House of Commons
European Scrutiny Committee

First Report of Session 2010–11

Documents considered by the Committee on 8 September 2010, including the following recommendations for debate:

The Cotonou Agreement
A twelve-point EU action plan in support of the MDGs
European Security and Defence Policy: EULEX Kosovo
Draft Budget 2011
Terrorist Finance Tracking Program
Financial assistance for Member States
Economic policy coordination
Europe 2020 Strategy: integrated guidelines
European citizens’ initiative

Report, together with formal minutes

Ordered by The House of Commons
to be printed 8 September 2010
Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

Staff

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

Contacts

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

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**Standing order and membership**
1 The Cotonou Agreement

1.1 The “Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part and the European Community and its Member States of the other part” was signed on 23 June 2000 in Cotonou, Benin. The ACP-EC Partnership Agreement” or “Cotonou Agreement”, was concluded for a twenty-year period from March 2000 to February 2020, and entered into force in April 2003. It was for the first time revised in June 2005, with the revision entering into force on 1 July 2008.1

1.2 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.

1.3 The partnership is centred on the objective of reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy. Its fundamental principles are:

— equality of the partners and ownership of the development strategies;

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1 The Commission says that the notion of “ACP States” goes back to the “ACP Group of States”, formally established in 1975 with the Georgetown Agreement, which was initially signed by 46 African, Caribbean and Pacific states. Today, the ACP Group of States counts 79 countries, 78 of them signatories of the Cotonou-Agreement (with Cuba being the exception). South Africa is a contracting party of the Cotonou Agreement, but not all the provisions apply to the cooperation between South Africa and the EC.
— participation (central governments as the main partners, partnership open to different kinds of other actors);

— pivotal role of dialogue and the fulfilment of mutual obligations; and

— differentiation and regionalisation.

1.4 The European Development Fund (EDF) is the main instrument for providing Community assistance for development cooperation under the Cotonou Agreement. The EDF is funded by the EU Member States on the basis of specific contribution keys. Each EDF is concluded for a multi-annual period. The 10th EDF covers the period from 2008 to 2013 and has been allocated €22.7 billion (by comparison, the 9th EDF was initially allocated €13.8 billion for 2000–2007).

1.5 The Cotonou Agreement provides for a revision clause every five years till 2020. The Commission says that the main reasons for the Second Revision are:

— to preserve the relevance and the outstanding character of the Partnership between ACP and EU countries;

— to adapt the Agreement to recent major changes in international and ACP-EC relations;

— to further develop several themes that are essential for both parties;

— the political dimension, institutional issues and sector specific policy issues;

— economic cooperation, regional integration and trade; and

— development finance cooperation, including humanitarian and emergency assistance and new development advances in aid programming and management.

1.6 The Commission says that the Second Revision adapts the partnership to changes which have taken place over the last decade, in particular:

- “The growing importance of regional integration in ACP countries and in ACP-EU cooperation is reflected. Its role in fostering cooperation and peace and security, in promoting growth and in tackling cross-border challenges is emphasized. In Africa, the continental dimension is also recognized, and the African Union becomes a partner of the EU-ACP relationship;

- “Security and fragility: no development can take place without a secure environment. The new agreement highlights the interdependence between security and development and tackles security threats jointly. Attention is paid to peace building and conflict prevention. A comprehensive approach combining diplomacy, security and development cooperation is developed for situations of State fragility;

- “Our ACP partners face major challenges if they are to meet the Millennium Development Goals — food security, HIV-AIDS and sustainability of fisheries. The
importance of each of these areas for sustainable development, growth and poverty reduction is underlined, and joint approaches for our cooperation are now agreed;

- “For the first time, the EU and the ACP recognize the global challenge of climate change as a major subject for their partnership. The parties commit to raising the profile of climate change in their development cooperation, and to support ACP efforts in mitigating and adapting to the effects of climate change;

- “The trade chapter of the Agreement reflects the new trade relationship and the expiry of preferences at the end of 2007. It reaffirms the role of the Economic Partnership Agreements to boost economic development and integration into the world economy. The revised Agreement highlights the challenges ACP countries are facing to integrate better into the world economy, in particular the effects of preference erosion. It therefore underlines the importance of trade adaptation strategies and aid for trade;

- “More actors in the partnership: the EU has been promoting a broad and inclusive partnership with ACP partners. The new agreement clearly recognizes the role of national parliaments, local authorities, civil society and private sector; and

- “More impact, more value for money: This second revision is instrumental in putting in practice the internationally agreed aid effectiveness principles, in particular donor coordination. It will also untie EU aid to the ACP countries to reduce transaction costs. For the first time, the role of other EU policies for the development of ACP countries is recognized and the EU commits to enhance the coherence of those policies to this end.”

1.7 In his Explanatory Memorandum of 31 March 2010, the then Minister of State at the Department for International Development (Mr Gareth Thomas) says that negotiations on the Second Revision, started on 29 May 2009 and were concluded at an extraordinary Joint Ministerial meeting in Brussels on 19 March, at which the EU negotiator, Commissioner Piebalgs, and the Gabonese Minister Bunduku-Latha as the ACP representative, initialled the revised Agreement, with amendments as detailed in the document attached to it. He explains that negotiations over the year have taken place in three thematic groups:

i) Political Dimension, institutional issues and sector specific policies;

ii) Economic Co-operation, regional integration and trade; and

iii) Development finance cooperation and related issues.

He says that the Commission has kept Member States informed of the progress of negotiations in these thematic groups through the ACP Council Working Group. He then outlines the main outcomes in each of these themes as follow:

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2 See http://ec.europa.eu/development/geographical/cotonouintro_en.cfm for further information on the Cotonou Agreement.
Political Dimension, institutional issues and sector specific policies

• “The revised text provides for greater synergies between the Cotonou Agreement and the EU/Africa Strategy, as well as other regional strategies. The African Union has now been included as a key interlocutor in peace and stability matters (Article 8, political dialogue and Article 11, conflict prevention). There is now a clearer explanation of the linkages between the EU/Africa, Cotonou and Economic Partnership Agreements (EPA) institutions (Articles 14 to 17). There is an explicit reference to the role of ACP National Parliaments in the Partnership so they can play a greater role (Article 4).

• “There are slight amendments to Article 96 Annex VII to allow for an exchange of information with the ACP Secretariat. Article 96 provides for intense dialogue and appropriate measures against any state party that significantly fails to uphold the essential elements of the Agreement (human rights, democratic principles or the rule of law). Appropriate measures could be a reallocation, reduction or — in extreme cases — a suspension of development aid from the European Development Fund (EDF), until the situation improves. The EC resisted requests for further changes by the ACP that would have weakened the effectiveness of Article 96 or prolonged the process. The EC also defended the current language on the International Criminal Court (ICC), consistently turning down requests by the ACP to weaken the language or to introduce individual reservations to the agreement.

• “The EC (with strong backing from the European Parliament) pushed for language on non-discrimination (Article 8.4) to include a specific reference to sexual orientation. This was strongly resisted by the ACP side, and a compromise was found on the basis of language in the Universal Declaration on Human Rights.

• “There are important new references to climate change (Article 32), HIV/AIDS (Article 31a), a strengthening of the commitment to accelerate efforts to meet the MDGs (preamble and Article 1) and an acknowledgement of the security/development nexus (Article 11). An ACP request to hold high-level consultations on fisheries has been included (Article 23a), with a view to enhancing coherence between fisheries policies and development cooperation. The impact of the food crisis has been recognised through strengthened language on food security and promoting agriculture.

• “Article 13 on migration includes an agreement for EU and ACP countries to accept the return and readmission of any citizen who is illegally present in the other region and provide appropriate identity documentation to facilitate this. The Commission’s mandate was to restructure the Article in line with the Global Approach to Migration (the EU’s strategy for third country engagement). In particular, the EC was mandated to strengthen the language on readmissions and ‘operationalise’ it through specific procedures, e.g. the issuing and accepting of travel documents. ACP countries resisted this addition on readmissions. As a compromise the attached Joint Declaration was negotiated, which commits the EU and the ACP to further negotiations on enhancing cooperation on migration,
without affecting Article 13. A progress report will be made to the ACP-EU Council in June.”

**Economic Co-operation, regional integration and trade**

- “The trade provisions were significantly updated to include EPAs and the expiry of the former WTO waiver. Articles 34–39 cover both technical and procedural necessities and set out principles around EPA implementation, consultation and regional cooperation. Aid for Trade is introduced as a concept (Article 35). The challenge of the erosion of preferential terms for the ACP has also been recognised (Article 37).

- “The Articles on regional cooperation and integration have been strengthened in recognition of the increased regional differentiation within the ACP grouping and to ensure consistency with the 2008 Communication on Regional Integration (particularly Articles 20, 23, 29 and 30).

- “Article 33 (taxation) has been revised to include a strong focus on support for domestic revenue-raising through enhanced tax administration. The Article also promotes the participation in international tax cooperation processes and compliance with international standards.”

**Development Finance Co-operation, including humanitarian and emergency assistance and new development advances in aid programming and management**

- “The negotiations in this area have focused on improving the programming and implementation of aid. In particular a role for ACP national parliaments in programming has been included and further detail provided on ‘Intra-ACP programming’ to harmonise this with programming at the national and regional levels (Annex IV). Provisions have been introduced for greater flexibility to respond to ‘unforeseen needs’ at the regional level (in ‘B envelopes’ within the European Development Fund), as well as flexibility to increase allocations in response to crisis situations (in ‘A and B envelopes’).

- “There is also a greater emphasis on humanitarian, emergency and post-emergency assistance financing under the multi annual financial framework (Article 72).”

**The Government’s view**

1.8 The then Minister (Mr Gareth Thomas) begins by welcoming the Commission’s regular communication with the Council and its request for further guidance on the more challenging areas of the negotiations. He notes that the UK has been actively involved in the process and believes that the revised Agreement represents a good outcome and meets the overall EU aims as agreed at the outset. He continues his comments as follows:

“We welcome the clear references throughout the negotiations to the Accra Agenda for Action, the Monterrey aid commitments, the Paris aid effectiveness principles and the need for all parties to make a concerted effort to achieve the MDGs. The
inclusion of new text reflecting the serious global challenge of climate change reinforces the importance which the EU places on tackling climate change and addressing its impact in developing countries. The approach is fully in line with that of the UK: integrating climate change into development strategies, focusing on mitigation for development purposes, and supporting adaptation measures.

“We welcome the revised Article 33 on taxation. The UK believes that taxation has a key role to play in mobilising domestic resources for development and reducing reliance on external aid. The Agreement promotes the participation in international tax cooperation processes and compliance with international standards which is very much in tune with the G20 tax transparency initiative taken at the London Summit in March 2009. In this context, a number of ACP countries, particularly Caribbean countries with significant financial sectors, are concluding tax information exchange agreements with G20 and OECD countries. The UK is keen to encourage this process. The Article on taxation should also facilitate a wider range of ACP countries participating in and benefiting from international tax transparency.

“The UK welcomes the commitment in the Joint Declaration on migration to continue dialogue to enhance cooperation in this area. We supported the EC in not reopening Article 13 at the end of negotiations, particularly as it risked reopening agreed provisions on legal migration and delaying a wider agreement on Cotonou without a clear opportunity to make progress on readmissions. The lack of immediate resolution on this issue will not adversely affect the UK, as we maintain bilateral readmission agreements with many ACP countries that are not directly dependent on Cotonou.

