the questions asked by the previous Committee have not been answered; apologises for their having remained unanswered for so long; and says that he continues to take his scrutiny obligations seriously, and that measures the FCO has put in place recently should prevent such oversights in future.

6.15 The Minister continues as follows:

> "The 'overview' Communication was not considered again by the Council after July 2009. The changes to the regulations governing each of the instruments were considered by the relevant Council working groups during the course autumn 2009 and early 2010 with proposals put to the European Parliament. The European Parliament considered all of the proposed changes to the instruments and set out its first reading opinion on 21 October 2010. The Competitiveness Council considered the EP's changes on 10 December 2010.
>
> "I regret that the FCO did not submit the Common Position on the ICI for scrutiny before it was considered by the Council on 10 December 2010. The UK made clear at the Council that it had not received policy or scrutiny clearance for the dossier and so voted against the Common Position. It was, nonetheless, agreed. I have included with this letter an Explanatory Memorandum that sets out the Government's view on the Council's Common Position.
>
> "On 17 December the Commission issued a supportive response to the Council's Common Position. I enclose the relevant document. We will keep the Committees informed on the progress of this dossier through the remaining stages."

The Council Regulation and the Commission Communication

6.16 As noted earlier, the proposal to extend its geographical scope to include a number of countries covered by the DCI and to fund certain activities in those countries using the ICI was first made in the Commission's Mid Term Review of the financial instruments for external action, following the European Parliament opinion that a number of proposed DCI activities were not sufficiently geared to poverty eradication or did not fulfil the criteria for ODA.

6.17 The documents set out the Council's and Commission's position, after consideration of the European Parliament's first reading opinion, on proposed amendments to the regulation for the ICI (the financial instrument for cooperation with industrialised and other high-income countries and territories).

6.18 The Commission sees the Council position as the outcome of constructive negotiations between the three institutions and as being in line with the essential objectives and the underlying approach of the Commission's initial proposal.

6.19 The Commission notes two specific amendments by the European Parliament that are not acceptable to the Council:

> *Delegated acts (Article 290 TFEU)*: the Commission says that the EP seeks by its first reading amendments to apply this procedure to the adoption of multiannual strategy papers by the Commission; and that, despite what it describes as long and intensive negotiations, it was not possible to reach agreement on this issue. It notes that the Council has not accepted these amendments in its positions at first reading, and says that it is ready to continue efforts to reconcile the positions of the institutions and to find ways to meet the substantive concerns behind Parliament's amendments, in particular in ensuring that Parliament can exercise appropriate oversight over the formulation of external cooperation strategies and the proper implementation of external financial instruments;
>
> *Article 16 on the financial reference amount*: The Commission notes that the Council has not accepted the proposed EP amendment, preferring to retain the text proposed initially by the Commission. The Commission says it supports the Council position since it reflects the standard text on financial reference amounts which is included in every financial instrument; but that, in order to facilitate agreement and re-assure the institutions, the Commission is ready to make the Declaration concerning Article 16 attached to the Communication.

6.20 All in all, the Commission says the Council position incorporates a negotiated compromise text which reflects to a very large extent the European Parliament's requests and amendments at first reading, and that the Commission can therefore accept the Council position.

6.21 In his Explanatory Memorandum of 10 January 2011, the Minister for Europe (David Lidington) explains that the relevant changes to the ICI regulation are effected by modifying and replacing several articles and annexes: articles 1 to 4 are replaced; articles 5(2) and 6(1) are replaced; article 7 is amended with additional paragraphs 7(2) and 7(3) added; article 8(3) is replaced; article 9 paragraphs (1) and (3) are replaced; article 12 is amended and paragraphs (1) and (2) replaced; articles 13, 14 and 16 are replaced; the title of Annex I is amended, and a new annex II is added listing those developing countries to be covered by the instrument.

The Government's view

6.22 The Minister goes on to say that the Government continues to support the policy of widening the geographical scope of the ICI in order to ensure that the activities funded

under the DCI remain focused on poverty reduction and are eligible as ODA, and of opposing any reduction in funding for the DCI as a result of changes to the ICI regulation, as set out by the then Minister in her Explanatory Memorandum of 7 July 2009. He continues as follows:

> "In the subsequent Council working group discussions the UK took a strong line to this effect. The Commission eventually proposed funding the additional uplift of €176 million to the end of the current Financial Perspective from savings elsewhere in Heading 4 of the EU Budget ("EU as a Global Player"). The Commission also made a declaration that funding for ICI would come from dedicated non-ODA budget lines and that the amount foreseen for DCI would not be reduced as a result."

6.23 The Minister then notes that the European Parliament adopted its first reading opinion on 21 October 2010. He describes most of the EP's amendments as either technical or textual in nature, such as references to the EU's values and labour standards, and references to support to SMEs, and says that there was a good deal of cooperation between the Council and the EP early in the legislative process and that the Council was able to incorporate in its first reading position many of the proposed amendments from the EP's first reading. He then says:

> "However, the Council did not agree with the EP's interpretation that Geographic Strategy Papers, Multi-Annual Indicative Programmes and Strategy Papers for thematic programmes constitute "delegated acts". The definition of "delegated acts" is intended to cover only the Commission's legislative proposals. Strategy and Multi-Annual Papers simply implement the relevant Instruments, rather than amending them; we therefore do not consider them to be legislative proposals.
>
> "The EP's attempt to interpret Strategy and Multi-Annual Papers as delegated acts which fall under Article 290 would give it increased powers of scrutiny before the implementation of programmes and risk considerably delaying the programming of EU instruments, reversing recent progress in speeding up disbursement. We do not accept the EP's interpretation of "delegated acts" in this context, which in our view would constitute "competency creep" by the European Parliament. The Council rejected the EP's tabled amendments at the Competiveness Council on 10 December. The EP is pursuing a similar strategy in relation to a number of EU Financial Instruments as described in two Explanatory Memoranda submitted by DFID on 9 December 2010."

6.24 With regard to the EP proposal to amend Article 16 of the regulation, the Minister says:

> "Article 16 on Financial Provisions contained standard text on the financial reference amount and the annual budget procedure used in all external instruments' regulations. The EP's amendments would have deviated from this standard text, and pre-judged the annual budget process by specifying that the source of funding could not be the DCI. We agree with the Council's position to block the changes to the standard text and we did not wish to set a precedent which could undermine the annual budget procedure."

6.25 The Minister again notes that, although the UK voted against the proposal at the Competitiveness Council on 10 December 2010 because it had not yet received Scrutiny clearance, the Council's first reading position was nonetheless adopted; and that the European Parliament will now consider it.

Conclusion

6.26 **The situation having moved on from the 2009 mid-term review, we now clear the Commission Communication and Commission Staff Working Document (documents (a) and (b)). In so doing, however, we note the Minister's assurances about the measures he has taken to avoid such lapses in future, and ask that he writes to the Committee in six months' time with a report on how well the new system has worked.**

6.27 **As the Minister also notes, the Committee has already considered similar Explanatory Memoranda on the Development Co-operation Instrument (DCI) and the European Instrument for Democracy & Human Rights (EIDHR).[34] Now, as then, we endorse the Government's position.**

6.28 **Once the EP responds, the Council will need to adopt a further agreed position; in which case we shall expect a further Explanatory Memorandum from the Minister, outlining the nature of the EP response and the Council position, and the Government's views thereon. If it is still proposed to include some sort of Commission Declaration about Article 16—about which the Minister makes no comment on this occasion—we ask him to ensure that his Explanatory Memorandum covers it. We shall also be interested in his views on the extent to which the outcome with regard to the Commission goal of providing the EP with "appropriate oversight over the formulation of external cooperation strategies and the proper implementation of external financial instruments" safeguards, or changes, the status quo.**

6.29 **In the meantime, we shall retain documents (c) and (d) under scrutiny.**

34 See headnote: (32201) and (32175): HC 428–xi (2010–11), chapters 8 and 9 (15 December 2010).

7 Value added taxation

(32317) 17491/10 + ADD 1 COM(10) 695	Green Paper on the future of VAT: *Towards a simpler, more robust and efficient VAT system*

Legal base	—
Document originated	1 December 2010
Deposited in Parliament	10 December 2010
Department	HM Treasury
Basis of consideration	EM of 20 December 2010
Previous Committee Report	None
Discussion in Council	None planned
Committee's assessment	Politically important
Committee's decision	Not cleared, further information requested

Background

7.1 For over 40 years the EU, and its predecessors, has had a common system of value added taxation, governed principally by the VAT Directive, the latest version of which is Council Directive 2006/112/EC.

The document

7.2 The Commission's intention with this Green Paper and an accompanying Staff Working Document, which supplements the former through a series of individual topic papers, is to launch a broad consultation on the functioning of the current VAT system and how it should be reframed in the future. The consultation, which is open to anyone with an interest, will run through to the end of May 2011. The outcome will help inform the production of a new VAT strategy, which the Commission expects to publish as a Communication by the end of 2011.

7.3 The purpose of the Communication will be to identify actions or initiatives to reform the current VAT system with a view to reducing administrative burdens, to combating fraud and to modernisation and simplification. It will effectively set out the Commission's high-level work plan over the medium term and give an indication of the nature of the VAT proposals to be expected in the coming years.

7.4 In its introduction to the Green Paper the Commission sets out the background and concludes it is now time to have a critical look at the VAT system to:

- strengthen its coherence with the single market;
- strengthen its capacity as a revenue raiser by improving economic efficiency and robustness; and

- reduce the cost of compliance and of collection.

The Green Paper and the Staff Working Document together raise a number of key issues, divided between two major headings. The first is on the principles of taxation of intra-EU transactions on which a VAT system fully adapted to the single market should be based. The second concerns issues which, in the Commission's view, need attention irrespective of the outcome of the debate on the principles.

7.5 The first of the two major headings essentially concerns the VAT treatment of cross-border transactions in the single market. The Commission considers a number of key principles in broad terms, including whether to implement definitive arrangements based on taxation at origin and the alternative route of taxation in the Member State of destination. One of the specific aims behind any reform would be to counter Missing Trader Intra-Community fraud. The Commission also raises the question of whether domestic and cross-border treatment needs to be equal and, if not, to what extent a different treatment is acceptable without it being an obstacle to the smooth functioning of the single market or allowing fraud. For example, it raises the possibility of achieving equal treatment through the general use of the 'reverse charge' mechanism.[35] At the same time the Commission recognises the difficulties associated with such an approach, so it reiterates its willingness to consider a pilot project to test the introduction of a compulsory generalised reverse charge system. Alternatively, the Commission suggests that equal treatment could be achieved through the taxation of intra-EU supplies of goods and services, but recognises that such an approach would have consequences for businesses and for tax administrations. The Commission suggests that technological solutions, including the VAT One-Stop-Shop (a simplification mechanism for cross border registration and declarations), offer possibilities to minimise impacts as part of any reform.

7.6 On the matters that the Commission considers need attention irrespective of the outcome of the debate on the first set of issues, the Green Paper raises the possibility for further work on the current VAT rules, with a view to ensuring the neutrality of the VAT system. It looks in particular at:

- the scope of VAT, including the treatment of public bodies and of holding companies;
- reducing VAT exemptions;
- improving the VAT deduction system; and
- further work on international services, including enforcing compliance by non-EU suppliers.

Other ideas focus on further work on the current process and procedures and VAT rules. The Commission points out that work in these areas would have to take into account the extent to which harmonisation is needed to improve the functioning of the single market and reduce compliance costs for business on the one hand and a degree of flexibility for Member States on the other. The areas flagged up are:

35 The reverse charge mechanism makes the buyer, rather than the seller, liable for payment of VAT.

- the legal process and the possible use of Council Regulations and Commission Decisions;
- accelerating the current derogation process for urgent anti-fraud measures; and
- VAT rates — including whether reduced rates are still relevant.

Finally, the Commission opens up possible areas for debate on broad themes aimed at reducing red tape, looking in particular at:

- reducing administrative burdens and streamlining EU VAT obligations, for example by devising a standard EU VAT return or defining at EU level a maximum set of standardised VAT obligations, to make things easier for businesses involved in cross-border trade;
- simplifications for small and medium enterprises, looking at the provision of an EU-wide scheme with a common registration threshold and greater scope for reducing compliance costs;
- developing further the VAT One-Stop-Shop concept;
- improving the VAT system for large and pan-EU businesses, for example looking at the treatment of interrelated companies, branches and VAT groupings;
- looking for synergies with other legislation, for example simplifying VAT collection on import in line with centralised customs clearance; and
- making the current system more robust — both in terms of countering fraud, but also to reflect changes in business practices since the basic system was established, including ideas to improve and simplify the collection of VAT by means of modern technologies and/or through financial intermediaries.

7.7 The Commission leaves it to contributors to the consultation process to decide on whether to focus on issues on which they have a particular interest or concern or instead cover the wide range of issues and 33 specific questions posed by the Commission in the Green Paper.

The Government's view

7.8 The Exchequer Secretary to the Treasury (Mr David Gauke) says that the Government welcomes the production by the Commission of the Green Paper and accompanying Staff Working Document and the opportunity to begin a high level debate on key issues and principles in order to inform the future direction of the EU VAT system. He comments further that:

- the Government is also supportive of the broad aims of reducing administrative burdens; combating fraud; and modernisation and simplification; but
- it will counter unhelpful ideas, including for example those that might lead to an erosion of UK national sovereignty or result in tax matters being dealt with otherwise than in Council under a unanimity basis.

Conclusion

7.9 **Clearly the Communication on a new VAT strategy, which the Commission intends to follow on from the consultation launched by this Green Paper, will be important. So before considering the Green Paper further we should like to see in due course the response to it, which we presume the Government will be making.**

8 Fundamental Rights Agency

(32319) 17564/10 COM(10) 708	Draft Council Decision amending Decision 2008/203/EC implementing Regulation (EC) No 168/2007 as regards the adoption of a Multiannual Framework for the EU Fundamental Rights Agency for 2007–12

Legal base	Article 352 TFEU; EP consent; unanimity
Document originated	2 December 2010
Deposited in Parliament	10 December 2010
Department	Ministry of Justice
Basis of consideration	EM of 22 December 2010
Previous Committee Report	None, but (28922) 13025/07: HC 16–i (2007–08), chapter 23 (7 November 2007) and HC 41–xxxvi (2006–07), chapter 2 (24 October 2007) are relevant
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background

8.1 In 2007, the Council adopted a Regulation establishing a European Union Agency for Fundamental Rights (the Agency).[36] Its objective was to provide advice and expertise on fundamental rights to support EU institutions, bodies, offices and agencies and Member States when implementing EU law. The Agency was established at a time when EU measures on police and judicial cooperation in criminal matters were contained in an intergovernmental "Third Pillar" in the Treaty on European Union (TEU). As the legal base for the Agency was Article 308 of the EC Treaty, its activities were similarly confined to matters falling with the scope of the EC Treaty and so did not extend to EU criminal law and police cooperation measures.