“As highlighted in the letter from Caroline Flint of May 2009, the potential of the 2005 changes to Article 96 are yet to be realised. We are therefore pleased that no significant changes have been made to this Article and we will continue work to improve its effectiveness. The UK is particularly pleased to see the reference to the ICC remain clear and undiminished in Article 8.

“We welcome the updated language on trade and the inclusion of new text to reflect EPAs. The UK successfully intervened on preference erosion to ensure that the resulting text reflected a balance between the real development challenges involved and the EU’s freedom to negotiate trade agreements with third parties.

“The UK welcomes the modifications to the programming sections of the revised Agreement, in particular the streamlining of the Intra-ACP programming and the increased flexibility of the ‘B-envelope’ allocation. The latter will ensure that the EC is better placed to respond to global shocks such as the financial crisis, for which it had to develop a specific response mechanism (the Vulnerability-Flex) due to the limited flexibility of allocations under the current Agreement.”

1.9 On the question of consultation, the then Minister notes both the UK contribution to the negotiations and that, in the preparation of his Explanatory Memorandum, he has been
in consultation with a number of other Ministries, including HM Treasury, the Home Office and the Foreign and Commonwealth Office.

1.10 With regard to the financial implications, the then Minister says that the revised agreement does not commit the EU to any further funding after the current European Development Fund 10 (EDF10) which expires in 2013. Discussions on ACP funding post-EDF10 will take place alongside the broader discussions for the Financial Perspectives (2014 — 2020). However, the Commission will use the revised Agreement to influence its programming for ACP countries up until 2015 when this Agreement will next be considered for revision.

1.11 Finally, looking ahead, the then Minister explains that, in order for the amended Agreement to be adopted, the Commission must now propose, for Council adoption, the Decisions authorising the signature and conclusion of the amended Agreement (which he notes will be deposited for scrutiny); and says that it is hoped that these Decisions will be approved in June — probably at the 21 June Environment Council as an “A Point”, (i.e. without substantive discussion) — with the final Agreement being signed on behalf of the EU at the ACP-EU Ministerial Council on 23–25 June.

Conclusion

1.12 We are grateful to the then Minister for his clear exposition of this important Revision of the keystone in the EU’s relationship with the ACP countries. Even though it has by now been signed, we note that there has always been widespread interest in the House in development cooperation issues, and consider that a debate in the European Committee will provide a new Minister and government with an opportunity to outline some of its own thinking, and a new House the opportunity to debate some of these issues.

1.13 We so recommend.
2 A twelve-point EU action plan in support of the MDGs

Commission Communication: A twelve-point EU action plan in support of the Millennium Development Goals

Legal base
Document originated: 24 April 2010
Deposited in Parliament: 10 May 2010
Department: International Development
Basis of consideration: EM of 7 June 2010
Previous Committee Report: None
To be discussed in Council: 14–15 June 2010 “Development” Foreign Affairs Council
Committee’s assessment: Politically important
Committee’s decision: Not cleared; for debate in European Committee B

Background

2.1 The Millennium Development Goals (MDGs) are eight goals to be achieved by 2015 that respond to the world’s main development challenges. The MDGs are drawn from the actions and targets contained in the Millennium Declaration that was adopted by 189 nations, and signed by 147 heads of state and governments, during the UN Millennium Summit in September 2000.\(^4\) The eight MDGs were broken down into 21 quantifiable targets that are measured by 60 indicators.\(^5\)

- Goal 1: Eradicate extreme poverty and hunger
- Goal 2: Achieve universal primary education
- Goal 3: Promote gender equality and empower women
- Goal 4: Reduce child mortality
- Goal 5: Improve maternal health
- Goal 6: Combat HIV/AIDS, malaria and other diseases
- Goal 7: Ensure environmental sustainability
- Goal 8: Develop a Global Partnership for Development

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\(^5\) Set out at the annex to this chapter of our Report.
The Commission Communication

2.2 The Commission describes the MDGs as “the first ever set of shared development goals at international level”, and as “having contributed to build an unprecedented level of consensus [which] should continue to guide and mobilise international support [and which] emphasise the importance of a Human Rights based approach to development.” They note that:

“with only five years remaining before the agreed 2015 deadline, world leaders will gather in New York on 20–22 September 2010 for the UN MDG Review High Level Plenary Meeting (HLPM). Their aim is to ensure a comprehensive review of successes and gaps, and agree on concrete action to speed up progress.”

2.3 The Commission describes the present situation as patchy. Progress has varied greatly both between MDGs and between regions, with economic growth, good governance and quality of domestic policies as key variables for progress. Globally, there has been strong and sustained progress in reducing extreme poverty as well as on other goals such as universal primary education, gender equality in primary education and access to water.

“But, around 1.4 billion people still live in extreme poverty (51% of them in Sub-Saharan Africa) and one sixth of the world’s population is undernourished. There has been almost no progress in reducing maternal and child mortality and prospects for access to sanitation are also bleak.”

2.4 Against this background, the Commission sets out its Action Plan, with a number of specific medium-term actions in support of the MDGs. The EU action plan is intended to:

— constitute a unified EU contribution to a UN action oriented outcome on MDGs for 2010–2015;

— provide a basis for outreach and dialogue, before and beyond the HLPM, with key and strategic partners, whether in the G8/G20 context, or in fora such as the Asia-Europe Development Conference Meeting (26–27 May 2010), the EU — LAC Summit (18 May 2010), and the 3rd Africa-EU Summit (29–30 November 2010); and

— feed into the Europe 2020 strategy.

2.5 The Commission notes the EU’s singular position, as collectively by far the biggest donor — almost 56% of global Official Development Assistance (ODA), almost doubled since the adoption of the MDGs, now amounting to €49 billion. In 2008, it decreased, but was still 0.42% of EU GNI.

“Nevertheless, the EU is behind the schedule to reach the collective EU intermediate target of 0.56% of GNI by 2010, as a step towards devoting by 2015 0.7% of GNI to ODA.

6 UN Secretary-General Ban Ki-moon has called on world leaders to attend a summit in New York on 20–22 September 2010 to boost progress towards the MDGs. His report, “Keeping the Promise”, will serve as the basis for Member States' deliberations on “an action-oriented outcome document for the Summit ….. identifies successes and gaps, and lays out an agenda for 2010–2015”. See http://www.un.org/millenniumgoals/ for full background to the HLPM.
“Back-loading aid increases would mean back-loading progress on the MDGs. In the current financial and economic crisis, it may not be easy to keep our collective promises to devote 0.7% of our GNI to ODA by 2015, and to direct 50% of the ODA increase to Africa, but it is still feasible and necessary. It is a question of foresight and political will. All donors need to contribute to the common goal on the basis of fair global and EU internal burden-sharing. At the UN HLPM, the EU needs to show how it will keep its promises, proving that developing countries can trust us. This includes tackling new global challenges by providing financing from resources additional to ODA.”

2.6 As well as honouring EU aid commitments, the Commission proposes 12 actions, the main ones being:

**Improving aid effectiveness**

The Commission notes estimated annual efficiency gains of between €3–6 billion if the EU and Member States were to implement better the aid effectiveness principles agreed in the Paris Declaration and the Accra Agenda for Action. The EU has to step up implementation of these commitments in order to show concrete results ahead of the fourth High Level Forum on Aid Effectiveness in Seoul in 2011. Coordinating European actions upstream has more impact than taking corrective measures downstream. The Commission proposes concrete steps to improve national and EU planning cycles and the EU Division of Labour.

**Targeting the most off-track MDGs**

The EU should pay particular attention to the goals furthest from being achieved. Action must be prioritised in countries where most progress is to be made. Targeted interventions should focus on the most vulnerable, including women, children and people with disabilities. Fragile states have made considerably less progress towards the MDGs than other developing countries; donors should do more and in a more coordinated way in fragile states.

The EU and Member States should always use as a first option partner countries’ own strategies and systems in order to strengthen country ownership. This should preferably be done through Budget Support and MDG Contract type of programmes. In education and health, concentrate EU and Member States action in those countries where need is greatest and sustainable policies can be supported; the list of priority countries will be prepared ahead of the High Level Plenary Meeting (HLPM) in September; enhance policy coherence and further EU political and financial involvement in the Global Fund to fight Aids Tuberculosis & Malaria and the Global Alliance for Vaccines and Immunisation; increase support for national education sector plans; and address all aspects of food security.

**Fostering Ownership in MDGs in partner countries**

Continue to encourage and support country-led approaches for deciding priority investments in support of MDGs, and promote the inclusion of MDG targets in
developing countries own development strategies. MDG ownership should be seen as part of the wider governance commitments taken by partner countries, and part and parcel of the EU dialogue with them. High quality statistical data is crucial to monitor progress, accountability and rational policies. The lack of reliable, accurate data to track MDG progress is particularly acute in Africa.

**Policy Coherence for Development**

The PCD Work Programme (see below) needs to be used proactively and early to guide EU decision making.

**Mobilising developing countries’ domestic resources through better taxation systems**

EU support for setting up sustainable fiscal and customs systems should be strengthened, building capacity and promoting good governance in tax matters.7

**Enhancing regional integration and trade to boost growth**

The EU should increase support to private sector development via the ACP Investment Facility and the EU-Africa Infrastructure Trust Fund; strengthen the capacity of the EIB to support EU development objectives; persist in working for a conclusion of the Doha Round; continue to work on tailored bilateral and regional trade agreements, including Economic Partnership Agreements; and advance further in the delivery of Aid for Trade.

2.7 The five accompanying Commission Staff Working Papers aim to provide the analysis underpinning the actions suggested in the action plan. They cover:

— Aid for Trade;
— Financing for Development;
— Millennium Development Goals (MDGs);
— Aid Effectiveness; and
— Policy Coherence for Development.

**Aid for Trade Monitoring Report 2010**

This is the third progress report against the EU Aid for Trade strategy of 2007. The Commission and EU Member States pledged in 2005 to each increase Aid for Trade commitments to €1 billion (£0.87 billion) a year by 2010. The report shows that Member States and the Commission have hit this target well in advance, reaching €2.15 billion (£1.87 billion) in 2008, consisting of €1.143 billion (£0.995 billion) from Member States and € 1.007 billion (£0.876 billion) from the Commission. Building

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7 The Commission has produced a separate Commission Communication on this subject: see (31516) 8891/10 listed in chapter 81 of this Report.
on this overall success, the Commission calls for continued support for Aid for Trade. Specifically it calls for increased Aid for Trade for the Least Developed Countries, greater needs-based analysis and an expansion in the number of countries in which EU joint Aid for Trade activities take place.

**Financing for Development — Annual Progress Report 2010**

This report monitors the EU’s commitments on financing for development, particularly Member State progress against their ODA targets. The report also covers other financing issues such as: improved revenue mobilisation by developing countries through taxation and public financial management; remittances; innovative sources; and strengthening global financial governance.

The Report notes that EU ODA continued to increase as a share of Gross National Income (GNI), reaching 0.42% in 2009 from 0.40% in 2008. Due to economic contraction, however, the total ODA volume decreased to €49 billion (£42 billion) from €50 billion in 2008. The report reveals that the EU will almost certainly miss its collective EU target to reach 0.56% of GNI by 2010. According to the Commission the target of 0.7% of GNI in 2015 is, however, still attainable with a fair internal burden-sharing.