8.2 Article 5 of the 2007 Regulation required the Council to adopt a five-year Multiannual Framework for the Agency setting out the thematic areas of the Agency's activities. It did

36 Council Regulation (EC) No 168/2007, OJ L 53, 22.02.07, p.1.

so by means of a Decision adopted in February 2008 which identified nine thematic areas, as follows:

- racism, xenophobia and related intolerance;
- discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation or against individuals belonging to minorities;
- compensation of victims;
- the rights of the child, including child protection;
- asylum, immigration and the integration of migrants;
- visa and border control;
- the participation of EU citizens in the democratic functioning of the Union;
- respect for private life and the protection of personal data, and other issues related to the information society; and
- access to efficient and independent justice.

8.3 The original Commission proposal had also included the prevention of crime and related aspects relevant to the security of citizens within the thematic area concerning the compensation of victims. Our predecessors agreed with the then Government that the thematic areas had to fall within the scope of the EC Treaty and said that the reference to crime prevention and the security of citizens should be excluded as they were Third Pillar matters.[37] The Multiannual Framework finally adopted by the Council in 2008 deleted any reference to Third Pillar matters.

8.4 The Lisbon Treaty, which entered into force on 1 December 2009, brought the provisions previously contained in the TEU on police and judicial cooperation in criminal matters into a new Title V in Part Three of the Treaty on the Functioning of the European Union (TFEU). The TFEU replaced the EC Treaty and introduced the ordinary legislative procedure (governed by qualified majority voting) or the special legislative procedure (governed by unanimity) for the adoption of police and criminal law measures which had been subject to intergovernmental procedures under the TEU. At the same time, the scope of the UK's Opt-In Protocol was extended to all Title V measures so that all EU criminal justice or police measures are subject to the opt-in.

The draft Council Decision

8.5 The purpose of the draft Council Decision is to amend the Agency's Multiannual Framework to include an additional thematic area covering "judicial cooperation in criminal matters and police cooperation." In its accompanying explanatory memorandum, the Commission says that the Council, when it adopted the 2007 Regulation establishing the Agency, made the following declaration:

37 (28922) 13025/07: see HC 41–xxxvi (2006–07), chapter 2 (24 October 2007).

> "The Council agrees to re-examine, before 31 December 2009, the remit of the Agency for Fundamental Rights with a view to the possibility of extending it to cover the areas of police and judicial cooperation in criminal matters. The Council invites the Commission to submit a proposal to this effect as appropriate."[38]

8.6 Since then, with the entry into force of the Lisbon Treaty, the Commission considers that the 2007 Regulation establishing the Agency covers all matters falling within the scope of the TFEU and so requires no amendment to bring EU measures on criminal law and policing within the scope of the Agency's activities. However, the Commission says that the 2008 Decision establishing the Agency's Multiannual Framework does need to be amended to include police and judicial cooperation in criminal matters as one of the Agency's "thematic areas," not least to enable the Agency to "contribute to the Union's goal of ensuring that the measures it adopts, as well as their implementation, comply with the Charter of Fundamental Rights."[39] This is what the draft Council Decision seeks to do.

8.7 The Commission considers that the draft Council Decision should be based on Article 352 TFEU which is an amended and renumbered version of Article 308 of the EC Treaty. While the 2007 Regulation establishing the Agency was based on Article 308 of the EC Treaty, the 2008 Decision establishing the Agency's Multiannual Framework (which the draft Council Decision would amend), was based on Article 5 of the 2007 Regulation. The Commission says that the use of this secondary legal base is at odds with recent Court of Justice case law[40] and, as a result, that the draft Council Decision should, like the parent Regulation, be based on the successor to Article 308 EC, namely Article 352 TFEU.

The Government's view

8.8 The Minister of State for Justice, Lord McNally, says that the Coalition Government's Programme for Government included a commitment to protect Britain's civil liberties and preserve the integrity of its criminal justice system while also engaging constructively with the EU. He continues:

> "The FRA was set up in 2007 and its role is to collect, analyse and disseminate data on the situation of fundamental rights in the EU, develop comparability and reliability of data and to carry out and promote research in the field of fundamental rights. It has no powers to examine individual complaints, to examine the fundamental rights situation particularly in any given Member State or EU institution, or to set new standards. Instead, the clear vision for the FRA — shared by the Commission — is for it to develop comparable data from across the EU on fundamental rights in relation to current policy issues. The development of such comparative data provides a useful tool in measuring the impact of EU legislation on fundamental rights across Europe including, as appropriate, in candidate countries. For example it undertook a comparative legal analysis of the position for gay, lesbian, bisexual and transsexual people across the EU states, providing useful data in an area where there is little research. The FRA has been mindful of its legal

38 Page 2, footnote 4 of the Commission's explanatory memorandum.

39 See page 4 of the Commission's explanatory memorandum.

40 The Commission cites C-133/06, Parliament v Council, judgment of 6 May 2008.

remit as set out in the establishing Regulation and the current MAF and has not strayed beyond its remit.

"During the process to establish the FRA, the UK expressed concerns about including former 'third pillar' issues within the Agency's remit. These concerns were based primarily on the establishment of a clear legal base and the workload of a new organisation. The Lisbon Treaty has gone some way towards providing a legal base."

8.9 He concludes by saying that the Government is continuing to consider carefully the implications of the draft Decision and will provide further information to Parliament.

Conclusion

8.10 **We note that the Government appears to harbour some doubt as to the correct legal base for the draft Council Decision. We ask the Minister, when providing further information to Parliament, to include a more detailed analysis of the Government's view on the legal base proposed and on the policy implications of including police and judicial cooperation in criminal matters as a new thematic area for the Agency's activities. Meanwhile, the draft Council Decision remains under scrutiny.**

9 Missing children hotline

(32306) 17296/10 COM(10) 674	Commission Communication: *Dial 116 000: The European hotline for missing children*

Legal base	—
Document originated	17 November 2010
Deposited in Parliament	3 December 2010
Department	Business, Innovation and Skills
Basis of consideration	EM of 22 December 2010
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested

Background

9.1 In 2007, the Commission adopted a Decision requiring Member States to reserve a six-digit number range starting with 116 for services of social value which contribute to the

well-being or safety of citizens or help those in difficulty.[41] The Decision also specified that Member States had to reserve the number 116 000 for the operation of a hotline to report missing children and ensure that, by the end of August 2007, the competent regulatory authorities — Ofcom in the UK — were in a position to make the number available to potential operators of the hotline.

9.2 A Commission survey in June 2008 revealed that Member States had done little to advertise the availability of the number to potential operators. In 2009, the European Parliament and Council adopted changes to the EU regulatory framework for telecommunications which, amongst other things, required Member States to:

- encourage the provision within their territories of services of social value using the 116 prefix;
- ensure that disabled end-users are able to access 116 services;
- ensure that citizens are adequately informed of 116 services and how to use them, especially when travelling in other Member States; and
- make every effort to provide citizens with access, via 116 000, to a hotline to report missing children, at the latest by 25 May 2011.[42]

The Commission Communication

9.3 The Commission says that the purpose of reserving the number 116 000 for a hotline to report missing children is to "ensure that the same service is always associated with the same number across the entire European Union. Having the same hotline number will help children and parents in distress to find help when outside their Member State of origin, for example if a child goes missing during a family holiday."[43] It wants the hotline to be fully operational, and to provide the same high quality of service, in all EU Member States. According to the Commission, so far it is only operational in 13 Member States (including the UK, where the Commission says that the hotline is "partially operational").[44]

9.4 The Communication considers the obstacles which have prevented the hotline from becoming operational in all Member States, highlights possible solutions and best practice, and suggests minimum standards needed to guarantee a high quality of service.

Obstacles to implementation of the hotline

9.5 The Commission identifies two key issues which have delayed the implementation of the 116 000 hotline in all Member States. First, studies indicate that there is a general lack of awareness about the hotline and insufficient information in some Member States to enable potential hotline operators to apply for assignation of the number. Second, difficulties in financing the hotline have deterred potential operators. The hotline has to be

41 See Commission Decision 2007/116/EC of 15 February 2007, OJ L 49, 17.2.2007, pp 30–33.

42 See Article 27a of the Universal Service Directive (Directive 2009/136/EC, amending Directive 2002/22/EC); HC 19–xviii (2008–09), chapter 13 (3 June 2009) and HC 19–xiv (2008–09), chapter 1 (22 April 2009).

43 See paragraph 2, page 3 of the Commission's Communication.

44 The hotline is operational in Belgium, Denmark, France, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain and the UK.

staffed 24 hours a day, seven days a week by suitably qualified individuals who are able to respond in more than one language. Staff training costs are therefore likely to be substantial. Moreover, as the hotline is required to be a freephone number, potential operators may not be willing or able to cover the costs of calls. At a practical level, it seems that 116 000 number may not be available to all users of mobile phones or to those making international calls.

Examples of best practice

9.6 The Commission highlights examples of good practice which have helped some Member States to overcome the problems associated with costs and lack of awareness of the hotline number. These include information campaigns; close cooperation between Member State governments and their national regulatory authorities to identify suitable hotline operators; and various funding options to cover the running costs of the hotline. Some hotlines are financed wholly or partly from public funds; from national lottery grants; or by telecoms operators as part of a corporate social responsibility programme. In one Member State, mobile phone operators have agreed to cover the telephone costs of calls to the hotline.

Common minimum standards

9.7 The Commission says that it is important for parents and children to receive the same quality of service and assistance when they call a 116 000 hotline, regardless of where they call from. It identifies a number of best practices established in Member States where the hotline is already operational which include:

- ensuring that the service is available in the language of the Member State in which it is provided and also (at a minimum) in English;
- providing specific staff training and a follow-up service, where appropriate, after the closure of a case;
- ensuring that transnational cases are re-directed to the relevant authority; and
- encouraging cooperation agreements between hotline service providers and the relevant national enforcement or judicial authorities.

9.8 The Commission says that it will continue to monitor progress by Member States in implementing measures to make the hotline fully operational, including through an annual stakeholders meeting, and may propose legislation if it considers that insufficient progress has been made within a reasonable timeframe.

The Government's view

9.9 The Minister for Culture, Communications and Creative Industries (Mr Edward Vaizey) welcomes the Communication which serves as "a timely reminder to all Member States that 116 000 should be implemented as soon as possible" so as to ensure "that all EU citizens, wherever they are in the 27 Member States, have access to this important pan-European service."

9.10 The Minister explains that Ofcom is responsible for the reservation and assignment of the 116 000 number in the UK. The number was allocated to the charity "Missing People" and its chosen telecommunications provider (British Telecommunications) in May 2010. 116 000 operates alongside the charity's existing helpline numbers and will replace them from April 2012. The Minister says that low-key promotion of the 116 000 number will start in January 2011 at selected UK entry points, based on pan-European marketing material provided by Missing Children Europe, followed by a high profile launch of the number in April 2012.

9.11 The Communication states that the 116 000 hotline is only "partially operational" in the UK because one (un-named) communications provider in the UK does not currently provide access to the 116 000 number. The Minister continues:

> "In the UK, only British Telecom has an obligation to provide access to all telephone numbers. However one operator has taken the commercial decision not to provide access to 116 000. This decision has been taken as it is their view that the wholesale charging structure was unacceptable for a 'free to caller' number originating on a mobile network and therefore would not cover their costs of efficient call origination. (Note: the UK has gone further than the Decision and requires calls to some 116 numbers to always be 'free to caller' rather than 'freephone', where charges can apply provided the caller is informed).
>
> "Ofcom are currently in negotiations with the operator on this matter and are considering whether access obligations for 116 000 could or should be strengthened.
>
> "It is worth noting that there is a new requirement in the amended telecommunications package (Article 27a of the Universal Service and Users' Rights relating to Electronic Communications Networks & Services directive — 2002/22/EC) for Member States to promote all 116 numbers. This should include measures to encourage the provision of those services and to ensure that disabled end-users have access to these numbers whilst travelling.
>
> "Work on implementing this is being taken forward by the Department for Business, Innovation and Skills as part of the larger project to implement the Revised European Communications Framework package of directives. The Department will work closely with all interested Government Departments and agencies in the implementation of these provisions."[45]

Conclusion

9.12 **While it is clear that implementation of the hotline is further advanced in the UK than in many other Member States, we note with concern that it is still not considered to be fully operational because one telecommunications provider does not provide access to the 116 000 number. We think that this is not only highly regrettable, but that it is also likely to be highly counter-productive if, as the Commission suggests, further EU legislation may be proposed to ensure that the hotline is fully operational in all**

45 See paragraphs 38–41 of the Minister's Explanatory Memorandum.

Member States. While we are content to clear the Communication from scrutiny, we ask the Minister to inform us of the outcome of negotiations currently being conducted by Ofcom to ensure universal access to the 116 000 number in the UK.

10 State aid "scoreboard ": Autumn 2010

(32333) 17721/10 COM(10) 701	State aid scoreboard: Autumn 2010 update

Legal base	—
Document originated	1 December 2010
Deposited in Parliament	13 December 2010
Department	Business, Innovation and Skills
Basis of consideration	EM of 21 December 2010
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

10.1 The Commission reports twice yearly on state aid and state aid issues, the main aim of recent reports ("scoreboards") having been to consider to what extent Member States have responded to the Lisbon Strategy, particularly the specific commitments agreed at the Stockholm European Council in 2001 to show a downward trend in the level of state aid relative to Gross Domestic Product (GDP) while redirecting aid from specific sectors to "horizontal" objectives, such as research and innovation. This latest update focuses on the state aid situation in the 27 Member States for the year 2009 together with the underlying trends, and it also looks at the state aids related to the financial crisis, the steps taken to simplify the state aid rules, and their enforcement.

The current document

State aid in 2009

10.2 The Scoreboard reports that the total of state aid granted by the 27 Member States in 2009 was €427.2 billion, with aid measures related to the financial crisis accounting for €353.9 billion of this total. Other aid amounted to around €73.2 billion, with industry and services accounting for €58.1 billion, agriculture and fisheries €11.8 billion, and transport (other than railways) €3.3 billion. Excluding financial crisis measures, the five largest

grantors of aid[46] account for 68.2% of the total, and, if financial crisis measures are included, the UK was the largest grantor (€124 billion) followed by Germany, France, Belgium and Greece.

Trends and Patterns of State aid expenditure in the Member States

10.3 The Scoreboard notes that, from a long-term perspective, levels of state aid had been falling, from about 2% of GDP in the 1980s to around 0.5–0.6% in the years 2003–2007, largely due to economic growth, a reduction in aid to the coal industry, and post-Accession adjustments in the new Member States, allied to a general recognition that higher aid levels hinder the efficient allocation of resources. Due to the response to the financial and economic crisis, overall EU aid levels in 2007 to 2009 went up to 3.6% of GDP, but, excluding the crisis measures, they stood at 0.62% of GDP in 2009: although this represents a slight increase compared with 2008, it remains within the average for 2000–2007, suggesting that Member States are continuing to exercise discipline in this area.

10.4 The Commission observes that state aid for horizontal purposes, such as environmental protection and regional development, is usually considered to be better suited to addressing market failures and less distorting than ad-hoc measures or aid for specific sectors. It notes that the general long term trend is for a higher proportion of aid to be granted for horizontal objectives, with aid of this kind accounting for €48.7 billion or 84% of aid to industry and services (compared with about 50% in the mid-1990s). The three main objectives were regional aid (24%), aid for environmental protection (23%) and aid for research, development and innovation (18%). In 2009, aid for non-crisis rescue and restructuring aid amounted to about €398 million, compared with an average of €872 million in 2006 -2008.

State Aid related to the Financial Crisis

10.5 The Commission notes that, since October 2008, it has taken a number of steps under Article 107(3)(b) TFEU to provide guidance to Member States on the provision of state aid to support financial institutions and address problems faced in the real economy in the current financial crisis. It says that the coordinated action by Member States to support banks along with the introduction of crisis-specific state aid rules helped to contain the financial sector and limit distortions of competition within the single market. The Commission adds that most Member States provided aid to their financial institutions, and that, between October 2008 and October 2010, it took around 200 decisions on such measures, with the maximum volume of total crisis support to financial institutions approved amounting to €4,588 billion (which in some cases involved the entirety of a Member State's bank deficits) . The bulk of the support (€3,485 billion) came in the form of state guarantees, followed by recapitalisation measures (€546 billion) and impaired asset relief interventions (€402 billion). However, the Commission points out that not all of the aid approved was provided by the Member States, the nominal amount of crisis support actually implemented in 2009 being €1,106 billion, compared with €1,236 billion in 2008. Of this, the state aid element for 2009 is estimated at €351 billion, which the Commission

46 Germany €15.3 billion, France €11.7 billion, Spain €4.9 billion, Italy €4.6 billion, and UK €3.3 billion.

says is significantly lower than the nominal amount of aid because it constitutes only a fraction of the guaranteed amounts (also, real budgetary expenditure materialises only when a state guarantee is actually drawn upon).

10.6 The Commission says that Member States were also enabled to mitigate the effects of the financial crisis on the real economy under the Temporary Framework which it adopted at the end of 2008 (though the Framework does not apply to companies in difficulty before the crisis). The total aid element of all the measures granted under the Framework in 2009 was €2.2 billion, of which 55% was in the form of a subsidy of up to €500,000 per company, whilst guarantees represented 12% of the total.

Simplification of State aid rules

10.7 The Commission recalls that Member States are obliged to notify all state aid measures prior to implementation, and that a "3-stream system" to state aid decision-making (involving block[47] and *de minimis* exemptions, and standard and detailed assessments) has been developed, applying a degree of control which reflects the potential impact on competition. The Commission says that, whilst the number of block exemption measures has increased significantly, the majority of individual schemes or cases still notifiable are subject to standard assessment, with the most detailed assessment being carried out in four out of 16 risk capital cases, nine out of 30 cases involving research and development and innovation, and only one out of 59 regional aid cases.

10.8 Additionally, in September 2009, the Commission introduced a simplified procedure allowing compatible aid to be approved within an accelerated time period of one month, based on a complete notification from the Member State. The other part of the simplification package was the Code of Best Practise for the conduct for state aid control procedures, based on a joint commitment of the Commission and Member States to achieve more streamlined and predictable procedures at each step of the investigation, thereby resulting in faster decisions.

Enforcing the state aid rules

10.9 A state aid measure is considered to be unlawful under Article 108(3) of the Treaty if a Member States implements it before it has been approved by the Commission, and, if illegal aid is found, it usually has to be repaid with interest. The Scoreboard reports further progress in the recovery of illegal and incompatible aid, with €12 billion having been recovered since 2000, and the total number of cases pending recovery falling to 54 compared with 94 at the end of 2004, and 11% of unlawful aid being unrecovered compared with 75% at the end of 2004.

The Government's view

10.10 In his Explanatory Memorandum of 21 December 2010, the Minister for Employment Relations, Consumer and Postal Affairs at the Department for Business,

47 In such cases, individual approval from the Commission is not required in advance, unless the application exceeds a certain threshold.

Innovation and Skills (Mr Edward Davey) says that there are no direct policy implications from this document, which is intended to increase transparency and to emphasise the need for Member States to continue their efforts to reduce the level of state aid, and to ensure that it is better targeted. On the broader state aid reform issues, the Government strongly supports an effective state aid regime and is committed to the European Council's aim of less and better targeted state aid. He adds that, as the Commission continues to review the effectiveness of its rules and procedures, the UK will continue to engage with it positively to help ensure the delivery of its policy goals, especially taking into account current economic instability.

Conclusion

10.11 **In clearing this document, we are drawing it — like previous scoreboards — to the attention of the House as a useful summary as regards state aid policy.**

11 Functioning of retail electricity markets for consumers

(32194) 16188/10 SEC(10) 1409	Commission Staff Working Paper: *The functioning of the retail electricity markets for consumers in the EU*

Legal base	—
Document originated	11 November 2010
Deposited in Parliament	17 November 2010
Department	Energy & Climate Change
Basis of consideration	EM of 30 November 2010
Previous Committee Report	None
Discussed in Council	3 December 2010
Committee's assessment	Politically important
Committee's decision	Cleared

Background

11.1 After an earlier study carried out in the context on the Consumer Markets Scoreboard had identified the retail electricity market as one of the areas most likely to function poorly for consumers, a further study on the functioning of that market was carried out in 2010 by the European Consumer Markets Evaluation Consortium. This considered whether consumers can effectively benefit from a well-functioning market in terms of choice, price and quality, and whether they are able to make informed, rational and empowered choices (in other words, how easy or difficult it is for them to participate in the market and make the optimal choice). In particular, it considered such aspects as awareness and information,

choice, prices, transparency and comparability of offers, switching, billing, problems, complaints and dispute resolution mechanisms.

11.2 The main findings of that study have now been set out in this Commission Staff Working Document, which focuses on the problems consumers face in making the right choice, and looks at the instruments which can help them to participate in the market: as such, it complements the measures on consumer protection contained in the third energy package (and now adopted as Directive 2009/72/EC).

The current document

11.3 The Commission notes that, in most Member States, retail electricity markets were not fully opened until July 2007, so that the process of developing a single European energy market is a recent one, and it adds that, even in markets with strong competition, consumers will not reap efficiency benefits if they cannot exercise informed choice. It therefore stresses the importance of appropriate measures being taken at an early stage, empowering consumers, providing information, raising awareness, facilitating comparison and providing redress, particularly for the most vulnerable. It also points out that the third energy package contained a number of consumer protection measures such as transparency of contractual terms and conditions, information and dispute settlement mechanisms, switching facilities, and safeguards, and it suggests that these measures now need to be put into practice. The Commission then examines the various aspects covered by the recent study.

Choice

11.4 The Commission suggests that consumer satisfaction depends greatly on whether prices are perceived as fair and reasonable, and that price competition depends, not only on structural market factors, but also on price transparency and comparability, and on consumer behaviour, with active consumers tending to enhance competition. In particular it looks at:

— Finding better offers

> The Commission notes that over 60% of shoppers instructed to search for cheaper tariffs succeeded in doing so within a day (on average), with the cheapest offer providing an average annual saving of €100 (equivalent to €13 billion, if replicated across the EU), though it points out that there were substantial differences between Member States.

— Choice and complexity

> The Commission says that the total number of electricity suppliers varies widely as between Member States, but that, in those in countries with a large number, suppliers are often small and operate locally. It notes that, in the EU as a whole, 866 standard tariffs were available to medium consumption consumers, with about 60% applying a fixed rate and being of an unspecified duration, but it also comments that the range of tariffs in some Member States is quite limited, and that certain types of tariff are not found at all in some countries. It says that, where a wide variety exists,

consumers need to be fully aware of the associated conditions, should be given a period of notice before price changes are made, and not automatically be rolled over to contracts with different conditions.

The Commission suggests that liberalisation can be expected to lead to a greater number of tariffs on offer, and that there is some evidence of this. It also points out that higher market concentration tends to be linked to a smaller number of tariffs on offer, and that there are also typically fewer different tariffs where prices are regulated.

— Price ranges within countries

The Commission says that the range of prices for consumers in different consumption bands provides a further indication of the level of choice and diversity, and of potential savings from switching to the lowest tariff. It provides an analysis of the dispersion of prices within the Member States, with an especially wide range available across all consumption bands in Finland, Belgium and Italy (and for low consumption in the UK).

— Consumer attitudes towards choice

The Commission says that consumers like to have a choice of tariffs and suppliers, even though they often fail to exploit the opportunities this provides. However, if the choice becomes too complex, it may be difficult for consumers to select the best alternative, meaning that there are large potential benefits which are not currently being used. It suggests that one explanation for this is that consumers could be falsely reassured by a high perceived level of competition, and so expect prices to be low, regardless of the supplier, assuming that there is no need to search for alternative offers. However, it also acknowledges that other explanations could include lack of motivation or interest, or an impression that switching is difficult.

— Comparing suppliers and tariffs

The Commission points out that nearly half of consumers do not know whether they are on the cheapest tariff, and that they have more experience of comparing different offers from their current supplier than from other suppliers, perhaps because of the perceived cost and inconvenience of switching suppliers. It also notes that fewer than 20% of consumers in all Member States had received assistance or advice in choosing their tariff.

— Price comparison tools

The Commission says that these can greatly help to overcome obstacles, but that fewer than 50% of consumers had used a price comparison website, even though the evidence is that this makes it easier to compare offers from different suppliers. It suggests that this might be because consumers are not aware that price comparison tools exist for retail electricity; that they may not trust the sites; that competing sites sometimes give different information on the cheapest offers, leading to confusion rather than transparency; and that the offers covered on some websites may be incomplete or out of date.

— Consumer understanding of consumption and the market

The Commission suggests that consumers may not make the right choice because they have limited knowledge of the market as regards products and prices, energy source, contract terms and consumer rights, and that many feel very poorly informed on the retail electricity market, allowing suppliers to exploit this to their benefit. In particular, it says that consumers were more aware of the amount they spend than of how much they consume, and that this problem was exacerbated by the use of estimated consumption (which is the dominant method in the majority of Member States, even though simple means, such as smart meters, exist for billing according to actual consumption).

— Information on bills

The Commission observes that, although suppliers make information available, they tend to rely more on passive (website) provision than on active means, which it suggests may in itself be an indicator of poor market functioning, and it says that it is rare for consumers to receive better offers. It also highlights the importance of the electricity bill as an opportunity for consumers to consider their consumption, and points out that in most Member States bills are regulated so as to make them more transparent and understandable, though the level and clarity of the information provided varies considerably between Member States (and information not directly related to billing is often hard to find).

Switching

11.5 The Commission says that the percentage of consumers switching tariff or supplier within the last two years varies considerably across Member States, but that the low rate overall is consistent with the conclusion that consumers are not particularly active in this regard. It says that supplier switching rates increase with the maturity of the market, but that there is evidence that switching is still not as easy as it could be in some Member States, particularly where a change of supplier is concerned.

11.6 The Commission says that the main reasons for switching tend to be poor customer service, the environmental friendliness of the supplier, or moving house. On the other hand, apart from lack of awareness or limited access to information, a significant number of consumers do not switch because they had no local alternative, because of the length of the notice period required, because they believe the financial incentive to do so is not sufficient, or because they find the process too cumbersome. Consumers considering switching are often offered a better deal by their current supplier.

Problems and complaints

11.7 The Commission notes the importance of consumer problems being solved swiftly and satisfactorily, and that this can be achieved by complaints to suppliers or third parties and by seeking redress. It says that one in ten consumers across the EU has had a problem with a supplier in the last two years, notably power interruptions and problems related to prices, including inaccurate billing and infrequent meter readings. The Commission observes that in the majority of Member States regulation relating to the handling of

complaints is in place, but that the level of complaints varies greatly between them, and that overall less than half of those making a complaint were satisfied with the way in which it was handled, particularly when this takes a long time. However, the Commission also records that more than one in three consumers who have a problem do not make a complaint, either because they do not know how (or where) to complain, because they think they are unlikely to get a satisfactory solution, because the sums involved are too small, or because complaining would be too difficult. Despite this, consumers very rarely complain to other organisations, such as ombudsmen or regulators, perhaps due to a limited awareness of their existence.

Fair and affordable prices

11.8 The Commission observes that the view consumers take on the fairness and reasonableness of price depends on whether they believe these are competitive and that, on average, prices are seen as fairer in Member States where they are not regulated. In terms of price levels in different Member States, it points out that consumer prices depend upon the commodity price, transport, distribution and supply costs, and taxies and levies, and that the dispersion of average prices across the EU is high (underlining the absence on an internal market), even when account is taken of differences in purchasing power. It says that the unit prices charged to households with lower overall consumption are higher, which has two unfortunate effects — because such households tend to be those on a low income, and because it provides an incentive to consume more electricity, which is contrary to the EU 2020 strategy. Finally, the Commission says that there are large differences between Member States as regards the proportion of consumers who have problems affording their electricity bills.

Conclusions

11.9 In summarising the survey, the Commission says that, although opportunities for better deals are widely available, liberalisation has not turned consumers into active participants, and that it is therefore vital to put in place appropriate mechanisms to address this, particularly in making information available. It suggests that guidelines for price comparison tools and in relation to the switching or suppliers or tariffs would be helpful, and that consumers would be aided by improved and simplified handling of complaints. It says that it will set up a multi-stakeholder working group to identify best practices in alternative dispute resolution in energy, and that there is considerable scope for making electricity more affordable for the most disadvantaged consumers and for enhanced price incentives to reduce consumption. It also says that European energy bodies should have a strong mandate to deal with consumer issues, and to facilitate the sharing of best practice.

The Government's view

11.10 In his Explanatory Memorandum of 30 November 2010, the Minister of State at the Department for Energy & Climate Change (Mr Charles Hendry) says that the Government considers tackling the issues of fuel poverty and energy affordability as top priorities, and that much work has already been done at EU level to improve consumer rights and information and to address the issue of vulnerable consumers, mainly through measures in the third energy package, which provides a strong European framework for protecting

consumers. This includes provisions on switching suppliers, defining vulnerable consumers and introducing smart meters, measures which the Government welcomes (and which, in many cases, are already in place in the UK).

11.11 He adds that the UK agrees with the Commission that the internal energy market legislation should be fully implemented and enforced to ensure that the benefits are enjoyed by consumers throughout the EU, and that improving energy efficiency is a central part of the solution to the issue of energy affordability. It does not see any need for further EU legislation on energy consumer issues at this point, but would welcome more sharing of best practice, for example through the Citizens' Energy Forum.

Conclusion

11.12 **Although this document is neither a legislative proposal nor a formal Commission Communication, the functioning of retail electricity markets is nevertheless relevant to the successful pursuit of the EU's Energy 2020 strategy,[48] which we have recently recommended for debate. Consequently, although we are clearing the document, we think it right to draw it to the attention of the House.**

48 (32170) 16096/10: see HC 428–xi (2010–11), chapter 2 (15 December 2010).

12 Honeybee health

(32335) 17608/10 COM(10) 714	Commission Communication on Honeybee Health

Legal base	—
Document originated	6 December 2010
Deposited in Parliament	13 December 2010
Department	Environment, Food & Rural Affairs
Basis of consideration	EM of 21 December 2010
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

12.1 The Commission says that, because bees play an important role in both pollination and the production of honey, the EU has established certain harmonised rules to protect and maintain their health, with Member States being free to regulate other aspects of beekeeping. It observes that this system worked successfully for many years, but that there has recently been an increase in bee mortality in several countries within and outside the EU. As a result, beekeeping organisations have — with the support of the European Parliament — called for more focus on this issue, and the Commission has therefore put forward this Communication to clarify the key issues and the actions which it intends to take to address them.