The UK remains on track to reach both the 2010 and 2015 targets. Four Member States are already in excess of 0.7% and a further four are firmly on track to meet the targets. Various other Member States (including Germany and Italy) have significantly decreased their ODA/GNI since 2008 and are seriously off-track. To ensure the 2015 target is met, the Commission proposes the establishment of national annual delivery plans and the creation of an EU internal annual ODA Peer Review.

**Progress made on the Millennium Development Goals and key challenges for the Road ahead**

With five years to go until the MDGs target date, this Staff Working Paper takes stock of what progress has been made and identifies lessons learnt. While progress has been made in some areas (e.g. on worldwide extreme poverty and enrolment in primary education), progress has been highly uneven among regions, countries and population groups. Some MDGs are also still severely off-track at global level, especially maternal and child health, and water and sanitation. The Commission points to economic growth, country leadership, domestic policies, and ODA as crucial to success.

Other key challenges include the continuing effects of the economic and financial crisis, mobilising the private sector, focussing on the most off-track MDGs and countries and addressing fragility and climate change.

**Aid Effectiveness — Annual Progress Report 2010**

This Staff Working Paper covers progress on commitments to improve aid effectiveness established by the Paris Declaration and the Accra Agenda for Action. It
presents a mixed picture of EU progress. While EU working methods and processes could be better coordinated, the Commission acknowledges a genuine willingness to improve the effectiveness of aid and can demonstrate some real progress. It suggests that further progress could be made by joint EU programming and a common European approach on improving the transparency and accountability of aid.

**Policy Coherence for Development Work Programme**

The Policy Coherence for Development (PCD) work programme aims to translate the principle that non-development policies should support, or at least not undermine, development policies and it sets out practical steps to enhance the coherence of EU policies. The work programme concentrates on actions in five areas: Trade and finance; climate change; global food security; migration; and security, in each of which individual targets and indicators are identified.

**The Government’s view**

2.8 In his Explanatory Memorandum of 7 June 2010, the Secretary of State for International Development (Mr Andrew Mitchell) says that this “broad” Communication “supports an action-oriented EU position for the MDG Summit in September”. He regards the most important ideas as “the introduction of an internal EU peer review mechanism on ODA delivery, consisting of national annual ODA action plans, regular discussions among Member States in the Council and reports on ODA delivery to the European Council.” This, he says, is welcome, “as it aims to secure EU ODA delivery despite the challenging fiscal situation in Europe.” Stating that the UK is “on track to meet its 2010 and 2015 ODA targets”, the Secretary of State “would like to see other Member States meeting theirs.”

2.9 The Secretary of State also notes that the Communication also sets out a number of actions to target countries and MDGs that are most off-track. He highlights the Commission proposal to re-allocate funds from the European Development Fund (EDF) to off-track countries in the framework of the 2010 mid-term review of ACP programmes, and describes the actions proposed in order to support individual off-track MDGs (including child and maternal health, education) as “not very specific at this stage.”

2.10 The Secretary of State then comments on the supporting Commission Staff Working Documents as follows:

**Aid for Trade Monitoring Report 2010 (SEC 2010 419 final):**

“The UK welcomes the Commission’s support for a stronger focus on Least Developed Countries, regional approaches and improved Aid for Trade (AFT) effectiveness in particular. The report identifies the key AFT challenges over the next few years such as (1) raising further awareness about what the AFT concept means in practice, (2) maintaining support for AFT flows in the absence of any current targets and ensuring that spending results in real change on the ground through, (3) aid effective approaches, (4) poverty and gender targeting, (5) effective monitoring and evaluation. The Commission does not indicate however how it will work with EU partners to develop a leadership role in tackling these challenges.

“This Progress Report gives a clear picture of EU delivery against targets. With only eight Member States (including the UK) already meeting or being on track to meet the EU ODA targets for 2010 and 2015, the Report recognises that the EU is in danger of missing its collective ODA targets. It is welcome that the Report calls on Member States to demonstrate their contribution to the EU ODA targets and the need for a fairer burden sharing internally and internationally.

“The UK remains committed to provide 0.56% of GNI as ODA in 2010, and to reach 0.7% by 2013 and will continue to press other donors to meet their commitments. This will be a key issue at the June European Council, in the G8 and in the preparation for the MDG Summit in New York in September 2010.

Progress made on the Millennium Development Goals and key challenges for the Road ahead (SEC 2010 418 final):

“The Staff Working Paper provides a useful assessment of the current status of the MDGs. The Government shares the Commission’s analysis in most respects and agrees that economic growth, country leadership, domestic policies, and ODA are crucial elements to attain the MDGs. The UK will work with other Member States to make sure that the EU assumes real leadership for attaining the MDGs. In this regard, the Government will work towards more specific EU commitments for tackling the off-track MDGs (health and education) in particular.

Aid Effectiveness — Annual Progress Report 2010 (SEC 2010 422 final):

“The UK is convinced that there is a strong need to improve aid effectiveness and to meet the respective Paris and Accra targets. This is particularly true under the current fiscal circumstances in Europe. We therefore welcome the comprehensive aid effectiveness agenda of the EU. We particularly support the Commission’s recommendation on developing a Chapter on mutual accountability and transparency for the EU Operational Framework on aid effectiveness. We also welcome the reference to the International Aid transparency Initiative (IATI), which has the aim to make aid more transparent.

“We also support the Commission’s initiative on cross-country division of labour. The UK’s newly launched Bilateral Aid Review will aim to improve the effectiveness of our aid, taking into account the activities of EU and other donors.


“The EU is in a unique position to be able to strengthen policy coherence for development (PCD), and should showcase that it is possible to the rest of the world. The UK therefore strongly supports the Commission’s efforts to strengthen PCD and welcome its ambition to focus on specific areas, trying to identify specific actions. The UK will work with the Commission in making these actions more concrete and
ambitious in particular in areas such as the common agricultural and the common fisheries policy.”

2.11 The Secretary of State goes on to note that, although there has been no external consultation on these documents, there is regular discussion with the Foreign and Commonwealth Office, HM Treasury and Cabinet Office on these issues.

2.12 Finally, the Secretary of State says that these documents will be on the agenda of the Foreign Affairs Council on the 14–15 June.

2.13 On 14 June, the Council subsequently endorsed 16 pages of Conclusions, which it says constitute the EU position on the MDGs with a view to the UN General Assembly High-Level Plenary Meeting and in which it says the Commission Communication “has provided essential guidance.” The Council says that the EU remains firmly committed to support the achievement of the MDGs globally by 2015, which it says “is still possible, if all partners in the international community demonstrate strong political commitment, implement necessary policy changes and take concrete action.” It agrees that progress has been uneven and that “considerable work remains to be done prioritising MDGs most off-track, notably in the regions and countries most lagging behind, especially in Sub-Saharan Africa and the Least Developed Countries (LDCs)”. With countries in situations of conflict and fragility needing special attention.” It sees progress as depending “to a great extent on the quality and coherence of development partners policies [and] remains convinced that the MDGs are interlinked, mutually dependent and reinforcing and therefore require a holistic, rights-based approach which takes into account local contexts”. It underlines “the interdependence of the MDGs with human rights, gender equality, democracy, good governance, development, peace and security, as well as climate and energy [and] also underlines the important role of non-development policies in achieving the MDGs.” Overall, the Council “strongly favours a concrete and action-oriented outcome of the HLPM”, and to this effect, proposes a number of concrete actions and policies.8

**Conclusion**

2.14 Although we have no concerns over the documents *per se*, we think that the importance of the issues they cover and of the 20–22 September 2010 UN MDG Review High Level Plenary Meeting (HLPM), for which they are intended to prepare the world’s foremost providers of development assistance, warrant their being debated in European Committee B.

2.15 We so recommend. In the meantime, the documents remain under scrutiny.

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 annex: the mdg targets and indicators

<table>
<thead>
<tr>
<th>millennium development goals (mdgs)</th>
<th>indicators for monitoring progress</th>
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<tbody>
<tr>
<td>goals and targets (from the millennium declaration)</td>
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<tr>
<td><strong>goal 1: eradicate extreme poverty and hunger</strong></td>
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<tr>
<td>target 1: halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day</td>
<td>1. proportion of population below $1 (ppp) per day 2. poverty gap ratio (incidence x depth of poverty) 3. share of poorest quintile in national consumption</td>
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<tr>
<td>target 2: halve, between 1990 and 2015, the proportion of people who suffer from hunger</td>
<td>4. prevalence of underweight children under-five years of age 5. proportion of population below minimum level of dietary energy consumption</td>
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<tr>
<td>goal 2: achieve universal primary education</td>
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<tr>
<td>target 3: ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling</td>
<td>6. net enrolment ratio in primary education 7. proportion of pupils starting grade 1 who reach grade 5b 8. literacy rate of 15–24 year-olds</td>
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<td>goal 3: promote gender equality and empower women</td>
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<tr>
<td>target 4: eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015</td>
<td>9. ratios of girls to boys in primary, secondary and tertiary education 10. ratio of literate women to men, 15–24 years old 11. share of women in wage employment in the non-agricultural sector 12. proportion of seats held by women in national parliament</td>
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<td>goal 4: reduce child mortality</td>
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<tr>
<td>target 5: reduce by two-thirds, between 1990 and 2015, the under-five mortality rate</td>
<td>13. under-five mortality rate 14. infant mortality rate 15. proportion of 1 year-old children immunised against measles</td>
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<td>goal 5: improve maternal health</td>
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<td>target 6: reduce by three-quarters, between 1990 and 2015, the maternal mortality ratio</td>
<td>16. maternal mortality ratio 17. proportion of births attended by skilled health personnel</td>
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<tr>
<td>goal 6: combat hiv/aids, malaria and other diseases</td>
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<tr>
<td>target 7: have halted by 2015 and begun to reverse the spread of hiv/aids</td>
<td>18. hiv prevalence among pregnant women aged 15–24 years 19. condom use rate of the contraceptive prevalence rate 19a. condom use at last high-risk sex 19b. percentage of population aged 15–24 years with comprehensive correct knowledge of hiv/aids 19c. contraceptive prevalence rate 20. ratio of school attendance of orphans to school attendance of non-orphans aged 10–14 years</td>
</tr>
</tbody>
</table>
| Target 8: Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases | 21. Prevalence and death rates associated with malaria  
22. Proportion of population in malaria-risk areas using effective malaria prevention and treatment measures  
23. Prevalence and death rates associated with tuberculosis  
24. Proportion of tuberculosis cases detected and cured under directly observed treatment short course DOTS (Internationally recommended TB control strategy) |
| --- | --- |
| Goal 7: Ensure environmental sustainability | 25. Proportion of land area covered by forest  
26. Ratio of area protected to maintain biological diversity to surface area  
27. Energy use (kg oil equivalent) per $1 GDP (PPP)  
28. Carbon dioxide emissions per capita and consumption of ozone-depleting CFCs (ODP tons)  
29. Proportion of population using solid fuels |
| Target 9: Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources | 30. Proportion of population with sustainable access to an improved water source, urban and rural  
31. Proportion of population with access to improved sanitation, urban and rural |
| Target 10: Halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation | 32. Proportion of households with access to secure tenure |
| Target 11: By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers |  |
### Goal 8: Develop a global partnership for development

| Target 12: Develop further an open, rule-based, predictable, non-discriminatory trading and financial system |
| Includes a commitment to good governance, development and poverty reduction — both nationally and internationally |
| Target 13: Address the special needs of the least developed countries |
| Includes: tariff and quota free access for the least developed countries’ exports; enhanced programme of debt relief for heavily indebted poor countries (HIPC) and cancellation of official bilateral debt; and more generous ODA for countries committed to poverty reduction |
| Target 14: Address the special needs of landlocked developing countries and small island developing States (through the Programme of Action for the Sustainable Development of Small Island Developing States and the outcome of the twenty-second special session of the General Assembly) |
| Target 15: Deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term |