The current document

12.2 The Commission says that annual EU honey production is about 200,000 tonnes, and that beekeeping is a widely-developed activity, with around 700,000 beekeepers, of which about 3% are classed as professional[49] (and which account for about one-third of production). It notes that, together with other insects, bees are important pollinators, and it says that, in considering the sector, account needs to be taken of the different kinds of beekeeping, the significant difference between bee health and technology when compared with animals such as cattle and poultry, different regional characteristics, and the distribution of diseases.

12.3 As regards bee health, the Commission points out that, in the past decade, several problems have affected the sector in different countries worldwide, but it adds that, although this has led to serious concern, scientific studies have not been able to determine the exact cause or extent. However, it suggests that bee health is linked to many different

49 In that they have over 150 hives.

bacterial, viral or parasitic factors; the availability of suitable treatment, the presence of invasive species; and environmental changes, including the use of pesticides in agriculture (though it has so far found no evidence of any link with genetically modified organisms).

12.4 The Commission goes on to look at the EU animal health framework as it applies to bees. It notes that the legislation in force provides for animal health certification and requirement for movements of bees between Member States, intended to prevent or control a number of bee diseases,[50] but that it does not cover an important bee parasite (*Varroa*), which is present and well established in the EU, because restricting bee movements would be a considerable burden on beekeepers without limiting its spread. The Commission also notes that, since 2000, there have been restrictions on imports of live bees from third countries, with checks being carried out at veterinary border inspection posts. It points out that it is currently preparing a proposal for a single "Animal Health Law", which will over time replace the current basic veterinary legislation of almost 60 Directives and Regulations, and is intended to introduce a more preventive approach to disease control: and it says that veterinarians and beekeepers have repeatedly mentioned bee health as one of the areas which could benefit from further EU harmonisation.

12.5 The Commission then addresses a number of more specific issues:

Scientific and technical knowledge

The Commission observes that the problems of the sector and the decline in the bee population are complex and diverse, but that, as no direct causal links have been established, it is still unclear what should be done to combat this. However, it suggests that surveillance plays a major part, and it notes that a recent project[51] by the European Food Safety Authority (EFSA) indicates that the systems operated by Member States are in general weak, with a lack of standardisation and harmonisation as regards the data collected. It says that it therefore intends to start a pilot surveillance programme by the end of 2011.

EU Reference Laboratory for bee health

The Commission points out that EU Reference Laboratories are essential for animal health risk management, in that they provide the scientifically sound and uniform testing needed for reliable disease diagnosis and the application of the necessary control and eradication measures, including the standardisation of analytical methods in the international arena. It says that it therefore intends to designate an EU Reference Laboratory for bee health, which should become operational by April 2011, and which will be tasked with addressing scientific issues identified in the EFSA report (and which will provide technical support to the pilot surveillance programme).

50 Such as American and European foulbrood, small hive beetle and the *Tropilaelaps* mite.

51 "Bee mortality and bee surveillance in Europe". An externally produced report on the project is available: http://www.efsa.europa.eu/en/supporting/pub/27e.htm.

Improved knowledge on bee health

The Commission says that the focus on bee health has been stepped up as part of the Better Training for Safer Food initiative, with 160 participants from all Member States and seven non-EU countries having taken part during 2010 and 2011 in a number of training courses.

Availability of veterinary medicines for bees

The Commission says that beekeeper associations believe that there are not enough medicinal products available to treat diseases in bees, largely because the market is small and the expected investment return low. It says that the European Medicines Agency has taken a number of measures aimed at promoting innovation and the development of new products, and that this area will be considered in the context of a wider review of the legal framework for medicines which have minor uses and/or apply to minor species.

Food safety aspects

The Commission points out that, where there is no authorised veterinary medicinal product in a Member State for a condition affecting an animal species, Member States have to ensure that measures exist allowing a veterinarian to use medicines off-label within strict limits. However, it notes that, in such cases, there are no clear rules on Maximum Residue Levels (MRLs), which creates legal uncertainties for both producers and consumers, and can lead to potential disruption of the internal market for honey. Consequently, it intends to adopt MRLs for such substances

Pesticides

The Commission notes that a new Regulation (1107/2009) maintains a provision under which a pesticide can only be approved at EU level if its use has no unacceptable effect on bee health or bees, or leads to negligible exposure of honeybees, but it adds that it is currently revising the data requirements for the submission of pesticide dossiers to enhance the protection offered.

Genetically modified organisms (GMOs)

The Commission notes that, although increased bee mortality has been reported all over the world, no difference has been reported between those areas where GMOs are extensively cultivated and those where GMOs are much less common or cultivation has been prohibited. It therefore cautions against any suggestion that increased bee mortality is related to increased GMO cultivation, and notes that EU legislation in this area contains a number of safeguards.

Bees and biodiversity loss

The Commission observes that bee health is also affected by biodiversity loss arising from land-use changes and mismanaged intensification, as well as by the

loss of traditional farming practices, pollution and the spread of invasive species. It says that it is promoting research on conservation, restoration and sustainable use of pollinator diversity in agriculture, and that there is growing evidence that bees with access to a mixture of pollen from different plants are healthier than those fed only one type of pollen. It also observes that the EU's Rural Development Programmes offer a range of agri-environmental measures to encourage biodiversity, and that attempts to meet the EU's more general biodiversity target for 2020 are likely to have a beneficial effect on bee health.

Common Agricultural Policy and bee health

The Commission notes that, in addition to environmental measures, Council Regulation (EC) No 1234/2007 establishing a common market organisation of agricultural markets contains a series of specific measures to support beekeeping, and that, if included in apiculture programmes drawn up by Member States, these may be eligible for part-financing by the EU. It adds that a report which it presented earlier this year concluded that this mechanism had been very beneficial to the beekeeping sector.

Research on bee health

The Commission says that the EU supports research projects into bee health through its Seventh Framework Programme, with about €10 million having already been dedicated to honeybees and other pollinators, and current projects dealing with the decline in both wild and domesticated pollinators (including honeybee colonies) in Europe, its potential causes and the development of appropriate diagnostic tools.

Communication on bee health issues

The Commission says that one of its key objectives is to improve communication, and that it expects a recently developed Commission internet page to serve as one of the focal points for interested parties, offering sectoral information on a range of activities and legislation regarding bee health, as well as links to other relevant pages. It adds that it intends to hold further discussions on how to improve its activities in this area.

Global link to international activities

The Commission observes that the World Organisation for Animal Health (OIE) is the recognised standard setting body, and recently issued a statement of bee health, proposing that research into the causes of mortality in bees, and how to combat diseases, should be intensified. Bee health also features in the Organisation's Fifth Strategic Plan for 2011–15, and the Commission says that it is cooperating closely with OIE on the exchange of relevant scientific information.

The Government's view

12.6 In his Explanatory Memorandum of 21 December 2010, the Parliamentary Under-Secretary at the Department for Environment, Food & Rural Affairs (Lord Henley) provides a summary of the provisions in the Communication, but says that it gives rise to no policy implications.

Conclusion

12.7 **Although this Communication is not contentious, it nevertheless deals with a subject of some public interest and concern. Consequently, whilst we are content to clear it, we think it right to draw it to the attention of the House.**

13 Agricultural product quality

(a) (32343) 17672/10 COM(10) 733	Draft Regulation on agricultural product schemes
(b) (32344) 17677/10 COM(10) 738	Draft Regulation amending Council Regulation (EC) No 1234/2007 as regards marketing standards

Legal base	(a) Articles 43(2) and 118 TFUE: co-decision; QMV (b) Article 43(2) TFEU; co-decision; QMV
Documents originated	10 December 2010
Deposited in Parliament	16 December 2010
Department	Environment, Food & Rural Affairs
Basis of consideration	EM of 11 January 2011
Previous Committee Report	None but see footnote
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

13.1 In October 2008, the Commission produced a Green Paper[52] on agricultural product quality. This pointed out that, because of globalisation, products from countries with low production costs were putting greater pressure on EU farmers, and it suggested that

52 (30059) 14358/08: see HC 19–viii (2008–09), chapter 12 (25 February 2009).

"quality" was the best way to tackle these new challenges, this being an area in which the EU had an advantage, given its very high standards of food safety and hygiene. It also noted the diverse requirements of the market, covering not only health and nutritional value, but also so-called "societal demands",[53] and believed that EU farmers should see this as something to be turned to their advantage.

13.2 In seeking views on how the policy and regulatory framework could best promote agricultural product quality, the Green Paper looked at a number of areas. These included:

EU farming requirements

13.3 The Commission noted that all food produced within the EU has to adhere to hygiene and safety standards, relating to the use of pesticides and fertilisers, the prevention of animal and plant diseases, animal welfare, and the protection of the environment. However, it also pointed out that many of these requirements do not necessarily apply to imported foodstuffs, and that, if this was better understood by consumers, it could become a potential marketing advantage.

Marketing standards

13.4 The Commission commented that these lay down definitions, minimum standards and labelling requirements for a significant number of agricultural products and some processed foods, and should enable farmers to deliver the quality expected by consumers. However, it added that some foods — notably arable crops — are not subject to Community-level marketing standards (though general consumer protection and labelling rules apply), and that some standards have proved controversial.

Specific Community quality schemes

13.5 The Commission identified certain specific Community quality schemes which give consumers the assurance regarding quality standards, whilst protecting farmers against imitation products. These include:

— Geographical indications

These describe an agricultural product or foodstuff which owes its characteristic to the area from which it originates, and include both "Protected Designations of Origin (PDO)" and "Protected Geographical Indications (PGI)",[54] with the latter currently applying to three areas (agricultural products, spirit drinks and wine).

— Traditional specialities guaranteed

These are the names of agricultural products or foodstuffs produced using traditional raw materials or methods of production, or which have traditional composition. However, since they were introduced in 1992, only 20 names have been registered,

53 Including, for example, environmental, ethical and social considerations.

54 In order to qualify as a PDO, all production steps must take place in the area, whereas in the case of a PGI, this is required of only one such step.

with another 30 awaiting registration, and most applicants for registration do so without reserving the product name. Also, few of the products concerned are significant in economic terms.

— Organic food

There had been a steady growth of demand for organic foods, and controls by public authorities or certification bodies were important to maintain confidence and justify premium prices. Although the EU had since 1991 applied a standard laying down rules, the market had tended to be fragmented along national lines.

— Other schemes

In addition to these quality schemes, there were a number of further areas, including products of high-nature value or from mountain areas, those involving welfare standards, and the possible extension of the Ecolabel scheme. The CAP "Health Check" had highlighted climate change, biodiversity conservation and water use as being among the highest priorities, and the Commission said that it would evaluate possible new schemes if further legislation was thought necessary.

Certification schemes

13.6 The Commission observed that there had been a substantial growth in private and national food quality certification schemes, but that this had given rise to concerns about their transparency and credibility. It therefore sought views on how effective these schemes had been, and the extent to which current EU oversight had been sufficient.

13.7 This Green Paper was followed in May 2009 by a Commission Communication which summarised the responses it had received, and which suggested that the EU strategic approach in this area should involve:

- improving communication between farmers, buyers and consumers about agricultural product qualities;
- increasing the coherence of EU agricultural product quality instruments;
- reducing complexity to make it easier for farmers, producers and consumers to use and understand the various schemes and labelling terms.

The current proposals

13.8 In these two documents, the Commission summarises the further responses to its 2009 Communication, and proposes draft regulations relating (a) to agricultural product schemes and (b) to marketing standards.

13.9 It says that there was a general welcome for the principal thrust of the Communication, the main views expressed being:

- opposition to a merging of the PDO and PGI instruments, although (with the exception of the wine and spirits sectors) most respondents favoured merging the three PGI schemes: in addition, there was general support for simplifying,

clarifying and streamlining the systems, and for enhancing their international recognition;

- almost unanimous support for continuation of the traditional specialities guaranteed scheme, but with some calls for it to be simplified, notably by discontinuing the possibility of registering a name without reserving it;
- a general welcome for simplifying marketing standards, farm labelling, and the further development of optional quality terms;
- recognition of the need to address the problems of those small-scale producers who found the existing schemes too burdensome.

13.10 The Commission says that it then carried out impact assessments of various options as regards the PDO and PGI schemes on the one hand, and traditional specialities guaranteed on the other. It says that these showed strong justification for an EU level *geographical indications scheme*, albeit with considerable scope for reducing complexity and facilitating enforcement by merging the scheme for agricultural products and foodstuffs with those for alcoholic drinks; that producer returns from PDOs and PGIs are higher than for non-designated products, with PDO labels commanding the largest premium; but that this added value would diminish if the PDO and PGI instruments were to be merged. In the case of *traditional specialities guaranteed*, it says, although data was limited by the low uptake, the assessment nevertheless showed the scheme had economic and social benefits, and that there was support for its retention: however, it concluded that there was little or no such benefit in the case of non-protected names, as experience had shown that the function could be taken up successfully by national or regional schemes. At the same time, the Commission notes the limited extent to which either the PDO or PGI schemes had attracted participation by small-scale producers, despite their association with traditional methods and local marketing, and it says that further study will be undertaken of this problem.

Document (a) — Agricultural product quality schemes

13.11 This draft Regulation would repeal the two legislative measures[55] currently applicable in this area, and replace them by a single regulatory structure, overseen by a single product quality committee. In the case of PDOs and PGIs, it would maintain and reinforce the scheme for agricultural products and foodstuffs, but, in view of the relatively recent reforms of wines and spirits legislation, the schemes for those products would remain distinct. More specifically, the proposal would:

- recognise the roles and responsibilities for monitoring, promotion and communication of groups applying for the registration of names;
- reinforce and clarify the level of protection for registered names and the common Union symbols;

55 Regulation (EC) No 509/2006 on agricultural products and foodstuffs as traditional specialities guaranteed (OJ No. L93, 31.3.2006, p.1), and Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ No. L93, 31.3.2006, p.12).

- shorten the procedure for registering names;
- clarify the respective roles of Member States and groups applying for registration as regards enforcing the protection of registered names throughout the EU;
- align the definitions of origin and geographical indication more closely with international usage.

In addition, certain legal issues would be clarified, and minimum common rules laid down on official controls to ensure that a product follows the specification and that correct labelling is applied.

13.12 In the case of traditional specialities guaranteed, the proposal maintains the scheme for the reservation of names guaranteed across the EU, but discontinues the option of registering names without reservation, on the grounds that giving publicity, but not protection, is best achieved at national level. In addition, the new EU scheme would simplify the registration process and align procedures with those for PDOs and PGIs, and target it in certain respects; extend the criterion of tradition from 25 to 50 years, in order to reinforce the credibility of the scheme; restrict it to prepared meals and processed products; and simplify the definitions and procedural requirements. The Commission also proposes that, since optional quality terms (such as "free range") have much in common with the other quality schemes, they should be brought into the current regulation, thus adapting them to the legislative framework of the Treaty, but without amending their content.