**Some of the indicators listed below are monitored separately for the least developed countries (LDCs), Africa, landlocked developing countries and small island developing States.**

**Official development assistance (ODA)**

33. Net ODA, total and to the least developed countries, as percentage of OECD/DAC donors’ gross national income

34. Proportion of total bilateral, sector-allocable ODA of OECD/DAC donors to basic social services (basic education, primary health care, nutrition, safe water and sanitation)

35. Proportion of bilateral official development assistance of OECD/DAC donors that is untied

36. ODA received in landlocked developing countries as a proportion of their gross national incomes

37. ODA received in small island developing States as a proportion of their gross national incomes

**Market access**

38. Proportion of total developed country imports (by value and excluding arms) from developing countries and least developed countries, admitted free of duty

39. Average tariffs imposed by developed countries on agricultural products and textiles and clothing from developing countries

40. Agricultural support estimate for OECD countries as a percentage of their gross domestic product

41. Proportion of ODA provided to help build trade capacity

**Debt sustainability**

42. Total number of countries that have reached their HIPC decision points and number that have reached their HIPC completion points (cumulative)

43. Debt relief committed under HIPC Initiative

44. Debt service as a percentage of exports of goods and services

**Target 16: In cooperation with developing countries, develop and implement strategies for decent and productive work for youth**

45. Unemployment rate of young people aged 15–24 years, each sex and total

**Target 17: In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries**

46. Proportion of population with access to affordable essential drugs on a sustainable basis

**Target 18: In cooperation with the private sector, make available the benefits of new technologies, especially information and communications**

47. Telephone lines and cellular subscribers per 100 population

48. Personal computers in use per 100 population

Internet users per 100 population
3 European citizens’ initiative

### Legal base

Article 24 TFEU; co-decision; QMV

### Document originated

31 March 2010

### Deposited in Parliament

25 May 2010

### Department

Foreign and Commonwealth Office

### Basis of consideration

EM of 22 June 2010 and Minister’s letter of 13 July 2010

### Previous Committee Report

None; but see (31169) 16195/09: HC 5–iii (2009–10), chapter 16 (9 December 2009)

### To be discussed in Council

Date not known

### Committee’s assessment

Politically important

### Committee’s decision

For debate in European Committee B

## Background

3.1 Article 11(4) of the Treaty on European Union (TEU) contains a new right. It provides that:

> “Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

> “The procedures and conditions required for such a citizens’ initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union”.

The first paragraph of Article 24 requires the Council and European Parliament to adopt regulations on the conditions and procedures for citizens’ initiatives.

3.2 In November 2009, the Commission invited views on the ten questions set out in its Green Paper on the citizens’ initiative.9 Views were invited on, for example:

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9 (31169) 16195/09: see HC 5–iii (2009–10), chapter 16 (9 December 2009).
• The minimum number of Member States from which citizens must come — would one third of the total number of Member States constitute a “significant number of Member States” as required by Article 11 (4) TEU?

• The form and wording of a citizens’ initiative — would it be sufficient and appropriate to require that an initiative should state clearly the subject-matter and objectives of the proposal on which the Commission is invited to act? What other requirements, if any, should there be about the wording and form of an initiative?

• The requirements for the collection and authentication of signatures — should there be a common set of procedural requirements for the collection, verification and authentication of signatures? To what extent (if at all) should a Member State be able to specify its own requirements on these matters? Are EU-wide common procedures necessary to ensure that EU citizens can support a citizens’ initiative regardless of their country of residence? Should citizens be able to support an initiative online? If so, what security and authentication arrangements should there be?

3.3 In his Explanatory Memorandum of 7 December 2009, the then Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) told the previous Committee that the Government broadly supported the Green Paper and would send the Commission its response to the questions.

3.4 The previous Committee welcomed the Commission’s decision to invite views on the practical questions posed in the Green Paper before it drafted the implementing legislation required by Article 24 TFEU. It cleared the Green Paper from scrutiny and asked the Minister for a copy of the Government’s written response to it.

3.5 He provided a copy on 16 February 2010. It said that the Government agreed with most of the Commission’s suggested answers but took a different view on a few. For example, the Government did not believe that there should be common requirements for the collection, verification and authentication of signatures — those were matters which should be left entirely to the discretion of each Member State.

The Commission’s draft of the Regulation

3.6 The Commission says that it received over 300 responses to the Green Paper and took them into account in producing its draft Regulation on the procedures and conditions for citizens’ initiatives. The responses are summarised in the Commission staff working document (ADD 1) which accompanies the draft Regulation.

3.7 The main provisions of the Commission’s draft of the Regulation are as follows:

• the organiser of a petition should be either a citizen of the EU or, if a legal person or organisation, established in a Member State;

• signatories of a citizens’ initiative should be citizens of the EU and meet the age requirements (18) for eligibility to vote in elections for the European Parliament;
before initiating the collection of statements of support for an initiative, the
organiser should register the initiative with the Commission and provide the
information listed in the Regulation;

the Commission should register proposed initiatives unless they are abusive,
frivolous or “manifestly against the values” of the EU;10

statements of support may be made in writing or electronically and should be
made within 12 months of the registration of the initiative;

online systems for the collection of statements of support should comply with the
requirements of Article 6(4) of the Regulation and organisers should obtain from
their Member States certification that their systems are compliant;

to be valid, an initiative should be supported by statements by a minimum number
of citizens in at least a third of the Member States — the minimum number for
each State is specified in Annex 1 of the Regulation (for example, for the UK and
Italy the minimum number is 54,750; for Germany it is 72,000; and for
Luxembourg and Malta it is 4,500);

after collecting 300,000 statements of support coming from at least three Member
States, the organiser should ask the Commission for a decision on the admissibility
of the initiative;

within two months of receiving the request, the Commission should notify the
organiser of its decision; the Commission should decide that the initiative is
admissible if it concerns a matter about which the EU could adopt a legal act for
the purpose of implementing the Treaties and about which the Treaties give the
Commission’s power to make a proposal;

if the initiative is admissible and when the organiser has collected at least a million
statements of support, the organiser should submit all the statements to a Member
State for verification and certification; verification and certification should be
completed within three months of submission and would be the responsibility of
the Member State in the territory of which the statements were collected and will
be stored;

the organiser should send the certificates to the Commission, which should publish
the initiative on the Commission’s website and, within four months, set out in a
communication its conclusions on the initiative and the action (if any) it intends to
take — the Commission should publish the communication and send it to the
organiser, the Council and the European Parliament;

Member States should ensure that the organisers of initiatives are liable under
criminal and civil law for infringements of the Regulation; and

five years after it comes into effect, the Commission should report to the Council
and the European Parliament on the implementation of the Regulation.

10 Draft Regulation, Article 4(4).
The Government’s view of the Commission’s draft

3.8 In his Explanatory Memorandum of 22 June, the Minister for Europe (Mr David Lidington) says that the citizens’ initiative is in line with the Government’s proposal that petitions which attract 100,000 signatures should be eligible for debate in the House.

3.9 While the Government agrees with some of the provisions of the draft Regulation, it has concerns about others. For example, the Government:

- considers that the proposed Regulation is “overly bureaucratic and risks alienating the very citizens that the [European citizens’ initiative] is intended to engage”,\(^{11}\)
- notes that, in the absence of an Impact Assessment of the draft Regulation, a firm judgment cannot be made on whether the proposals would lead to successful initiatives that are representative of the views of the people of the EU;
- does not agree that the minimum age to be eligible to make a statement in support of an initiative need necessarily be voting age;
- does not agree that 300,000 statements need be collected before the Commission decides if the initiative is admissible — “the Commission should take a view on competence as early as possible in the process”;\(^{12}\)
- does not agree that Member States should be responsible for the verification and certification of statements of support — there is insufficient evidence that the initiative would be systematically abused to the extent that such verification would be necessary or desirable.

3.10 The Minister notes that the Commission has sent the draft Regulation to the European Data Protection Commissioner and looks forward to seeing his opinion on it.

3.11 He also notes that, according to the Commission, the cost of the citizens’ initiative to the EU budget would be €784,000 in 2010, €394,000 in 2011 and, subsequently, €354,000 a year. The cost to Member States of verifying statements of support has not been quantified. The Commission hopes that the Regulation will be adopted by the end of 2010.

The General Affairs Council’s draft of the Regulation

3.12 On 14 June, the General Affairs Council agreed a revised draft of the Regulation.\(^{13}\) The main differences between the Council’s and the Commission’s drafts are as follows.

- the Council’s draft provides that the Commission should reject an application to register an initiative if it is manifestly outside the scope of the Treaties as well as if it would be against the values of the EU;

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11 Minister’s Explanatory Memorandum, paragraph 29, final sentence.
12 Ibid, paragraph 33.
13 10626/2/10.
• new Recital 11a encourages the Commission to promote the development of open source software which would comply with the technical and security provisions of the Regulation and would be available for use by the organisers of all initiatives;

• the Council has amended Recital 15 to say that Member States’ verification of citizens’ statements of support may be based on checks of random samples;

• under the Council’s draft, the Commission would be required to report on the implementation of the Regulation after three years rather than five;

• the Council has amended Annex III to provide that the Member States listed in Part A need not require signatories of statements of support to provide additional personal information (the UK is named in Part A);

• it has also added a Part B to Annex III specifying the additional identification which other signatories would have to provide — the requirements differ from country to country: for example, Austrian signatories would have to provide the number of either a passport or an identity card whereas a Bulgarian signatory would have to provide his or her “single civil number”;

• the Council’s draft reduces from 300,000 to 100,000 the number of statements of support that the organiser would have to collect before asking the Commission for a decision on the admissibility of the proposed citizens’ initiative;

• within a period of three months after receiving an organiser’s request for verification of the statements of support, the Member States should complete the verification “on the basis of checks, in accordance with national law and practice, as appropriate” (Council’s draft, Article 9(2)); and

• the Council has added a requirement that the personal data Member States receive when asked to verify statements of support may be used only for the purpose of verification and they must destroy the statements of support within a month of issuing the certificate of verification.

The Minister’s letter of 13 July 2010

3.13 On 13 July, the Minister sent us the Council’s revised draft of the Regulation. In his covering letter, he tells us that, at the General Affairs Council on 14 June, the Government opposed the Spanish Presidency’s proposal that the Council agree a common approach on the revised draft. The Government made clear that it would abstain because the draft Regulation was still under scrutiny in Parliament and that it had policy concerns about the draft. While there was sufficient support for the Presidency’s proposal for the general approach to obtain agreement, the Council accepted that it should have further negotiations on the text because of the concerns of the UK and a number of other Member States.

3.14 The Minister’s letter adds that:

• the Government regards the changes the Council has made to the Commission’s draft as a step in the right direction;
but the proposal remains over-bureaucratic and burdensome on both Member States and citizens;

the Government wishes the Regulation to be amended to give Member States greater discretion about how to verify statements of support and, indeed, whether to verify them at all;

it will also “be seeking more thought and development into the idea of a single website for the collection of online signatures, with no role for Member States in certification”;14 and

the Government agrees with the French, Czech, Italian and Lithuanian Governments that the Commission should decide the admissibility of a proposed initiative before statements of support are collected.

Conclusion

3.15 We are grateful to the Minister for sending us the Council’s amended draft of the Regulation and for his comments on it. We are also glad that the Council is to have further negotiations on the text. In our view, some of the provisions require clarification. For example, Article 9(2) of the Council’s draft says that Member States may verify statements of support by making checks “in accordance with national law and practice”; the meaning of those words is unclear, as is the reference to “open source software” in Recital 11a.

3.16 Our main concern, however, is not with the drafting of the Regulation, important though that is. It is with the substance of the rules for citizens’ initiatives. In our view, the rules should be as few and simple as is consistent with the prevention of the abuse of the process. This raises questions such as:

- is it necessary for the admissibility of an initiative to be decided in two stages, initially when the organiser applies to the Commission to register the initiative and subsequently when a specified number of signatures has been collected; or should admissibility be decided once, before any statements of support are collected?; and

- is it necessary for Member States to verify statements of support and what would be the risks if there were no requirement for verification?

There is scope for legitimate differences of opinion about what the rules should be and, indeed, about the desirability of citizens’ initiatives in parliamentary democracies. Because the political importance of these questions, we recommend the draft Regulation for debate in European Committee B.

14 Minister’s letter, penultimate paragraph, fourth sentence.
4 European Security and Defence Policy: EULEX Kosovo


Legal base Articles 28 and 42(3) TEU; unanimity
Department Foreign and Commonwealth Office
Basis of consideration EM of 2 June 2010
Previous Committee Report None; but see (30652) — HC 19–xviii (2008–09), chapter 20 (3 June 2009); (29379) — and (29380) — : HC 16–x (2007–08), chapter 10 (30 January 2008)
To be discussed in Council 8 June 2010 Economic and Financial Affairs Council
Committee’s assessment Politically important
Committee’s decision Not cleared; for debate in European Committee B

Background

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

— establishing a European Security and Defence Policy crisis management operation in the field of rule of law in Kosovo; and

— on the appointment and mandate of the European Union’s Special Representative in Kosovo.

4.2 The previous Committee’s report of 30 January 2008 set out the background in some detail.15 First came the UN Mission in Kosovo (UNMIK): according to its website, a UN undertaking “unprecedented in both its scope and structural complexity”, unique in that “other multilateral organizations were full partners under United Nations leadership” and based on UN Security Council in Security Council Resolution 1244 of 10 June 1999, which “authorized the Secretary-General to establish in the war-ravaged province of Kosovo an interim civilian administration led by the United Nations under which its people could progressively enjoy substantial autonomy”.

4.3 Working closely with Kosovo’s leaders and people, the mission performed the whole spectrum of essential administrative functions and services covering such areas as health and education, banking and finance, post and telecommunications, and law and order, grouped under four Pillars:

• Pillar I: Police and Justice, under the direct leadership of the United Nations;

• Pillar II: Civil Administration, under the direct leadership of the United Nations;

4.4 The head of UNMIK was the Special Representative of the Secretary-General for Kosovo; as the most senior international civilian official in Kosovo, he presided over the work of the pillars and facilitated the political process designed to determine Kosovo’s future status.

4.5 In November 2005, a process to determine the future status of Kosovo, pursuant to UNSCR 1244, was launched with the appointment of the UN Status Envoy, former President of Finland Martti Ahtisaari; though the United Nations would remain fully engaged in Kosovo until the end of UNSCR 1244, it indicated that it would no longer take the lead in a post-Status presence.

4.6 In June 2005, the European Council “stressed that Kosovo would, in the medium term, continue to need a civilian and military presence to ensure security and in particular protection for minorities, to help with the continuing implementation of standards and to exercise appropriate supervision of compliance with the provisions contained in the status agreement”, and its willingness to play a full part, in close cooperation with the relevant partners and international organisations.

4.7 The Stabilisation and Association Process (SAP) is the strategic framework for the EU’s policy towards the Western Balkan region; its instruments are open to Kosovo, including a European Partnership, with political and technical dialogue under the SAP Tracking Mechanism regarding, inter alia, standards in the field of rule of law, and related Community assistance programmes.

4.8 In November 2007, an EU planning process got underway, based on the Council’s desire to normalise the EU’s relations with Kosovo as far as possible by using all the instruments available within the SAP, and which envisaged the creation and deployment of an integrated EU mission in the areas of rule of law and police.

4.9 Against this same background, the EU also established the International Civilian Office/EU Special Representative Preparation Team (ICO/EUSR Preparation Team), to contribute to preparations for the establishment of the International Civilian Mission in Kosovo.

4.10 In a letter to the previous Committee of 17 July 2007, the then Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) reported that planning for the international civilian presences in Kosovo continued to proceed on the basis of the Special Envoy’s proposals, “which provide for independence for Kosovo, supervised by the international community”. He described the main elements of the proposed overall settlement and said that they struck “the right balance between recognising the aspirations of the vast majority of Kosovo’s population who want independence, whilst providing extensive and effective safeguards and reassurances to Kosovo’s non-Albanian communities, notably the Kosovo Serbs”. All in all, he described the Ahtisaari proposals as “rigorous oversight and enforcement by the international civilian and military presences”, consisting of:

- Pillar III: Democratization and Institution Building, led by the Organization for Security and Co-operation in Europe (OSCE); and
- Pillar IV: Reconstruction and Economic Development, led by the European Union.
— an International Civilian Office, responsible for ensuring settlement implementation and headed up by an International Civilian Representative, double-hatted as the EU Special Representative;

— a European Security and Defence Policy (ESDP) mission responsible for policing and rule of law;

— an OSCE mission to support Kosovo’s democratic transition; and

— an international military presence provided by NATO’s 16,000-strong Kosovo Force (KFOR).

4.11 To ensure the effectiveness of this complex international set-up, the International Civilian Representative (ICR) would be given an overall co-ordinating role, chairing a Co-ordination Committee comprising the Head of the International Military Presence, the Head of the ESDP mission and the Head of the OSCE mission. The ICR would be appointed by, and report to, an International Steering Group (envisaged as comprising the countries of the Balkans Contact Group — France, Germany, Italy, Russia, UK and the US); the ICR International Civilian Representative might also be required to report to the UN Security Council.

4.12 In Kosovo the ICR was to have overall responsibility for the implementation of the settlement and for upholding its provisions, and would be the final authority in Kosovo regarding interpretation of the settlement. That said, the then Minister’s expectation was that the day to day business of government would be conducted by the Kosovo government, not the International Civilian Representative.

4.13 The ICR would also be double-hatted as the EU Special Representative to further enhance international coherence. The then Minister said that this arrangement would not impact on the EU’s autonomy — the two roles would remain distinct even if held by the same person; the European Commission presence in Kosovo would have a separate Head of Office, distinct from the EU Special Representative. The EU Special Representative would be appointed by and accountable to the Council, reporting to it through Secretary General/High Representative Solana and receiving strategic guidance and political input from the Political and Security Committee. The EU Special Representative would have a distinct role from that of the ICR, which would include providing political guidance to the Head of the ESDP mission, offering the EU’s advice and support to Kosovo’s political development, ensuring the effectiveness of the EU’s role in the international presence, and contributing to the development and consolidation of respect for human rights.16

The Joint Actions

4.14 In his first 28 January 2008 Explanatory Memorandum, the then Minister for Europe said that the role of this civilian mission would be “to assist the Kosovo authorities, judiciary and law enforcement agencies as they develop and strengthen a multi-ethnic rule

of law sector that is free from political interference and adhering to international standards and European best practices.” Its tasks would include:

— “monitoring, mentoring and advising Kosovo institutions on all areas related to the rule of law, including customs, whilst holding certain executive responsibilities;
— “ensuring the maintenance and promotion of the rule of law, public order and security;
— “helping ensure that all Kosovo rule of law services are free from political interference;
— “ensuring that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law; and
— “strengthening co-operation and co-ordination throughout the whole judicial process, particularly in the area of organised crime.”

4.15 The second Joint Action appointed Mr Pieter Feith as the EU Special Representative in Kosovo and set out his mandate. This was, the then Minister said in a second 28 January 2008 Explanatory Memorandum, “based on the objective of securing a stable, viable, peaceful and multi-ethnic Kosovo, which will contribute to regional stability”; his tasks would “include being the channel for the EU’s advice and support to the political process, promoting EU political coordination in Kosovo, ensuring a coherent public message, and contributing to the consolidation of human rights and fundamental freedoms in Kosovo.”

4.16 The then Minister said that it was important that the EU should play a leading role in strengthening stability in the Western Balkans, as agreed by the European Council on 14 December 2007, when “the Council agreed with the UN Secretary-General that the status quo in Kosovo is unsustainable, and made clear the EU’s readiness to assist Kosovo on the path towards stability, including through an ESDP mission.” He said that:

— the mission would focus on local ownership and capacity building, through mentoring, monitoring and advising the Kosovars; be the largest civilian mission to date, with 2200 international civilians; and advance the goal of a stable, viable, peaceful, democratic, multi-ethnic Kosovo, contributing to regional cooperation and stability and committed to the rule of law and to the protection of minorities;
— the requirement for a military presence to act as external security guarantor would continue to be met by NATO;
— funding for Common Costs (Mission Headquarters, in-country transport, office equipment etc) would be met from the Common Foreign and Security Policy budget, to which the UK currently contributed approximately 17%; the estimated budget for the first 12 months was €162 million, meaning that the UK would contribute approximately €28 million; and
— the UK would contribute up to 85 personnel, with these positions to be funded from the Whitehall Peacekeeping Budget, which was a call on the Treasury’s central contingency reserve.
4.17 The then Minister also welcomed the appointment of Mr Feith and his mandate, explaining that Mr Feith had a long track record of crisis management in both NATO and the European Union; had been closely involved with Kosovo since he was a senior policy official in the NATO International Secretariat in the late 90s; had headed the successful EU-led Aceh Monitoring Mission in 2005 and 2006; and in 2007 was appointed Director of the EU’s Civilian Planning and Conduct Capability and the Civilian Operation Commander for the civilian ESDP missions — he was thus very well placed to provide strategic policy leadership to the international community effort in Kosovo and to work closely with the NATO and EU missions there.

4.18 The then Minister noted that:

— the budget of €380,000 for Common Costs will met from the Common Foreign and Security Policy budget (meaning the UK would contribute €65,000); and

— the UK planned to contribute up to five people to the ICR’s Office, the funding for which would also come from the Whitehall Peacekeeping Budget.

4.19 Finally, he said that no date had yet been set for agreement of either Joint Action.

4.20 Conscious of the sensitivities and political complexities surrounding the situation in Kosovo, the previous Committee appreciated why the then Minister had brought the Joint Actions forward for scrutiny with no date for their implementation, and accordingly cleared the documents.

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

4.22 In her accompanying 21 May 2009 Explanatory Memorandum, the then Minister for Europe (Caroline Flint) says that EULEX Kosovo assumed the lead on rule of law issues from UNMIK, became operational on 9 December 2008 and declared full operational capability on 6 April 2009.