Document (b) — Marketing standards

13.13 The Commission says it is clear that marketing standards can contribute to improving the economic conditions for production, marketing and quality. It points out that market management measures already contain a minimum requirement for produce to be "sound, fair and marketable", and proposes that these requirements should be extended to products not covered by specific standards as a means of reassuring consumers. The new framework would also introduce for all sectors a legal basis for compulsory labelling of place of farming, allowing the Commission — following impact assessments, and on a case by case basis — to adopt delegated acts at the appropriate geographical level. It says that the dairy sector will be one of the first to be examined, but that, for those sectors (such as olive oil and eggs) where mandatory indication of origin already exists, this will be maintained.

13.14 The package also includes two Commission Communications — published in the Official Journal[56] on 16 December 2010 — which provide respectively best practice guidance for voluntary certification schemes and on the labelling of foodstuffs using PROs and PGIs as ingredients.

The Government's view

13.15 In his Explanatory Memorandum of 11 January 2011, the Minister of State for Agriculture and Food at the Department for Environment, Food & Rural Affairs (Mr Jim

56 OJ No C.341, 16.12.10, p.3.

Paice) says that the proposals in question are justified in accordance with the principle of subsidiarity, as set out in Article 5 TFEU. In particular, he notes that, in the case of document (a), the Commission takes the view that, if the terms and names under the quality schemes enjoyed different levels of protection in each Member State, this could mislead consumers and impede intra-Union trade, and that the determination of such rights, and the recognition of scheme symbols, across the EU can only be achieved effectively and efficiently at EU level. However, the Minister points out that the Commission has recognised that the processing and analysis of applications can be done more efficiently at national level, that it is unnecessary at EU level to continue the option to register traditional specialities guaranteed names which are not protected, and that controls and enforcement should be primarily for national competent authorities, with supervision at EU level. In the case of document (b), he agrees with the Commission's view that, in order to guarantee a uniform application of marketing standards, it is appropriate that these are provided for at EU level, but with Member States being responsible for controls.

13.16 As regards the policy implications, the Minister says that the UK broadly welcomes the purpose of this package, and will play an active part in the detailed discussions which will now follow. He adds that the Government is now studying the details of the two legislative proposals, including whether the provisions related to powers of the Commission to adopt delegated and implementing acts are appropriate. He says that UK impact assessments will be required if domestic legislation is needed, and, in the meantime, comments that the Government is strongly opposed to extending the criterion for traditional specialities guaranteed from 25 to 50 years, and restricting eligibility to processed foods. He also points out that, although none of the EU schemes has budgetary implications, the Commission is proposing that it should take a more active role in order to protect the names of the quality schemes and the Union symbols, particularly in third countries, and that consequently the financial statement to document (a) shows the additional budgetary resources needed (though the sums involved are relatively small, rising from €110,000 in 2012 to €150,000 for 2013–15, subject to the availability of appropriations in 2014 and 2015).

Conclusion

13.17 **These two proposals seek to give legislative effect to many of the changes which the Commission suggested in the Green Paper it produced in 2008, and, as such, they largely reflect the views it received in response to that document, and in terms which are broadly acceptable to the UK. Consequently, although the proposals deal with an area of some interest to consumers, they do not appear to us to raise any new issues, or ones sufficiently significant to require further consideration by the House. We are therefore clearing them.**

14 EU structural spending on domestic water supply

(32362) 18009/10 —	Special Report No. 9/2010 by the European Court of Auditors: *Is EU Structural measures spending on the supply of water for domestic consumption used to best effect?*

Legal base	—
Deposited in Parliament	20 December 2010
Department	Environment, Food & Rural Affairs
Basis of consideration	EM of 17 January 2011
Previous Committee Report	None
To be discussed in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

14.1 The prudent and rational use of natural resources is one of the objectives of environmental policy set out in the Treaties, the key legal instrument being the Water Framework Directive (2000/60/EC), which aims to ensure the protection of water and its sustainable use by establishing classification systems for water quality, the publication of river basin management plans, and the attainment of environmental objectives by 2015. It also required Member States to adopt by 2010 water pricing policies providing incentives to efficient water use, incorporating the cost recovery principle. In addition, a Council Directive on Drinking Water Quality (98/33/EC) is designed to protect human health, in particular by setting maximum microbiological, chemical and organoleptic standards.

14.2 The construction costs of water supply systems are eligible for assistance under the Cohesion Policy, from the European Regional Development Fund (ERDF) and the Cohesion Fund (CF), varying from 25% to 85% of eligible expenditure, and, in the period 2000–2006, such support totalled €4.05 billion, with four Member States (Greece, Italy, Portugal and Spain) accounting for nearly 90% of this. Expenditure in this field is likely to remain significant in the 2007–13 programming period, and the European Court of Auditors has sought in this Special Report to assess whether EU spending on water supply is used to best effect.

The current document

14.3 The Court says that co-financed projects are implemented under shared management between the Commission and beneficiary Member States, with their roles depending on which fund provides support and the cost of the project. Thus, CF projects and major ERDF projects are examined by the Commission, whereas its role for other ERDF projects is limited to assessing and approving operational programmes, with Member States evaluating grant applications, deciding on the amount of grant, and following up implementation. The Court also notes that co-financed infrastructures are of various types, ranging from abstraction to distribution, with the most common water supply systems

being dams, desalination plants, treatment plants, water mains, pumping stations, reservoirs, water tanks, distribution networks and remote control and detection systems for leaks and breakdowns.

14.4 The Court's audit focused on infrastructures dedicated exclusively to domestic water supply co-financed by the CF and ERDF and completed during the 2000–2006 programming period in the four Member States which were major recipients of funds. It is based on a direct review of 29 projects — 11 approved by the Commission, and 18 by Member States — and on an examination of the system applied by the Commission and Member States for managing and monitoring EU funds. In particular, the Court looked at whether:

- the most appropriate solutions were adopted to meet the needs of the areas concerned;
- the co-financed projects were successful in improving the water supply; and
- the objectives have been achieved at the lowest costs to the EU budget.

Were the most appropriate solutions adopted?

14.5 The Court says that the commitment of resources for long-term projects of this kind needs to be preceded by an analysis of likely demand and the availability and quality of existing resources, and in particular whether estimates of water needs were well-founded, the best of the potential solutions had been selected, and the authorities approving grants have added value to the projects concerned. It found that, in almost all cases, forecasts of needs did not take into account recent downward trends in per capita water consumption, and that, in some cases, not all the resources currently available were considered; that the focus was on building infrastructures to exploit new water resources, with attention rarely being paid to other solutions, such as reducing water losses, or using more accessible resources; and that limited value was added by the appraisal of grant applications by the Commission or Member States.

Have the projects improved domestic water supply?

14.6 The Court says that project objectives can vary significantly — including such indicators as water availability, geographical coverage, quality, efficiency and service quality — and it considered whether these had been defined and quantified, the objectives achieved, and achievements monitored by the approving authorities. It found that project objectives were not always quantified as regards the expected results, and that, although measurable improvements in water supply were achieved, some projects were not in operation because of a lack of complementary infrastructure, and others contained inherent limitations. It also concluded that the reporting of achievements had been of limited value.

Have results been achieved at the lowest cost to the EU budget?

14.7 The Court says that, in order to assess this, it examined whether the co-financed infrastructure construction had been carried out in an economical way, the infrastructure

works efficiently, and whether the EU grant was set at an appropriate level. It finds that there were delays and cost overruns, as a result of administrative problems and poor planning; that several projects operate with limited efficiency, and that the process for setting grant rates includes significant weaknesses in the supporting financial analysis, and does not take sufficient account of the ability of the projects concerned to generate revenue.

Recommendations

14.8 In the light of this analysis, the Court has recommended that:

- Member States should improve their ex-ante analysis and forecast of future needs by taking into account recent and accurate data, and improve their inventory of all available water resources, paying greater attention to alternatives to supply side solutions and to measures to protect water quality;
- the Commission should encourage Member States to implement efficient water resource management, and take its effects into account when planning co-financed water supply infrastructure;
- Member States should ensure from the planning stage that complementary infrastructure necessary for the entry into operation of the projects will be available on time, with better monitoring tools for achievement and conditions being put in place;
- Member States should pay more attention during the planning phase to factors which often create delays, with the results of better ex-ante analyses being taken into account in the design of new infrastructure;
- the Commission and Member States should improve the quality of cost-benefit analyses and financing gap estimates, and give due consideration to the ability of the projects to generate revenues.

The Government's view

14.9 In his Explanatory Memorandum of 17 January 2011, the Minister for Natural Environment and Fisheries at the Department for Environment, Food & Rural Affairs (Mr Richard Benyon) says that, since 2000, the Department for Regional Development in Northern Ireland has received approximately £18.6 million of EU funding through the ERDF for various water treatment works, but that no other parts of the UK have used such funds for this purpose. He says that the UK supports the Court's recommendations to improve the forecast of future needs, give more consideration to alternatives to new supply (e.g. demand measures), and improve the planning and management of infrastructure development.

14.10 The Minister also points out that water companies in England and Wales are privately-owned monopolies, financed through private equity or debt, with no public subsidy, and that they are subject to independent economic regulation by Ofwat, which ensures that they are able to finance their statutory functions and that the interests of customers are protected by making sure that bills are kept as low as possible consistently

with maintaining essential services. He says that the combination of regulation and the need to compete for private finance provides appropriate incentives for the companies to make effective decisions concerning water supply infrastructure. (In both Northern Ireland and Scotland the water companies are also subject to independent economic regulation, but are publicly-owned monopolies.)

14.11 The Minister also points out that water companies throughout the UK have a statutory duty to maintain adequate supplies of wholesome water, and that each company is required to prepare and maintain a water resources management plan, setting out how it will manage its resources to ensure a sustainable supply and demand balance over the next 25 years, taking into account the impacts of climate change and other factors such as housing and population growth. He adds that water resources are managed using a "twin track" approach to maintain a supply and demand, and that companies must assess the impact of each water resource supply option, taking account of economic and environmental considerations, to identify optimal solutions.

Conclusion

14.12 **As is customary, the Court of Auditors has produced an interesting and informative report containing some penetrating observations about the way in which EU funds have been used to improve the supply of water for domestic consumption. Consequently, although co-financed expenditure in this area within the UK is low, we think it right in clearing the document to draw it to the attention of the House, given the environmental and economic importance of the activities in question and the substantial EU funds involved.**

15 The EU and Guinea-Bissau

(a) (32381) 18202/10 COM(10) 766	Commission Communication: Opening of consultations with Guinea-Bissau under Article 96 of the Cotonou Agreement
(b) (32403) 5048/11 COM(10) 806	Council Regulation: Restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau

Legal base	(a) Article 9 and Article 96 of the Cotonou Agreement and Article 3 of the Internal Agreement on its implementation; — (b) Article 215 TFEU; QMV.
Department	Foreign and Commonwealth Office
Document originated	(a) 20 December 2010 (b) 21 December 2010
Document deposited	(a) 22 December 2010 (b) 7 January 2011
Basis of consideration	(a) EM of 11 January 2011 (b) EM of 17 January 2011
Previous Committee Report	None; but see HC 428–v (2010–11), chapter 11 (27 October 2010)
To be discussed in Council	To be determined
Committee's assessment	Politically important
Committee's decision	(a) Cleared, but further information requested (b) Cleared

Background

15.1 The Foreign and Commonwealth Office website paints a troubled and unhappy picture of Guinea-Bissau's move to independence, via a protracted guerrilla war and then Portugal's own 1974 "carnation revolution": firstly, one-party rule, then a coup in 1980 which "began a pattern of military coups and instability, which has persisted until quite recently". That coup was led by Joao Bernardo "Nino" Vieira, who became the first directly-elected President in 1994, after the acceptance of multi-party democracy in 1991 (a directly-elected president and an elected national assembly).

15.2 The period from 1998 to 2004 was notable for a further coup attempt; protracted stalemate between loyalist and rebel forces; the intervention of troops from neighbouring Senegal and Guinea, as well as from the regional peacekeeping force, ECOMOG;[57]

57 Economic Community of West African States Monitoring Group.

elections in December 1999 and January 2000; and the eventual election of opposition leader Kumba Yala in February 2000.

15.3 The first half of this present decade then consisted of further manifestations of unresolved tensions between the government and the military hierarchy: a further attempted military rebellion; subsequent rule by President Yala "characterised by chronic political instability"; his eventual deposition in a bloodless coup in September 2003 supported by all political parties, including Yala's own; the installation of a businessman as interim President; and legislative elections in March 2004 in which no party came out with an overall majority.

15.4 A further period of political turmoil followed the June 2005 presidential elections, following which ex-President Vieira eventually emerged as the winner in a close finish, and was sworn in as President on 1 October; including ex-president Yala's return from exile in late 2006; and culminating in the collapse of the government coalition in March 2007. After a stand-off the opposition leader Martinho N'Dafa Kabi became Prime Minister in April, and the political situation in the country steadied. The mandate of the legislature ended on April 21st 2008. The President then passed a temporary constitutional amendment allowing the continuation of the legislature until further elections could take place. These occurred on 16 November 2008 and resulted in a new Prime Minister, Carlos Gomez Junior, being appointed in January 2009. Following the March 2009 assassination of President Viera, presidential elections were held in June 2009 and resulted in the election of the currently serving President, Malam Bacai Sanhá. The entry (which was last reviewed on 1 July 2010) closes as follows:

> "Media reports have bought to public attention a growing problem of drug trafficking via Guinea-Bissau. Drugs coming from Latin America are being smuggled to Europe via the country, taking advantage of the mangrove swamps and jagged coastline, and the poor capacity of the government to deal with the problem. On 9 April the current Air Force head, Ibraima Papa Camara, and former navy chief Bubo Na Tchuto were named "drug kingpins" by the US. Bubo Na Tchuto's political influence in Guinea-Bissau remains apparent."[58]

15.5 The Committee's most recent Report concerning the EU and Guinea-Bissau relates the history of the EU's Security Sector Reform (EU SSR) in Guinea-Bissau, which was launched May 2008 and was to last for 12 months. The preamble noted that the promotion of peace, security and stability in Africa and Europe was a key strategic priority of the Joint Africa-EU Strategy adopted in December 2007, and that security sector reform (SSR) in Guinea-Bissau was essential for the country's stability and sustainable development. The Mission's tasks included:

- advising and contributing to the development of detailed resizing/restructuring plans for the armed forces;
- assisting in the development of an underpinning doctrine for employment of the Armed Forces, including mainstreaming the counter narcotics effort;

58 See FCO Country Profile at http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/guinea-bissau?profile=politics&pg=7.

- supporting the development of detailed plans for the restructuring of police bodies; and
- advising on the planning and development of an effective criminal investigations capacity.

15.6 In April 2009, the then Committee cleared a "no cost" six-month extension until 30 November 2009; and a further, very-low-cost six-month extension until 31 May 2010. There had continued to be political distractions, but also the election of a new President and an indication (as the then Minister for Europe put it) that the Mission would receive the necessary political support over the next six months to complete the tasks set out in its mandate. The then Minister for Europe supported the extension: it stemmed, he explained, from a recent review and would enable the EU to: "reach a better understanding of plans by the wider International Community (notably the Economic Community of West African States and the UN) to increase their presence in Guinea-Bissau; conclude the mission's existing work; and "build bridges towards further implementation in the future." The extension "should be used by the Mission to complete the tasks of its current mandate (without taking on any additional ones) and to prepare the conditions for engagement by another SSR actor in the future." There was to be a strategic review on the future of EU engagement in Guinea-Bissau, which would be submitted to the Political and Security Committee[59] by the end of January 2010. The review would focus on "where, amongst other International Community interventions, the EU can add most value to stabilisation efforts in Guinea-Bissau in the future [and] … form the basis for making an informed judgement about any subsequent EU engagement in Guinea-Bissau after the end of the mandate of the Mission."

15.7 Three years after the first commitment by the then Guinea-Bissau authorities to SSR, there was a strong sense of disillusionment running through the then Minister's comments, and of this being the last chance for the latest President and government. But the EU had yet to lose patience with an ESDP mission and cut its losses. In clearing that latest extension, the then Committee therefore asked the then Minister to write with information about the outcome of the review and the PSC's assessment and recommendations, ahead of any final determination about what form any further EU involvement might or might not take.

15.8 Nothing was heard from him. Instead, in an Explanatory Memorandum of 21 May 2010, the Minister for Europe (Mr David Lidington) said that a further four-month extension had been proposed in response to a military mutiny that took place in Guinea-Bissau on 1 April. It was, he explained, intended to demonstrate strong EU support to the weakened civilian government of Guinea-Bissau, allow the government time to reassert its authority over the military, while allowing time for the EU to reach a decision on whether the conditions exist for longer term CSDP engagement. This further extension would add €630,000 to the total expenditure of €7.13 million so far. One measure of progress would be

59 The committee of ambassador-level officials from national delegations who, by virtue of article 38 TEU, under the authority of the High Representative for Foreign Affairs and Security Policy (HR) and the Council, monitor the international situation in areas covered by the CFSP and exercise political control and strategic direction of crisis management operations, as set out in article 43 TEU.

the extent to which the Guinea-Bissau government met the demands set out in an EU *démarche* following the 1 April military mutiny, viz:

- the immediate and unconditional liberation of the Armed Forces Chief and all of the other personnel detained in violation of the law;
- the establishment of the legal responsibility of and disciplinary measures against those found to be responsible for the incidents of 1 April and the putting into place of a framework for the continuation of the reforms;
- the affirmation of the primacy of the civilian authorities and the legitimate democratic authorities; and
- a guarantee of the respect for all parts of the Vienna Convention and diplomatic immunity.

15.9 The Minister seemed not to hold great hopes for a positive outcome. The size of the mission would be reduced, which was an explicit acknowledgement that, until the current situation was resolved, there was little chance of the Mission achieving success, but this approach maintained a CSDP foothold in-country. Guinea-Bissau's own development, security and stability would, he judged, be damaged if the Mission were pulled out immediately. But there would be a period of reflection in order to re-assess conditions on the ground before making a more informed decision on the future of CSDP engagement. If conditions on the ground had not improved and made serious Security Sector Reform unlikely, then the Minister believed the EU should consider closing the mission.

15.10 Subsequently, in a letter to the Committee of 4 October 2010, the Minister explained that it had now been decided to close the mission. An earlier review had concluded that the illegal drug trafficking and organised crime in West Africa and Guinea-Bissau made it of strategic importance to continue the SSR effort through a CSDP mission. However, Member States were clear that the mission could only continue and have a chance of success if the Guinea-Bissau authorities demonstrated tangible and clear commitment to SSR, specifically by the adoption of the organic laws by the Guinea-Bissau Parliament which the mission had helped to draft. On this basis, the EU had begun planning for a new CSDP mission to be deployed from 1 June 2010. The new mission was to be smaller than EUSSR Guinea-Bissau, have a greater emphasis on military reform and a more direct coordination with the UN. However, the Minister noted, planning for the new CSDP mission was brought to a halt by a military mutiny in Guinea-Bissau.

15.11 He continued as follows:

> "On 1 April 2010, rogue elements of the Guinea-Bissau military, led by the Deputy Chief of Defence (Major General Indjai), unlawfully detained the Chief of Defence (CHOD) Captain Jose Zamora Induta and Prime Minister Carlos Gomes Junior. The Prime Minister was later released but Major General Indjai remains CHOD and no assurances been provided regarding the safety of Captain José Zamora Induta who remains under detention.
>
> "In order to encourage a return to democratic oversight after the mutiny, the EU issued a demarche to the Guinea-Bissau Government which set out the conditions

that would need to be met in order for CSDP engagement to continue. These conditions included the unconditional release of the detained CHOD and the prosecution of those responsible for the events of 1 April. Regretfully the Guinea-Bissau Government was unable to meet these conditions and the former Deputy Chief of Defence has since been appointed formally by the Guinea-Bissau President as CHOD."

15.12 As a result, the Minister then said, a second strategic review was undertaken and concluded that conditions in country would not enable the new CSDP mission to take real steps towards SSR and recommended that EUSSR Guinea-Bissau be closed from 30 September. He supported the decision. Deployment of a new mission would have meant EU personnel working with individuals who had engaged in unconstitutional activity, which would have cast doubt on the credibility of any SSR work undertaken. Crucially, the events of 1 April brought into question the commitment of the local authorities to meaningful SSR, without which a new mission would have struggled to have the necessary impact. Although EUSSR Guinea-Bissau would be closed, the EU would be exploring alternative ways of remaining engaged in Guinea-Bissau in order to avoid abandoning Guinea-Bissau at a critical time. The UK position in any future discussions on this issue would be to ensure that continued engagement would be effective and represent good value for money.

Our assessment

15.13 The Committee felt that there could be little doubt that this was the right course of action, and once again left it to others to judge the utility of this exercise hitherto.

15.14 The Committee also looked forward to hearing from the Minister in due course, should ways of remaining engaged in Guinea-Bissau be proposed.

15.15 In the meantime, we reported the ending of this chapter because of the interest in the House in European Security and Defence Policy and in security developments in Africa.[60]

15.16 Then, on 3 November, we cleared a separate Council Decision consisting of a travel ban and an asset freeze directed against what the Minister for Europe described as instigators of the April 2010 mutiny—current Chief of the Armed Forces, Antonio Indjai, and the recently re-appointed Head of the Navy, Bubo Natchuto—whom he believed had taken active steps to prevent a peaceful political process and who continued to undermine stability in the Republic of Guinea-Bissau; these targeted EU restrictive measures were designed to send a clear signal to both the ruling military and political groups in Guinea-Bissau that the current status quo was unacceptable, and that change needed to happen in the country. Beyond their symbolic value, the Minister said the measures could catalyse tougher regional political measures; and would also make clear to other countries in the region that the EU was committed to peaceful civilian rule—West Africa having recently had a number of elections in which violence and undemocratic behaviour were real concerns. There was therefore, he said, a wider benefit to the region of the EU imposing restrictive measures on these individuals in Guinea-Bissau at this time.

60 See headnote: HC 428–v (2010–11), chapter 11 (27 October 2010).

15.17 Having so recently reported to the House the decision, finally, to close the ESDP SSR mission—that decision being in response to the circumstances the Minister described—we concluded that, the proposed measures against the two main culprits being both not surprising and in all respects standard, this consequential Council Decision was not, in and of itself, of sufficient political interest to warrant a substantive Report to the House, and should be cleared accordingly.

The Cotonou Agreement

15.18 Guinea-Bissau is a signatory of the African Caribbean and Pacific-European Community (ACP-EC) Partnership Agreement, signed in Cotonou on 23 June 2000, and known as the Cotonou Agreement. This provides a framework for relations between the EU and 77 ACP countries. It has been revised in 2005 and 2010. According to the Commission, compared to preceding development cooperation agreements and conventions, the Cotonou Agreement is designed to establish a comprehensive partnership, based on three complementary pillars:

— development cooperation;

— economic and trade cooperation; and

— the political dimension.

15.19 It is the last of these three elements that has been developed most in the two revisions. Article 96 allows for consultations between the EU and an ACP state where a breach of any of the "essential elements" set out in Article 9—respect for human rights, democratic principles or the rule of law—is perceived to have taken place.

The Commission Communication

15.20 It is against the unhappy political background outlined above that, in this Communication, the Commission proposes that such consultations should begin. In his Explanatory Memorandum of 10 January 2010, Minister for Europe (Mr David Lidington) says:

> "Real power lies with the overly large military which acts with impunity—no-one has as yet been indicted for the murder of the previous President—and entirely in its own interests. The EU is now looking to use the formal consultations afforded by Article 96 of the revised Cotonou Agreement to further engage in constructive dialogue with the civilian leadership of Guinea-Bissau. The attached Communication from the Commission to the Council is the start of this process."

15.21 In line with normal procedure, attached to the Communication is a draft letter, addressed to the Guinea-Bissau authorities and copied to the ACP Council of Ministers, from the Development Commissioner and the High Representative. The Commission "finds that there has been a particularly serious and clear violation of these essential principles ... deems the situation to be a case of special urgency within the meaning of Article 96(2)(b) of the Agreement [and] therefore considers it necessary to open consultations with the authorities in power in Guinea-Bissau in order to examine possible

solutions to the crisis which would re-establish democratic order." It says that the main aim of these consultations will be to discuss a list of undertakings with the authorities, including:

— an end to the illegal detention of Vice Admiral Zamora Induta and others arrested during the events of 1 April;

— the opening and conclusion of fully independent investigations into the events that took place between 1 March 2009 and 1 April 2010;

— the appointment of persons of integrity not implicated in acts of violence and unconstitutional conduct to lead Guinea-Bissau's armed forces; the acceptance by the authorities of any experts' mission and civil and military support that may be proposed by ECOWAS/the CPLP and/or other partners to supervise and support the reform of the security sector and protect political staff;

— adoption, enactment and publication of the SSR legislative package;

— adoption by the government of an operational programme to implement the SSR package; and

— any other undertaking likely to improve the country's democratic governance and security-sector reform.

15.22 The Commission says that such dialogue will give the authorities in Guinea-Bissau an opportunity to take steps to end the crisis and enable the EU to judge whether and how it could, on the basis of this dialogue, support initiatives directed at compliance with the principles of the Cotonou Agreement.

15.23 The Commission therefore proposes that the Council invite Guinea-Bissau to hold consultations under Article 96 of the revised Cotonou Agreement. Pending the outcome, the Commission will adopt precautionary measures in respect of development cooperation operations under way in Guinea-Bissau, with the exception of payments for contracts already under way, humanitarian measures or measures that directly benefit the local population, regional projects and projects to combat transnational crime, and preparatory measures for the implementation of future projects, as long as the specific conditions of the relevant instruments and agreements are adhered to.

15.24 The Minister says that there are no direct financial implications for the UK, the EU having allocated €120 million up to 2013 through the European Development Fund and EU Budget; that these funds are intended to support the country in strengthening the rule of law and democracy, to facilitate the population's access to basic services and utilities, and to support macroeconomic stabilisation; and that the UK's assessed contribution to the EU Budget means that about 14% of this total sum will be UK money.

The Government's view

15.25 The Minister says that the EU—and the rest of the international community—has tried to deal with the three key issues that Guinea-Bissau faces: "narcotics trafficking (the effect of which permeates almost every level of society); security sector reform (SSR) work;

and development." He notes that there has been little, if any, progress on counter-narcotics and reform of the military to date, "in large part due to the impunity with which leading members of the Bissau-Guinean military act." He reviews the events of 1 April 2010, when Antonio Indjai and Bubo Natchuto led a military mutiny that saw the Prime Minister briefly imprisoned and the then CHOD detained; the subsequent appointment of Indjai to the role of CHOD and reappointment of Natchuto to the role of Navy Chief; and the consequential EU cancellation of its SSR mission and the US statement that it would no longer engage on SSR.

15.26 More recently, the Minister says:

> "There have been some small indications that the military in Guinea-Bissau might be willing to change: by changing the circumstances of Vice Admiral Zamora Induta's detention from imprisonment to house arrest—one of the undertakings requested in the Commission's Communication—and their lack of active opposition to the principle of a small ECOWAS/Angolan military stabilisation force. But these are only small steps in the right direction against a negative trend and we should be careful about reading too much into them at present."

15.27 The Minister supports consultations under Article 96 in principle as one of the few formal options the EU has at its disposal to try to influence the actions of the military and Government of Guinea-Bissau, and therefore the situation in the country. He says that the Government will work in the EU and in Bissau to try to ensure that:

> "the results of these consultations (the "appropriate measures" that the EU can take, including the cessation of EU development funding into Guinea-Bissau, if the consultations do not lead to an acceptable solution) do not affect the most vulnerable amongst the population in that country; but rather influence their leaders into acting in the best interests of their citizens."

15.28 Looking ahead, the Minister says that the draft letter first has to be discussed in the ACP Working Group (ACPWG) on 11 January 2011:

> "The Commission has not given us any firm timelines for action beyond this. Once agreed by the ACPWG, the issue will need to be approved by COREPER and the Council of Ministers following that. The Council will then send the letter to Guinea-Bissau inviting them to hold consultations. Consultations should begin no later than 30 days after the invitation and last for a maximum 120 days. They are closed by a Council Decision. If Guinea-Bissau does not fulfil the commitments it agreed the EU can decide to take appropriate measures such as the partial or total suspension of development cooperation. This would require another Council Decision."

The Council Regulation

15.29 In his Explanatory Memorandum of 17 January 2011, the Minister for Europe (Mr David Lidington) explains that, though the Council Decision on restrictive measures was agreed by the Foreign Affairs Council in November 2010, its adoption was put on hold until a Council Regulation could be circulated and then subsequently agreed, enabling the (policy-making) Decision and (implementing) Regulation to be agreed together (the

Council Regulation being required to allow EU Member States' relevant competent authorities—HM Treasury in the UK's case—to implement the asset freeze).

15.30 The Minister also explains that, the Commission/High Representative having circulated Council Regulation 5048/11 for discussion on 5 January 2011, and following comments from Member States, a revised Council Regulation was drafted and circulated on 11 January 2011; that the revisions amend language to ensure this is standard and consistent with other Regulations and also introduces Article 10 which allows the Commission to amend Annex II on the basis of information supplied by Member States; and that he supports the revised Council Regulation.

15.31 The Minister goes on to explains that:

— the procedures for designating individuals are compliant with fundamental rights: those subject to a travel ban would be entitled to challenge the implementation or application of such a ban in the domestic courts of a Member State and to challenge the EU Regulation before the General Court; and Member States may grant exemptions from the travel ban for specified reasons including, inter alia, where travel is justified on the grounds of humanitarian need;

— the UK Border Agency will incorporate the travel ban element in the UK's domestic legislation by amending the Schedule to the Immigration (Designation of Travel Bans) Order 2000, which will enable any applications the named individuals may make for visas or for leave to enter the UK to be refused automatically;

— HM Treasury will make an order under the European Communities Act to put in place criminal penalties with respect to the asset freezes implemented by the Council Regulation.