4.23 She confirmed that EULEX Kosovo was now the largest civilian European Security and Defence Policy (ESDP) mission with over 1700 international staff deployed across Kosovo. She explained that the mission would monitor, mentor and advise Kosovo institutions on all areas related to rule of law including police, judiciary, penitentiary and customs, “with certain executive responsibilities (notably on war crimes, organised crime and terrorism)” and was supporting “the Kosovo institutions, judicial authorities, and law enforcement agencies in developing sustainability and accountability, ensuring multi-ethnic systems and services that are free from political interference.” EULEX judges and prosecutors were “participating in court hearings and trials, both advising counterparts and under executive powers”, and issued verdicts in two war crimes trials. She also noted that:

— the Office of Missing Persons continued to identify and return remains;

— EULEX Police and Customs officials were supporting Kosovan officials throughout Kosovo;
the customs unit had extended their presence in northern Kosovo with a 24/7 presence at Gates 1 and 31 on the border with Serbia, leading to a reduction in smuggling (particularly oil);

— the mission was increasing the police presence in northern Kosovo and had acted successfully as second responder to the Kosovo Police Service in recent riots in North Kosovo, in co-ordination with KFOR (the NATO force in Kosovo); and

— the mission was establishing a liaison office in Belgrade to facilitate dialogue with Serbia.

4.24 The then Minister also noted that the UK reduced its contingent from 62 to 32 seconded staff in April following a reduction in the level of funding available to second staff to European Security and Defence Policy missions in the financial year’s budget (the Minister recalled a Written Ministerial Statement of 25 March 2009), but said that “the UK still retains secondees in key positions in the mission, for example the Deputy Head of Mission, Chief Reporting Officer and in the justice section.”

4.25 With regard to the new financial reference amount, the then Minister said that:

— the budget would be €100 million for 2009 and €45 million reserved for January — June from the 2010 budget, giving a total of €145 million until the expiry of the mission’s mandate on 14 June 2010;

— the UK’s 17% contribution was an estimated €24.7 million (£22 million); and

— the UK’s 32 secondees in the mission would be funded through the Tri-departmental (FCO, MOD and DfID) Conflict Prevention Pool.

4.26 Finally, the Minister confirmed that the requirement for a military presence to act as external security guarantor would continue to be met by NATO.

The previous Committee’s assessment

4.27 Although it had no questions on this extension per se, and accordingly cleared the document, the previous Committee reported it to the House because of the widespread interest in the House in the political context surrounding EULEX Kosovo’s deployment and operation

The Council Decision

4.28 This Council Decision extends the mandate of the European Union Rule of Law Mission in Kosovo (EULEX Kosovo) for two years until 14 June 2012, including an initial technical extension until 14 October 2010 to allow time for the preparation of revised planning documents. EULEX will continue to focus on the improvement of the rule of law in Kosovo with the aim of supporting Kosovo rule of law institutions to reach EU standards, and to support the Kosovo authorities by monitoring, mentoring and advising the judiciary, police and customs, and exercising limited executive functions.
4.29 In his Explanatory Memorandum of 2 June 2010, the Minister for Europe at the Foreign and Commonwealth Office (Mr David Lidington) explains that the detailed planning documents which underpin the Council Decision have been revised to include the following minor changes:

— to increase mission presence and visibility in the north of Kosovo;

— to establish a Mission Analytical Capability (MAC), which will analyse how internal and external factors impact on mandate implementation;

— to establish a Strategic Planning Group and the Strategic Planning Implementation Committee, to enhance cooperation between the three components (customs, judiciary and the police) and improve the mission’s strategic direction; and

— minimal structural changes to the mission, to improve administration.

The Government’s view

4.30 The Minister says that since it assumed the lead on rule of law issues from the UN Mission in Kosovo (UNMIK) and became operational on 9 December 2008, he believes that EULEX has made significant progress:

“With its mandate of 1950 international staff, EULEX has established itself throughout Kosovo and the advice of mission experts is having a positive impact on the development of Kosovo’s police, customs and judicial system. Particular positive steps of note are: the return to work of 318 Kosovo Serb police officers who are being reintegrated back into the Kosovo Police Service; an agreement of a protocol with Serbia on cooperation over police issues; the trying of a number of war crimes cases; the judicial component’s inroads into the backlog of cases that were not investigated under UNMIK; and, most recently, the mission has started to deliver on its promise to investigate “big fish”, and is investigating the Transport Minister for corruption. There has been no large scale violence and EULEX has responded calmly and effectively to public order disturbances.”

4.31 The Minister supports the extension of the mandate for two years and believes that EULEX has “an indispensable role to play” in Kosovo:

“EULEX Kosovo is an important international presence in enabling Kosovo to meet EU standards in rule of law and key in tackling organised crime and corruption, which is exported from Kosovo throughout the EU. Improving the rule of law in Kosovo is central to stability in the Western Balkans and, following the drawdown of UNMIK, EULEX is the main mechanism to help Kosovo achieve reform in these fields. A two year mandate extension is, therefore, important in providing continuity and increased stability in Kosovo, and the central sign of EU commitment to improving the rule of law in Kosovo in order to support its European perspective. To ensure that this political commitment is communicated to the people of Kosovo, this extension will be included in the communication and information strategy for the mission.”
4.32 The Minister then says that, having established itself on the ground in a difficult environment, the mission is now moving into a new phase of its mandate:

“The mission must work to deliver the more high profile results that international partners and Kosovans would like to see. In order to move forward, the mission needs to tackle more effectively the challenges of organised crime and corruption. Delivering results in the north, a Serb-majority area of Kosovo, is very important to EULEX’s credibility with the people of Kosovo. The Operations Plan, which underpins the Council Decision, sets out a more active and visible presence in the north where EULEX’s activities are central to restoring full customs control, and bringing effective justice and policing to the north.”

4.33 He goes on to say that, to have greater effect:

“it is essential that the mission develops a sharper strategic focus centred on its long term goals, with realistic interim benchmarks of what it will achieve. This renewed focus should be coupled with an enhanced awareness of the political ramifications of the mission’s technical decisions. To improve the strategic direction of the mission, the Operations Plan lays out the establishment of a Mission Analytical Capability (MAC). A MAC informs the Head of Mission’s decision making, as it seeks to enhance situational awareness and analysis. The mission must also ensure that the different components are all pulling together in the same strategic direction and working effectively with each other.”

4.34 In addition, the Minister says, the new mandate provides for:

“a Strategic Planning Group and a Strategic Planning Implementation Committee to be established within the mission in order to enhance cross-component cooperation and the strategic direction of EULEX, particularly relating to organised crime. The Operations Plan also sets out changes to the mission structure, in order to improve mission administration. The overall staffing numbers of the mission are unaffected by the mandate changes and remain at 1950.”

4.35 Finally, the Minister says:

“In order for the mission to make further progress against its objectives in the next two years, support from Member States and EU Institutions is key. Continued cooperation and coordination with all other actors in theatre, in particular the double-hatted EU Special Representative and International Civilian Representative, is crucial to the mission delivering results.”

4.36 With regard to the Financial Implications, the Minister says that funding for the technical extension until 14 October will come from under-spends in the current mission budget of €265 million; and that funding for the mission thereafter will be agreed in the autumn, at which time he says he will write again to the Committee. He also notes that the UK currently provides funding for 31 personnel in the Mission.

4.37 The Minister concludes by noting that it is planned to submit this Council Decision for agreement to the ECOFIN Council on 8 June 2010.
Conclusion

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

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

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

4.41 There is, of course, a wider backdrop at which the Minister may be hinting. Though some 69 countries have now recognised it, Russia, China, India and five European Union members still refuse to recognise Kosovo’s independence. Also, in October 2008, the legality of Kosovo’s declaration of independence was referred to the International Court of Justice in The Hague, leaving open the possibility of an advisory opinion whose ambiguity may encourage Serbia to ask the United Nations General Assembly to pass a resolution demanding new talks on Kosovo’s status. In the meantime, while most of Kosovo’s 130,000 Serbs live in small southern and central enclaves, almost half live in a sliver of land north of the River Ibar — a region that is part of Kosovo, but where it seems that the government’s writ does not run (local elections on 30 May being held under Serbian auspices). According to respectable media reports, many Kosovars would be “happy to be shot of their indigestible north”, with talk of trading it for Albanian-inhabited parts of south Serbia, while many Serbs believe that their country could give up its claim on Kosovo south of the Ibar river.17 Even if exaggerated, it would seem that the political undercurrents in Kosovo are such

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that, regardless of the proposed internal administrative changes, EULEX Kosovo will continue to have a very hard row to hoe.

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

4.43 We recognise that, by now, this Council Decision has been adopted. Nonetheless, we recommend that it be debated in the European Committee, so that the Minister for Europe may have the opportunity to respond to our observations and interested Members may be given the opportunity of raising with him any concerns of their own about Kosovo and the EU’s role there.

5 Draft Budget 2011

<table>
<thead>
<tr>
<th>Legal base</th>
<th>Article 314 TFEU; co-decision; QMV</th>
</tr>
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<tbody>
<tr>
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<td>1 June 2010</td>
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<td>Department</td>
<td>HM Treasury</td>
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<tr>
<td>Basis of consideration</td>
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<td>Previous Committee Report</td>
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<td>Discussion in Council</td>
<td>15 July 2010</td>
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<td>Committee’s assessment</td>
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<td>Committee’s decision</td>
<td>For debate on the Floor of the House</td>
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</tbody>
</table>

Background

5.1 The Commission’s Draft Budget (DB) is the first stage in the annual process of establishing the EU’s budget for the following year. The 2011 DB sets out the Commission’s proposals for EU expenditure in 2011, together with bids for the other institutions, such as the European Parliament. It provides the basis for negotiations between the two arms of the Budgetary Authority (the Council and the European Parliament), which will result in the adoption of the General Budget by the end of 2010.

5.2 The 2011 Budget will be the first to be adopted according to a new procedure introduced by the Lisbon Treaty. The ECOFIN Council will negotiate and agree its first reading position on the DB on 24 July 2010 (the TFEU requires the Council to complete this stage by 1 October), which will then be forwarded to the European Parliament. The European Parliament will in turn discuss and agree its first reading position by mid-
October 2010 (the TFEU deadline is 42 days after the Council adopts its position). If it proposes further amendments to those made by the Council, a conciliation committee would be convened to meet over 21 days, largely in late October and early November, with the aim of reaching agreement on the 2011 Budget. This will be subject to separate approval by both the Council and the European Parliament, after which the EU’s Budget for 2011 will be deemed to have been adopted.

The document

5.3 The context for the DB is determined by the multi-annual Financial Framework, which sets out annual ceilings for the five permanent and one temporary headings of budget expenditure: sustainable growth, preservation and management of natural resources, citizenship, freedom, security and justice, the EU as a global player, administration and compensation (temporary measures for Bulgaria and Romania in their first years of accession, which no longer apply). The DB for 2011 is the fifth of the 2007–2013 Financial Framework.

5.4 The DB is presented in Activity-Based Budgeting (ABB) format, with budget appropriations, resources and staff allocations organised by activity. As part of the 2011 DB the Commission has also published Activity Statements providing performance information for each activity. These present specific objectives, planned outputs and performance measures at the level of individual budget lines as well as higher-level activity areas, in line with ABB. The 2011 DB presents a Budget Memorandum for the second time. This thematic overview of the Activity Statements aims to highlight operational policies and activities financed by the EU budget in support of the Europe 2020 Strategy, designed to promote smart, sustainable and inclusive growth.18

5.5 As is usual, the DB (previously the Preliminary Draft Budget) consists of a General Statement of Revenue and draft estimates of required appropriations for the EU institutions: European Parliament, Council, Office of the President of the Council (the latter two being treated as one institution for the purpose of establishing the budget), Commission, Court of Justice, Court of Auditors, Economic and Social Committee, Committee of the Regions, European Ombudsman and European Data Protection Supervisor. Once the establishment of the new European External Action Service is agreed, there will also be a draft estimate of required appropriations for that new institution, as well as amendments to the draft estimates of the Commission and Council, to reflect the transfer of functions from those institutions to the External Action Service.

Overview and summary of the figures

5.6 The Commission explains that its key objectives with the DB are:

- to support the EU economy in recovery from the economic and financial crisis; and

to help EU citizens by reinforcing economic growth and employment opportunities.

Allied to this, the DB also reflects the objectives of smart, sustainable and inclusive growth as identified in the Europe 2020 Strategy.

5.7 The Commission proposes commitment appropriations\(^\text{19}\) of €142,565 million (£121,180 million).\(^\text{20}\) This is 1.14% of EU Gross National Income (GNI) and an increase in commitment appropriations of €1,073 million (£912 million) or 0.8% above 2010 levels.\(^\text{21}\)

For payment appropriations the Commission proposes €130,136 million (£110,616 million), or 1.04% of EU GNI. This represents an increase of €7,179 million (£6,102 million) or 5.8% in comparison to the 2010 Budget. The margin under the Financial Framework ceiling is €1,236 million (£1,051 million) for commitment appropriations and €4,429 million (£3,765 million) for payment appropriations. Tables summarising the key figures of the 2011 DB, in both euros and sterling are annexed.

**The individual expenditure headings**

**Heading 1: Sustainable Growth**

5.8 Overall, proposed expenditure under Heading 1 is €64,407 million (£54,746 million) for commitment appropriations and €54,651 million (£46,453 million) for payment appropriations, leaving a margin of €67 million (£57 million) under the Financial Framework ceiling for commitment appropriations. Heading 1 is divided into two sub-headings — Sub-Heading 1a (Competitiveness for Growth and Employment) and Sub-Heading 1b (Cohesion for Growth and Employment).

**Sub-Heading 1a: Competitiveness for Growth and Employment**

5.9 The Commission proposes €13,437 million (£11,421 million) for commitment appropriations and €12,110 million (£10,294 million) for payment appropriations. Compared to the 2010 Budget this represents a decrease of €1,426 million (£1,212 million), or 9.6% in commitment appropriations and an increase of €766 million (£651 million), or 6.8% in payment appropriations. Major changes are:

- an increase of €1,044 million (£887 million) or 13.8% in commitment appropriations and €644 million (£547 million) or 10.1% in payment appropriations, for the Seventh Research Framework Programme (including completion of the Sixth Research Framework Programme);

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\(^{19}\) The budget distinguishes between appropriations for commitments and appropriations for payments. Commitment appropriations are the total cost of legal obligations that can be entered into during the current financial year, for activities that, in turn, will lead to payments in the current and future years. Payment appropriations are the amounts of money that are available to be spent during the year arising from commitments in the budget for the current or preceding years. Unused payment appropriations may, in exceptional circumstances, be carried forward into the following year.

\(^{20}\) This and all subsequent sterling figures in this chapter have been converted at the rate on 28 May 2010 of €1=£0.850.

\(^{21}\) Throughout this chapter the figures for the 2010 budget are those of the adopted budget, as amended by Draft Amending Budgets 1–4, that is (31434) 7830/10 and (31435) 7831/10, see HC 5–xvi (2009–10), chapter 11 (30 March 2010) and (31487) 8434/10 and (31506) 8729/10, see chapter 81 of this report.
• an increase of €182 million (£155 million) or 16.8% in commitment appropriations and €3.5 million (£3 million) or 0.4% in payment appropriations for the Trans-European Networks;

• no commitment appropriations are budgeted for energy infrastructure projects under the European Economic Recovery Plan, as all the relevant commitment appropriations were made in the 2009 and 2010 Budgets — however, there is an increase in payment appropriations of €47 million (£40 million) or 4.6% to reflect the implementation of the projects;

• a decrease of €698 million (£593 million) or 78.1% in commitment appropriations and an increase of €101 million (£86 million) or 22.2% in payment appropriations for EGNOS and Galileo (the two parts of the EU’s geostationary navigation satellite system); and

• an increase of €23 million (£20 million) or 4.4% in commitment appropriations and a decrease of €40 million (£34 million) or 11.1% in payment appropriations for the Competitiveness and Innovation Framework Programme.

**Sub-Heading 1b: Cohesion for Growth and Employment**

5.10 The Commission proposes commitment appropriations of €50,970 million (£43,325 million) and payment appropriations of €42,541 million (£36,160 million). These represent an increase of €1,584 million (£1,346 million) or 3.2% in commitment appropriations and an increase of €6,157 million (£5,233 million) or 16.9% in payment appropriations relative to the 2010 Budget. The proposed increase in payments appropriations within the sub-heading is largely due to individual increases of:

- €3,312 million (£2,815 million) or 14.7% under the convergence objective;
- €1,740 million (£1,479 million) or 28.5% under the regional competitiveness and employment objective;
- €222 million (£189 million) or 27.1% under the European territorial cooperation objective; and
- €898m (£763m) or 13.1% under the Cohesion Fund.

**Heading 2: Preservation and Management of Natural Resources**

5.11 The Commission proposes commitment appropriations of €59,486 million (£50,563 million) and payment appropriations of €58,136 million (£49,416 million). These represent a decrease of €13 million (£11 million) or nearly 0% for commitment appropriations and an increase of €0.04 million (£0.04 million) or nearly 0% for payment appropriations compared to the 2010 Budget. The DB reserves a margin of €852 million (£724 million) under the Financial Framework ceiling for commitment appropriations. While expenditure on rural development, market related expenditure and direct aids remains relatively steady compared to 2010 levels, there is an increase of €27 million (£23 million) or 8.7% in commitment appropriations and €52 million (£44 million) or 24.3% in payment appropriations for the Life+ (the Financial Instrument for the Environment) programme.
And expenditure on “other actions and programmes” decreases by €39 million (£33 million) or 88.7% in commitment appropriations and €19 million (£16 million) or 45.5% in payment appropriations.

**Heading 3: Citizenship, Freedom, Security and Justice**

5.12 Proposed expenditure under Heading 3 is €1,803 million (£1,533 million) for commitment appropriations and €1,492 million (£1,268 million) for payment appropriations. This represents increases in commitment appropriations of €129 million (£109 million) or 7.7%, and in payment appropriations of €94 million (£80 million) or 6.7% relative to the 2010 Budget. The DB leaves a margin of €86 million (£73 million) under the Financial Framework ceiling for commitment appropriations. Heading 3 is divided into two sub-headings — Sub-Heading 3a (Freedom, Security and Justice) and Sub-Heading 3b (Citizenship).

**Sub-Heading 3a: Freedom, Security and Justice**

5.13 The Commission proposes commitment appropriations of €1,135 million (£965 million) and payment appropriations of €853 million (£725 million). This represents an increase of €129 million (£109 million) or 12.8% for commitment appropriations and €114 million (£97 million) or 15.4% for payment appropriations. This leaves a margin of €71 million (£60 million) under the Financial Framework ceiling. The changes to commitment and payment appropriations within the sub-heading include:

- increases of €95 million (£81 million) or 18.5% in commitment appropriations and €82 million (£70 million) or 23.4% in payment appropriations for solidarity and the management of migration flows;
- an increase of €26 million (£22 million) or 24.4% in commitment appropriations and a decrease of €7 million (£6 million) or 9.5% in payment appropriations for security and safeguarding liberties; and
- increases of €13 million (£11 million) or 5.3% in commitment appropriations and €27 million (£23 million) or 12.8% in payment appropriations for decentralised agencies.

**Sub-Heading 3b: Citizenship**

5.14 The Commission propose €668 million (£568 million) for commitment appropriations and €639 million (£543 million) for payment appropriations. This represents a decrease of €0.2 million (£0.2 million) or nearly 0% for commitment appropriations and of €20 million (£17 million) or 3.1% for payment appropriations relative to the 2010 Budget. This leaves a margin below the Financial Framework ceiling for commitment appropriations of €15 million (£13 million). The main changes under this sub-heading are:

- an increase of €8 million (£7 million) or 7.8% and €8 million (£7 million) or 8.2% in commitment appropriations and payment appropriations respectively for Media 2007;
• decreases of €4 million (£3 million) or 12.2% and €2 million (£2 million) or 7.1% in commitment and payment appropriations respectively for the Europe for Citizens programme; and

• a net decrease of €10 million (£9 million) or 23.2% in commitment appropriations and €52 million (£44 million) or 54.2% in payment appropriations for “other actions and programmes”, including an individual decrease of €12 million (£10 million) or 41.9% and €9 million (£8 million) or 30.8% in commitment and payment appropriations respectively for expenditure on education and culture.

Heading 4: The EU as a Global Player

5.15 The Commission proposes €8,614 million (£7,322 million) in commitment appropriations and €7,602 million (£6,462 million) in payment appropriations. This represents an increase of €453 million (£385 million) or 5.6% in commitment appropriations and a decrease of €186 million (£158 million) or 2.4% in payment appropriations relative to the 2010 Budget. There is a margin of €70 million (£60 million) below the Financial Framework ceiling for commitment appropriations. The main changes under this heading include:

• an increase of €210 million (£179 million) or 13.2% in commitment appropriations and a decrease of €269 million (£229 million) or 15.1% in payment appropriations for the Instrument for Pre-Accession Assistance;

• increases in both commitment and payment appropriations of €99 million (£84 million) or 3.9% and €195 million (£166 million) or 9.4% respectively for the Development Cooperation Instrument;

• increases in both commitment and payment appropriations of €71 million (£60 million) or 32.2% and €16 million (£14 million) or 8.2% respectively for the Instrument for Stability;

• increases in both commitment and payment appropriations of €45 million (£38 million) or 48% for EU guarantees for lending operations; and

• decreases in both commitment and payment appropriations of €159 million (£135 million) or 74% and €186 million (£158 million) or 40.7% respectively for development and relations with African, Caribbean and Pacific states.

Heading 5: Administration

5.16 The Commission proposes commitment appropriations of €8,255 million (£7,017 million) and payment appropriations of €8,256 million (£7,018 million). This represents an increase of €346 million (£295 million) in commitment appropriations, €348 million (£296 million) in payment appropriations and 4.4% in both in comparison to the 2010 Budget. There is a margin of €161 million (£137 million) under the Financial Framework ceiling for commitment appropriations. The increase in commitment and payment appropriations is accounted for by increases of:
• €104 million (£88 million) in commitment appropriations and €106 million (£90 million) in payment appropriations, or 2.9% in both, for the Commission;

• €141 million (£120 million) or 4.8% in both commitment and payment appropriations for the other institutions;

• €82 million (£70 million) or 6.9% in both commitment and payment appropriations for pensions across all the institutions; and

• €19 million (£16 million) or 12.5% in both commitment and payment appropriations for the European Schools.