The Government's view

15.32 The Minister says that the measures are designed "to send a clear signal to both the ruling military and political groups in Guinea-Bissau that the current status quo is unacceptable, and that change needs to happen in the country". He again argues that, beyond their symbolic value, these measures could catalyse tougher regional political measures; and that, with West Africa having recently had a number of elections in which violence and undemocratic behaviour are a real concern, there is a wider benefit to the region of the EU imposing restrictive measures on individuals in Guinea-Bissau at this time by making it clear to them that the EU is committed to peaceful civilian rule.

15.33 Finally, the Minister says that it is likely that the EU will adopt the Council Regulation at the 31 January Foreign Affairs Council.

Conclusion

15.34 **We are puzzled as to why the Commission Communication has been submitted for scrutiny at this stage, when a Council Decision is required on opening Article 96 consultations and, as the Minister points out, the draft letter that is their basis has yet to complete the normal official-led preparations. So, although we clear the**

Communication, we also expect a further Council Decision and Explanatory Memorandum before the Council goes ahead with the proposal.

15.35 **We clear the Council Regulation.**

15.36 **We are again drawing the situation to the House's attention because of the degree of interest in political developments in West Africa.**

16 EU relations with Belarus

(32435) — —	Council Decision amending Council Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus

Legal base	Articles 29 EU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM and Minister's letter of 17 January 2011
Previous Committee Report	None; but see (32019) —: HC 428–iii (2010–11, chapter 17 (13 October 2010); (31171) —: HC 5–iii (2009–10), chapter 17 (9 December 2009) ; (30507) — : HC 19–xiii (2008–09), chapter 10 (1 April 2009); (30076) —: HC 16–xxxiii (2007–08), chapter 5 (29 October 2008); and (27458) 8836/06 and (27459) — : HC 34–xxviii (2005–06), chapter 15 (10 May 2006)
To be discussed in Council	24 January 2011 Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested

Background

16.1 The Belarus "Country Profile" on the Foreign and Commonwealth Office website continues to catalogue a litany of repressive and undemocratic behaviour since Alyaksandr Lukashenka won the first Presidential elections in July 1994.[61] The highly critical September 2006 report by Adrian Severin, the UN Special Rapporteur appointed in 2004 by the 60th UN Commission on Human Rights, is described as one of many to cite numerous human rights violations including persistent accounts of harassment of NGOs, the independent media, opposition political parties, educational institutions, religious organisations, and trade unions. It says that this pattern of repression has been particularly evident in the build up to parliamentary and presidential elections, when opposition

61 See Belarus Country Profile at: http://www.fco.gov.uk/en/about-the-fco/country-profiles/europe/belarus?profile=politics&pg=7.

figures were put under intense pressure and numerous independent media outlets were suspended or closed.

16.2 These concerns include the disappearance of four opponents of the regime in 1999/2000, including former Belarusian Interior Minister Yury Zakharenko and deputy Viktor Gonchar. Despite appeals from the international community, the Belarusian authorities have not investigated satisfactorily these disappearances. The EU repeatedly called on the Belarusian authorities to open a truly independent investigation, but the Belarusians failed to act. In response, in September 2004 the EU decided to apply travel restrictions against those Belarusian officials named in the Pourgourides report on 'Disappeared Persons in Belarus' as key actors in the disappearances (this report was adopted by the Parliamentary Assembly of the Council of Europe in April 2004).

16.3 Further sanctions were imposed following the Presidential elections of March 2006. These failed to meet OSCE standards: there was arbitrary use of state power, widespread detentions, disregard for the basic rights of freedom of assembly, association and expression, and violent suppression of protests and the detention of peaceful protesters. In response the EU adopted restrictive measures — a visa ban and an asset freeze — against President Lukashenka, the Belarusian leadership and officials personally responsible for the violations of international electoral standards.

16.4 The measures were renewed, given that there had been no independent investigation into the disappearances, nor any reform of the electoral code, in line with OSCE recommendations, nor any concrete action to respect human rights with respect to peaceful demonstrations: on the contrary, the situation had continued to deteriorate. On 7 April 2008 the Council adopted Common Position 2008/288/CFSP extending the measures by 12 further months until 10 April 2009.

16.5 In so doing, the Council agreed that the restrictive measures provided for by Common Position 2006/276/CFSP should be extended for a period of 12 months, but that the travel restrictions aimed at certain officials of Belarus — with the exception of those involved in the 1999–2000 disappearances and the President of the Central Electoral Commission — should not apply for a reviewable period of six months, so as to encourage dialogue with the Belarus authorities and the adoption of measures to reinforce democracy and respect for human rights; at the end of this six-month period, the Council would re-examine the situation.

16.6 The previous Committee's most recent Report outlines subsequent shifts in the EU position, as differences emerged among Member States about how best to handle Belarus, given the EU's concerns but also its concern that an increasingly isolated Belarus would be drawn closer to an increasingly assertive and difficult Russia (with unspoken anxieties about the gas supply situation, where Belarus is a key link in the chain).

16.7 As that Report notes, there were a number of exchanges between the Committee and the then Minister for Europe (Caroline Flint). She said there had been some signs that Belarus might be interested in increasing its contacts with Member States and willing to adopt a more moderate stance on other issues. The release of its last three internationally recognised political prisoners in late August 2008 met one of the 12 conditions for engagement set out by the EU in the Commission document 'What the European Union

could bring to Belarus' published in November 2006.[62] Meanwhile, President Lukashenka had promised that September 2008 parliamentary elections would be free and fair. Whilst the initial OSCE report said that the elections failed to meet OSCE standards, Belarus had, she said, been significantly more co-operative in their interactions with OSCE monitors. Though this represented less progress than she would have liked, she shared the view of other EU Member States that "isolating Belarus will not promote further positive progress but rather focus the leadership on strengthening their ties with Russia whilst failing to deliver on EU demands." She therefore supported the EU consensus in favour of suspending the visa ban for six months whilst renewing the restrictive measures for a further 12 months, "backed up by a strong statement from Council Members", as "the approach most likely to encourage the Belarusians to make further progress on the road toward human rights and democracy." The EU would continue to "a path of critical engagement" ensuring Belarus understood that the process must be sustained by further Belarusian steps.

16.8 Whilst it was unlikely that all 12 conditions for engagement would be met over the next six months, she expected some positive progress, particularly in the areas of freedom of the media, civil society and elections. In addition to pushing for the EU to set down clear modalities measuring progress she said she would continue "to deliver clear and firm messages basing our demands explicitly on the EU's '12 Propositions.'[63] She argued that lifting the visa ban would enable the EU and Member States" to engage at senior levels and create personal incentives for senior officials in Belarus, who will be keen to ensure that the ban is not imposed again." Belarus would have a six month window in which to demonstrate concrete improvements in human rights and democracy. She hoped that Belarus would make the most of this opportunity to rebuild the relationship with the EU. If Belarus failed to move toward the necessary reforms, the restrictions would be automatically re-imposed at the end of that six month period, with a unanimous decision required to extend the decision by another six months.

16.9 In a subsequent letter of 9 March 2009, the then Minister reported that the EU had made clear its five priorities — no new political prisoners, freer media, reform of electoral code, liberalisation of NGO environment, and freedom of assembly — and that the Belarusians had "refrained from flagrant human rights abuses" and introduced "a number of small reforms." But progress against the five priorities had been mixed, the positive changes had not been systemic and could be reversed and she was concerned by some negative steps in the immediately preceding couple of weeks — including the arrest of three human rights activists, two of whom had been recognised as political prisoners by the international community during previous periods of detention.

16.10 The then Minister went on to say that, while some Member States shared her concerns, most were leaning towards renewal of the suspension on the grounds that there had been some progress; though renewal could demonstrate the EU's commitment to engagement with Belarus, and "tie them closer to international organisations and

62 See http://ec.europa.eu/delegations/belarus/documents/eu_belarus/non_paper_1106.pdf for the full text of the paper.

63 Which are set out in the Council Non-Paper to which the Minister referred, and which were reproduced at Annex 2 of the relevant chapter of the previous Committee's Report 9 December 2009 : see headnote : (31171) —: HC 5–iii (2009–10), chapter 17 (9 December 2009).

internationally accepted standards through the Eastern Partnership and the Council of Europe, so encouraging further reform", renewal on the basis of the limited reforms so far, the Minister said, "risks suggesting that we were satisfied with progress, weakening an important lever for further reform" and "could lead them to believe that sanctions would be lifted altogether when they come up for renewal in October." Conversely, the Minister said, re-imposition could be interpreted negatively by international bodies other than the IMF and jeopardise the additional assistance that their $2.5bn loan in January assumed, and make Belarus vulnerable to Russian influence, which would in turn be unlikely to help the reform process.

16.11 Overall, the Minister concluded, her judgement on whether to support renewal of the suspension would be based on the most effective way of supporting reform; the Belarusian reaction to whichever step the EU took was unpredictable, with neither option providing guarantees of improved performance; an important part of the effectiveness of her approach would be achieving EU unity, "so Belarus was left in no doubt about our messages", which unity would be needed when the Common Position was due for renewal in October 2009, without which the sanctions would lapse. Given "these challenges", the Minister said her position would "continue to evolve in the run up to the GAERC", and she would "inform the committee in the usual way of the outcome of the Council."

16.12 There then followed further exchanges with the then Minister and, more recently, her successor (Chris Bryant), which are detailed in our previous Report. Once again, in November 2009, the Council, though noting an absence of tangible progress in areas identified in the Council Conclusions of 13 October 2008, decided that the restrictive measures should be extended until 31 October 2010, "but to encourage further reform, the suspension of the travel restrictions were also extended for the same period." The then Minister professed himself disappointed that Belarus had not made more progress since the previous year, and reflected the balance of views between EU Member States. This outcome sent "a united message" to the Belarusian authorities that the EU was not yet satisfied with their progress; the extension enabled the EU to maintain leverage whilst still promoting engagement; appetite for sanctions within the EU had diminished so the Belarusian authorities might have believed they could sit sanctions out and wait for the measures to lapse; the renewal, he concluded, made it clear that the EU was not yet convinced of the Belarus authorities' commitment to reform.

16.13 In clearing the Council Decision, the previous Committee said that it was reporting this further extension so fully because of the degree of interest in the House both in EU relations with Russia's "near neighbours" and in EU sanctions policy around the globe. They again left it to others in the House to judge the effectiveness of the EU's policy, and its shifts since 2006, in relation to its avowed objectives (which it set out in Annexes 1–3 of its Report).[64]

The most recent Council Decision

16.14 Council Decision 2009/969/CFSP extended the restrictive measures until October 2010, whilst suspending the travel restrictions imposed on certain leading figures in

64 See headnote: HC 5–iii (2009–10), chapter 17 (9 December 2009).

Belarus, with the exception of those involved in the disappearances which occurred in 1999 and 2000 and of the President of the Central Electoral Commission.

16.15 This most recent Council Decision extended the restrictive measures until 31 October 2011. At the same time the application of the travel restrictions imposed on certain leading figures in Belarus, with the exception of those involved in the disappearances which occurred in 1999 and 2000 and of the President of the Central Electoral Commission, were to be further suspended.

16.16 In his Explanatory Memorandum of 8 October 2010, after briefly reviewing the history of the EU's engagement with Belarus in the same terms as did his predecessors, the Minister for Europe (Mr David Lidington) said that over the last year greater EU engagement had not delivered improvements in human rights or democracy. The Belarus authorities had taken a few, mostly cosmetic, steps but progress had stalled, and in some areas deteriorated. Already, in the run up to the Presidential elections, signs of progress were not encouraging. Repressive tactics were being employed in order to discredit opposition parties, whilst intimidating the limited independent media sector. In addition, the President's rhetoric on relations with the EU over the last few months continued to be negative. He concluded thus:

> "Under these circumstances, lifting the sanctions would send the wrong signal to Belarus and the wider public. It would suggest that we do not consider human rights a priority. And lifting the sanctions before elections that we expect will fail to meet international standards would be particularly unfortunate timing.
>
> "But re-imposing sanctions could actually be counterproductive for our broader policy of engagement and for our specific need to maintain a dialogue with the authorities ahead of the Presidential elections."

Our assessment

16.17 We reported this Council Decision to the House for the same reasons as did the previous Committee.

16.18 In so doing, we noted that the Minister commented in only very general terms about what had happened over the past ten months, particularly in relation to the EU's benchmarks. He also made no mention of the detained individuals referred to in previous discussion with his predecessors.

16.19 Referring to the upcoming 19 December Presidential elections, in which President Lukashenka would be running for a fourth term, we noted press reports that his closest challenger, Alyaksandr Milinkevich, had already pulled out last September, saying he believed the poll would be rigged.

16.20 We presumed that the EU would review the outcome. Bearing in mind the Council's proviso, we asked the Minister to write to us then about that review and with his views on the best way forward, and to include information about progress against the EU's Twelve Points and the detained individuals.

16.21 We also cleared the document.[65]

The draft Council Decision

16.22 This Council Decision amends Council Decision 2010/639/CFSP and will result in a re-imposition of these measures on those involved in 2006 election violations, including President Lukashenka, and the addition of a new basis for the extant restrictive measures on the basis of involvement in the violations of international electoral standards and the crackdown on the opposition, the independent media and civil society during the 2010 Presidential election.

The Government's view

16.23 In his Explanatory Memorandum of 17 January 2011, the Government's new Minister for Europe (Mr David Lidington) says that the pre-election campaign saw an improvement in freedoms, compared with previous election campaigns (e.g. the opposition were allowed to collect signatures without harassment and were given access to some — limited — airtime on state radio and TV. He then continues as follows:

> "but the relentless government propaganda against the opposition, the fixing, yet again, of the elections, plus the appalling behaviour of the authorities in their aftermath have completely wiped this sense of improvement out."

16.24 He then notes that, according to the official figures, incumbent President Lukashenka won the 19 December 2010 presidential elections with 79.65% of the votes, and says:

> "The OSCE/ODIHR released its preliminary findings on the conduct of the 2010 Presidential election in Belarus on the day following the 19 December election. ODIHR acknowledged that some specific improvements had been made, but concluded that Belarus still had a considerable way to go in meeting its OSCE commitments. The election night was marred by the violent disruption by the authorities of an opposition rally, the detention of seven presidential candidates and more than 600 activists, journalists and civil society representatives."

16.25 The Minister then refers to a joint EU-US statement of 4 January, "regretting the decision of the Government of Belarus to terminate the mission of the OSCE's Office in Minsk, calling for the immediate release of all detained and for the Belarusian authorities to fulfil their commitments to the OSCE by reforming the election process and providing greater respect for human rights."[66] He goes on to say:

> "Although most detainees have now been released, the crackdown continues. Thirty-one oppositionists remain in detention and could face up to 15 years in prison for organisation and participation in mass riots. We expect there to be repercussions for those who were kept in administrative detention; students will be expelled and workers will not have their standard one-year contracts renewed. One lawyer who

65 See headnote: (32019) —: HC 428 –iii (2010–11), chapter 17 (13 October 2010).

66 The statement is available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/118708.pdf.

was detained has had her licence to work revoked; the Ministry of Justice has announced it will revoke the licence of the lawyer defending Sannikov, one of the major opposition figures.

"The re-imposition of the restrictions forms part of the EU's response to this rapid deterioration of the human rights situation in Belarus."

16.26 Referring to the EU approach outlined above, the Minister then says:

"Since the suspension of sanctions, we have seen less progress than we had hoped. However, the small positive steps raised hopes that Belarus could be moving towards an acceptance of European standards. For this reason, in October last year, we maintained the approach taken by the previous government of maintaining the suspension of the sanctions, while retaining the ability to re-impose sanctions if the situation in Belarus deteriorated.

"Given that the elections were once more seriously flawed and the authorities carried out yet another crackdown on the opposition, civil society and the independent media, the Government considers it essential to re-impose sanctions, including on those involved in the most recent human rights violations."

16.27 The Minister concludes by saying that the Council Decision is scheduled to be adopted in January 2011.

The Minister's letter of 17 January 2011

16.28 In his accompanying letter, the Minister says that in view of the need for the EU to respond quickly to conditions in Belarus, he wants to be able to agree the text at Council on 24 January; and that, while his Explanatory Memorandum reflects the most recent draft Decision, discussions are continuing in Brussels and there remains a possibility that the text will change during this week. As, in those circumstances, there would not be time for the Committee to consider any amendments before the Council meeting, he asks the Committee to consider waiving the requirement for scrutiny on the amended text in accordance with paragraph 3(b) of the Scrutiny Reserve Resolution,[67] and says that his officials will continue to keep the Committee updated.

Conclusion

16.29 **We again leave it to others to judge how well the EU has played its hand over the past five years.**

16.30 **We are content to clear the Council Decision.**

67 This reads as follows:

"(3) The Minister concerned may, however, give agreement—

(a) to a proposal which is still subject to scrutiny if he considers that it is confidential, routine or trivial or is substantially the same as a proposal on which scrutiny has been completed;

(b) to a proposal which is awaiting consideration by the House if the European Scrutiny Committee has indicated that agreement need not be withheld pending consideration."

16.31 **We do not, however, consider it appropriate to exercise the waiver to which the Minister refers when we have no idea of what changes might materialise. Instead, we ask that the Minister writes to the Committee after the Council meeting about whatever changes emerge between now and then and, should they be substantive, why he decided to agree to their adoption.**

16.32 **A small point: we ask that, in future, his Explanatory Memoranda should include a specific date on which (and not just the month in which) he expects a Council Decision or Council Regulation to be adopted.**

17 Financial services

(31843) 12360/10 + ADDs 1–8 COM(10) 370	Commission White Paper on insurance guarantee schemes

Legal base	—
Document originated	HM Treasury
Basis of consideration	Minister's letter of 16 December 2010
Previous Committee Report	HC 428–iii (2010–11), chapter 8 (13 October 2010) and HC 428–viii (2010–11), chapter 6 (17 November 2010)
Discussion in Council	None planned
Committee's assessment	Politically important
Committee's decision	Cleared

Background

17.1 Insurance guarantee schemes (IGSs) provide last-resort protection to consumers when insurance undertakings are unable to fulfil their contractual commitments, so protecting people against the risk that claims will not be met if their insurance company becomes insolvent. Increasing cross-border insurance activity and the impact of the financial crisis on perceptions of the risk of cross-border firm failures has highlighted differences in the protection afforded to insurance policyholders across the EU and prompted calls for a standardised EU IGS. The concept of an EU-wide IGS has been mooted since 2000. However, Member States have been unable to agree on the scope of such a scheme, especially since some, unlike the UK, have no schemes at all for the insurance sector.

17.2 In this White Paper, published in July 2010, the Commission proposes introduction, through a Directive, of an EU framework for IGSs. The Commission's key proposals include:

- adopting a minimum harmonising Directive, with a home state principle,[68] that covers both life and non-life insurance policies and natural persons and certain legal persons (such as small and medium businesses);

- establishing a pre-funding model for domestic insurance guarantee schemes, with a target funding level of 1.2% of gross written premiums, to be applied over a 10-year horizon — in the event of low funds, should an insurer fail, the pre-fund could also be supplemented by post funding arrangements; and

- ensuring, at the very least, that policyholders and beneficiaries should be compensated for losses where an insurer becomes insolvent.

The Commission says that it may, in the future, also consider compensation limits and other reductions of benefits, as well as setting a pre-defined time limit for compensation payments. The Commission calls for the views of interested parties by 30 November 2010.

17.3 When we considered this document, in October 2010, we noted the Government's support, albeit with caveats, for the principle of establishing an EU framework for insurance guarantee schemes and the possibility of future legislative proposals. We presumed the Government would be responding to the Commission's call for comments on the White Paper and asked to see that response. In November 2010 it was confirmed to us that the Government would be responding to the Commission and that the response would:

- follow the principles outlined to us previously;

- seek to ensure that any EU framework does not weaken the current UK policyholder protection afforded by the Financial Services Compensation Scheme; and

- seek to ensure that any such framework is proportionate to the risks within the insurance sector.

We asked to see the response in due course and meanwhile the document remained under scrutiny.[69]

The Minister's letter

17.4 The Financial Secretary to the Treasury (Mr Mark Hoban) has now sent us the response submitted by the Treasury and the Financial Services Authority. The response, which will be published on line by the Commission and the introductory paragraphs of which we annexe, does follow the principles outlined to us previously, seeking to ensure that:

- any EU framework does not weaken the current UK policyholder protection afforded by the Financial Services Compensation Scheme; and

68 A home state principle would involve covering policies not only issued by domestic insurers but those sold by branches of domestic insurers established in other Member State, as in contrast to a host country principle involving coverage of policies issued by branches of incoming insurers.

69 See headnote.

- any such framework is proportionate to the risks within the insurance sector.

Conclusion

17.5 **We are grateful to the Minister for sending us the response to the White Paper and now clear the document.**

Annex: *Commission White Paper on Insurance Guarantee Schemes — a UK response from HM Treasury and the Financial Services Authority*

Introduction

1 The UK supports the approach taken by the Commission in introducing a directive which sets out a framework for Insurance Guarantee Schemes (IGSs) across the EU. We consider that it is important that all Member States have a guarantee scheme for policyholders with contracts of life and general insurance.

2 The UK fully supports the development of Solvency II and believes that when implemented this will reduce the number of insurance failures. However, Solvency II is not a zero failure regime, and there are a growing number of insurers of a substantial size effecting cross-border business. It is therefore important to have credible and robust compensation arrangements in place to ensure that policyholders are protected, in the event of an insurance company failing- and no longer being able to meet claims against it. Without an EU-wide approach to guarantee schemes, there is a risk that EU crisis management arrangements will be less effective and that the development of a single market might be hindered.

3 In developing an EU IGS framework, the UK wants to ensure that:

- policyholders are equally and adequately protected regardless of the home Member State of the insurer; and

- the UK's current level of policyholder protection provided by our existing IGS, the Financial Services Compensation Scheme is maintained.

18 EURODAC

(32072) 14919/10 COM(10) 555	Amended draft Regulation on the establishment of EURODAC for the comparison of fingerprints for the effective application of the Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection

Legal base	Article 78(2)(e) TFEU; co-decision; QMV
Document originated	11 October 2010
Deposited in Parliament	14 October 2010
Department	Home Office
Basis of consideration	Minister's letter of 11 January 2011
Previous Committee Report	HC 428–x (2010–11), chapter 10 (8 December 2010) and HC 428–vii (2010–11), chapter 6 (10 November 2010)
To be discussed in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background and previous scrutiny

18.1 EURODAC is an EU database which forms part of the so-called "Dublin system" for determining which Member State is responsible for examining a claim for asylum. It contains the fingerprints of third country nationals or stateless people aged at least 14 years old who:

- have applied for asylum in an EU Member State; or
- have been apprehended in connection with an irregular crossing of a Member State's external border; or
- have been found to be illegally present within a Member State.

18.2 EURODAC is intended to reduce the risk of multiple claims for asylum being lodged in different Member States or of asylum seekers being shuttled between Member States, without any one taking responsibility for the asylum application. Each set of fingerprint data obtained by a Member State may be compared with data already stored in EURODAC to see if an asylum seeker has previously lodged a claim in one or more other Member States or has entered EU territory unlawfully.

18.3 The UK participates fully in the Dublin system and is bound by the 2000 Regulation establishing EURODAC. The amending draft Regulation proposed by the Commission is the third attempt to recast the 2000 Regulation. The UK opted into previous draft amending Regulations proposed in 2008 and 2009 but which were subsequently withdrawn. The Government told us that a fresh opt-in decision was required for the Commission's latest draft amending Regulation because it was "in essence a new proposal"

and the Government was not, therefore, bound by its earlier decisions to opt into the 2008 and 2009 draft amending Regulations.[70]

18.4 We found the Government's approach to the opt-in in this case difficult to reconcile with that taken in relation to UK participation in a draft Regulation to establish an IT Agency for the operational management of large scale IT systems (including EURODAC). In that case, the Government considered that a fresh opt-in decision was not required when the Commission's original proposal (which the UK had opted into) was replaced by an amended proposal.

18.5 We noted that the circumstances in which the UK may be bound by, or released from, an earlier opt-in decision had broader legal and political significance and asked the Government to explain the criteria which it and EU institutions applied to determine:

- whether an earlier opt-in decision remains binding on the UK; or
- whether a fresh opt-in decision is required.

18.6 The Minister for Immigration (Damian Green) told us that the Commission's latest draft amending Regulation, compared with its 2009 predecessor, reflected "a significant change in scope such that this can be considered a new proposal that triggers the opt-in."[71] This was because the latest proposal omitted a provision enabling Europol and designated national law enforcement authorities to seek access to EURODAC data if there were reasonable grounds for believing that the data would contribute substantially to the prevention, detection or investigation of terrorist or other serious criminal offences. He added that the Commission and Council Legal Service had not contradicted the Government's view that a fresh opt-in decision was required, nor had they expressed a view on the precise criteria that would trigger a fresh opt-in.

18.7 We accepted the Government's view that the change in scope of the Commission's latest draft amending Regulation was significant, but asked the Minister to explain whether a "significant change in scope" was the sole criterion the Government applied to determine whether a fresh opt-in would be required and, if there were additional criteria, to tell us what they were. We also asked the Minister to inform us of the Government's decision whether or not to opt in.

The Minister's letter of 11 January 2011

18.8 The Minister tells us that the Government has decided to opt into the Commission's latest draft amending Regulation "in order to secure continued access to EURODAC for immigration purposes, as it plays a vital role in combating abuse of the UK's asylum system." He explains the process applied by the Government in the present case to determine whether a fresh opt-in decision was required.

> "As the Committee will appreciate, Article 3 of the UK's opt-in Protocol provides that in order for it to apply, a proposal or initiative must have been presented to the

70 See the Minister's Explanatory Memorandum of 25 October 2010.

71 See Minister's letter of 19 November 2010.

Council pursuant to Title V of Part Three of the TFEU. As set out in the original explanatory memorandum deposited with the Committee and in my letter of 19 November 2010 to you, the EURODAC proposal is such a proposal. As I set out in this last letter, in this case we also considered that this was a new proposal to which the opt-in applied because the removal of the provisions permitting law enforcement access reflected a significant change in scope compared to the previous proposal. The ability of the UK (and Ireland) to opt-in to this proposal is also expressly reflected in the text of the Commission proposal. This is an evolving area and the Government will keep its approach to the application of the Protocol in these types of cases under review."

Conclusion

18.9 **We thank the Minister for informing us of the Government's decision to opt into the latest draft amending Regulation. We take the Minister's latest letter as confirmation that a "significant change in scope" is the principal criterion for determining whether a fresh opt-in decision is required, but that it may not be the only one. We note what the Minister says about this being "an evolving area" and that the Government intends to keep under review its approach to the application of the opt-in Protocol. While we are content to clear the document from scrutiny, we ask the Minister to inform us of any significant developments in the present negotiation and of any evolution in the Government's approach to future opt-in decisions in similar cases, where the UK has opted into a Commission proposal which is later withdrawn and replaced by a new proposal.**

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

Department for Education

(32389) 18237/10 —	Report on the annual accounts of the European Schools for the financial year 2009 together with the Schools' replies.

Department for Environment, Food and Rural Affairs

(32355) 17884/10 COM(10) 736	Draft Council Decision on the signing, on behalf of the European Union, and provisional application of the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe.
(32356) 17885/10 COM(10) 735	Draft Council Decision on the conclusion of a new Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe.
(32357) 17886/10 COM(10) 737	Draft Council Regulation (EU) on the allocation of fishing opportunities under the Fisheries Partnership Agreement between the European Community and the Democratic Republic of São Tomé and Príncipe.
(32382) 18203/10 SEC(10) 1588	Commission Regulation to the Council to authorise the Commission to open negotiations on behalf of the European Union for the renewal of the protocol to the Fisheries Partnership Agreement with Madagascar.

Department for Transport

(32267) 16753/10 —	Report on the annual accounts of the Trans-European Transport Network Executive Agency for the financial year 2009 together with the Agency's replies.
(32291) 17025/10 COM(10) 657	Commission Communication on the monitoring and reporting of data on the registration of new passenger cars.

(32359) 17889/10 COM(10) 725	Fifth Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Implementation of Regulation (EC) No.2320/2002 establishing Common Rules in the field of Civil Aviation Security.

Formal minutes

Wednesday 19 January 2011

Members present:

Mr William Cash, in the Chair

Mr James Clappison
Michael Connarty
Jim Dobbin
Julie Elliott
Nia Griffith
Chris Heaton-Harris
Kelvin Hopkins
Chris Kelly
Stephen Phillips
Jacob Rees-Mogg
Henry Smith

1. Scrutiny of Documents

The Committee deliberated.

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

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

Headnote read, amended and agreed to.

Paragraphs 1.1 to 1.29 read and agreed to.

Paragraph 1.30 read, amended and agreed to.

Paragraphs 2.0 to 19 read and agreed to.

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

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

2. Scrutiny of a Pre-Council Written Ministerial Statement

The Committee considered a Pre-Ministerial Statement.

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[Adjourned till Wednesday 26 January at 2.00 pm.

Standing order and membership

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

a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and

c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression "European Union document" covers —

i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;

v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee's powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House's Standing Orders, which are available at www.parliament.uk.

Current membership

Mr William Cash MP (*Conservative, Stone*) (Chair)
Mr James Clappison MP (*Conservative, Hertsmere*)
Michael Connarty MP (*Labour, Linlithgow and East Falkirk)*
Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)
Julie Elliott MP (*Labour, Sunderland Central)*
Tim Farron MP (*Liberal Democrat, Westmorland and Lonsdale*)
Nia Griffith MP (*Labour, Llanelli*)
Chris Heaton-Harris MP (*Conservative, Daventry*)
Kelvin Hopkins MP (*Labour, Luton North*)
Chris Kelly MP (*Conservative, Dudley South*)
Tony Lloyd MP (*Labour, Manchester Central*)
Penny Mordaunt MP (*Conservative, Portsmouth North*)
Stephen Phillips MP (*Conservative, Sleaford and North Hykeham*)
Jacob Rees-Mogg MP (*Conservative, North East Somerset)*
Henry Smith MP (*Conservative, Crawley*)
Ian Swales MP (*Liberal Democrat, Redcar*)