The Government’s view

5.17 The Economic Secretary to the Treasury (Justine Greenaway), whilst commenting that EU expenditure has a role to play in supporting economic recovery throughout the EU and in boosting competitiveness and growth, tells us that the Government is, however, very concerned by the proposed increase in payment appropriations of 5.8% in the DB. She says that:

• at a time of fiscal consolidation throughout the EU, with Member States’ governments reducing public spending to bring down budget deficits, the Government does not consider it appropriate for the 2011 Budget to increase as proposed;

• the Government will therefore be proposing that the 2011 Budget remains at cash levels equivalent to the 2010 Budget;

• while there is a limit to the amount of change that can be made to the annual expenditure of co-decided multiannual programmes, whose financial envelopes are established in separate legislative acts, the Government will nevertheless work to control growth in the EU Budget;

• it will do this through pushing for payment appropriations levels based on realistic implementation forecasts, bearing in mind absorption capacity on the ground, and through close questioning of proposed increases for which the Commission’s DB does not provide sufficient justification; and

• the Government will, at the same time, push for greater value for money in EU expenditure, as well as advocating adequate budget margins below the Financial Framework ceilings, both to ensure the Framework is protected and to provide sufficient flexibility for unexpected and urgent demands in-year.

5.18 The Minister then gives us an outline of the Government’s initial intended approach towards the DB, saying that:

• for Sub-Heading 1a (Competitiveness for Growth and Employment) the Government supports effective EU Budget expenditure that supports low-carbon and sustainable economic recovery and growth;
• EU expenditure under this sub-heading can add value in areas such as fostering competitiveness, innovation, research and development, and mobility;

• the Government supports effective EU Budget expenditure towards efficient, sustainable and safe transport systems in Europe;

• the Government will maintain its focus on budget discipline and the need for budgeted payment appropriation levels based on credible implementation rates;

• for Sub-Heading 1b (Cohesion for Growth and Employment) the Government notes the sharp rise in the levels of payment appropriations budgeted under this sub-heading;

• while accelerated implementation of the Structural and Cohesion Funds was to be expected in 2011, the fifth year of the programming period, the Government will push to ensure that budgeted levels are realistic and reflect actual absorption capacity;

• for Heading 2 (Preservation and Management of Natural Resources) the Government does not believe that interventions in agricultural markets and direct aids are good value for money for the British taxpayer;

• with that in mind, the Government will scrutinise closely all of the Commission’s proposals in this area, to ensure they are realistic and adequately justified;

• for Heading 3 (Citizenship, Freedom, Security and Justice) the Government believes that effective EU expenditure under this heading can add value in addressing common challenges such as migration, organised and cross-border crime, the prevention and suppression of terrorism, and challenges linked to health issues;

• it does this through supporting practical, operational cooperation between Member States on specific projects, as well as cooperation between Member States and third countries;

• the Government will maintain its focus on real implementation rates under this heading, to bear down on any over-budgeting;

• for Heading 4 (The EU as a Global Player) the Government believes that EU expenditure under this heading should focus on security, stability and poverty reduction;

• adequate EU funding is especially important to achieve these aims in fragile states around the world, as well as in the EU’s neighbourhood;

• sufficient funding must also be focused on tackling climate change, which can be a source of instability;

• there should be an increased emphasis on development objectives, including reaching the Millennium Development Goals in poorer countries and regions;
• for Heading 5 (Administration) the Government does not believe that the overall increase of 4.4% in this heading is justified;

• now more than ever, it is important for EU institutions and agencies to deliver efficiency savings, better value for money and cost reductions; and

• accordingly, the Government will push for substantial reductions in this heading.

Conclusion

5.19 As always the EU Budget has significant financial and policy implications and the UK has a substantial interest and role in scrutinising the Draft Budget (DB), not least because of the large sums involved and the UK’s position as a large net contributor — it is in the UK’s interest to restrict budget growth and ensure efficient use of resources. As is customary, we recommend that the DB be debated. Given the importance of budgetary restraint at this time we recommend also that this debate should be on the Floor of the House and should last three hours.

5.20 In the debate Members may wish to examine the Government’s objectives for the forthcoming budget negotiations, as outlined by the Minister, particularly in relation to the size of the overall increase proposed, and the continuing issue of absorption and implementation capacity and its relationship to budgetary surpluses.
### Annex: Draft Budget 2011 (€ million)

<table>
<thead>
<tr>
<th>Heading</th>
<th>FF Ceiling (1)</th>
<th>2011 Draft Budget</th>
<th>2010 Budget&lt;sup&gt;1&lt;/sup&gt;</th>
<th>Difference 2010 budget – 2011 draft budget</th>
<th>Difference 2010 budget – 2011 draft budget %</th>
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1 The 2010 Budget figures represent the Adopted Budget, as well as the four draft amending budgets to the 2010 Budget, three of which are still subject to agreement by the budgetary authority.

2 The margin for Heading 1 (subheading 1a) does not take into account €500m in appropriations for the European Globalisation Adjustment Fund, a contingency fund that sits above the Financial Framework ceilings.

3 The margin for Heading 4 does not take into account €253.9m appropriations for the Emergency Aid Reserve, a contingency reserve that sits above the Financial Framework ceilings.

4 For calculating the margin of Heading 5, account is taken of the footnote (1) of the financial framework 2007-2013 for an amount of €8.2m for the staff contributions to the pension scheme.

(1) FF = Financial Framework (2) CA = Commitment Appropriations (3) PA = Payment Appropriations (4) Due to rounding, the sum of the lines may not equal the total
### Draft Budget 2011 (£ million)

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<td>2. Preservation and Management of Natural Resources</td>
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<td>Of which: market related expenditure and direct aids</td>
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<td>37,185</td>
<td>37,108</td>
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<td>3. Citizenship, Freedom, Security and Justice</td>
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<td>3a. Freedom, Security and Justice</td>
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<td>3b. Citizenship</td>
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<td>568</td>
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<td>4. European Union as a Global Player</td>
<td>7,166</td>
<td>7,322</td>
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<td>5. Administration</td>
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<td>TOTAL (4)</td>
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<tr>
<td>Appropriations as a percentage of EU GNI</td>
<td>1.14%</td>
<td>1.14%</td>
<td>1.04%</td>
<td>1.17%</td>
<td>1.02%</td>
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</table>

1. The 2010 Budget figures represent the Adopted Budget, as well as the four draft amending budgets to the 2010 Budget, three of which are still subject to agreement by the budgetary authority.
2. The margin for Heading 1 (subheading 1a) does not take into account £425m in appropriations for the European Globalisation Adjustment Fund, a contingency fund that sits above the Financial Framework ceilings.
3. The margin for Heading 4 does not take into account £216m appropriations for the Emergency Aid Reserve, a contingency reserve that sits above the Financial Framework ceilings.
4. For calculating the margin of Heading 5, account is taken of the footnote (1) of the financial framework 2007-2013 for an amount of 68.2m for the staff contributions to the pension scheme.

(1) FF = Financial Framework  (2) CA = Commitment Appropriations  (3) PA = Payment Appropriations  (4) Due to rounding, the sum of the lines may not equal the total
# 6 Terrorist Finance Tracking Program

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>(a)</td>
<td>Commission Recommendation to authorise the opening of negotiations for an agreement between the European Union and the United States Treasury Department financial payment messaging data to prevent and combat terrorism and terrorist financing</td>
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<tr>
<td></td>
<td></td>
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<tr>
<td>(b)</td>
<td>Draft Agreement between the European Union and the United States of America on the processing and transfer of financial messaging data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program</td>
</tr>
<tr>
<td></td>
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<tr>
<td>(c)</td>
<td>Draft Council Decision on the signature of the agreement between the European Union and the United States of America on the processing and transfer of financial messaging data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program</td>
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<tr>
<td>(d)</td>
<td>Draft Council Decision on the conclusion of the agreement between the European Union and the United States of America on the processing and transfer of financial messaging data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program</td>
</tr>
</tbody>
</table>

**Legal base**

(a) and (b) —

c) Article 218(5) TFEU; —; QMV

d) Article 218 (6) (a) TFEU; consent; QMV

**Documents originated**

(a) and (b) —

c) and (d) 15 June 2010

**Deposited in Parliament**

(a) —

(b) 14 June 2010

c) and (d) 21 June 2010

**Department**

HM Treasury

**Basis of consideration**


**Previous Committee Report**

None

**Discussion in Council**

(a) 10 May 2010

(b) None

(c) 28 June 2010

(d) Not yet known

**Committee’s assessment**

Politically important
Committee’s decision  
(a) Cleared, (b)-(d) For debate in European Committee B

Background

6.1 Following the September 2001 terrorist attacks, the United States Department of the Treasury developed a Terrorist Finance Tracking Program (TFTP) to identify, track, and pursue terrorists and their financial supporters. The TFTP used payment information carried by SWIFT (the Society for Worldwide Interbank Financial Telecommunications), a Belgian company, which is the world’s main system for passing international payment instructions between financial institutions. This information was provided on the basis of an administrative subpoena requiring that the US branch of SWIFT should provide the US Treasury with specified financial transaction record data, which were stored in the United States. This data was held by the US Government in a highly secure database and was used exclusively for terrorist finance tracking purposes.

6.2 These arrangements were disclosed in public in 2006, and concerns were raised in the EU about the use made of the information by the US and about the protection of personal data. To address these concerns, the US Treasury gave a set of unilateral undertakings, known as Representations, to the EU in June 2007. These specified a series of commitments and safeguards to ensure the protection of EU-originating personal data processed under the TFTP and that the data would be used exclusively for counter-terrorism purposes.22

6.3 The EU appointed an “Eminent European Person”, Judge Bruguière, to oversee the use of EU-originated payment information by the TFTP. In December 2008 Judge Bruguière presented his first annual report on the processing of EU originating personal data by the US Treasury. This report concluded that the US Treasury has been vigilant from the outset in respecting the safeguards included in the Representations and notably the strict counter-terrorism purpose limitation. Judge Bruguière’s report also concluded that the TFTP has generated since its implementation, and continues to generate, significant value for the fight against terrorism both in the USA and beyond. Moreover the US Government has readily shared this intelligence with third countries — Member States being the principal non-US beneficiary of TFTP lead information.23

6.4 Changes to the operation of the SWIFT system from the beginning of 2010 placed most payment information outside the scope of US administrative subpoenas, leading to such information being unavailable to the TFTP and seriously impairing its scope and coverage.

6.5 In November 2009 the previous Committee cleared from scrutiny a draft Council Decision to authorise the signing, but not the conclusion, of a temporary agreement (year-long, whilst a permanent agreement was being negotiated), referred to as the SWIFT Agreement, between the EU and the US in order to allow transfer of SWIFT data to the US

The agreement would have made financial payment messaging data stored in the EU available to the US, subject to strict compliance with safeguards for the protection of personal data and was intended to maintain the availability of data stored in the EU to the TFTP and so ensure that the TFTP continued both to have coverage of all regions and to support counter-terrorism authorities in the US and EU. The agreement was to come into operation provisionally on 1 February 2010, pending its entry into force, once “the Parties have exchanged notifications indicating that they have completed their internal procedures for this purpose.”

6.6 In February 2010 the previous Committee considered a draft Council Decision to authorise conclusion of the SWIFT Agreement. Although it thought it likely, given its decision on the earlier draft Council Decision, that it would clear the new document it was greatly exercised about the limited time available for scrutiny of both the substance of the proposal and a Government decision to opt-in to it. The latter point was of particular concern because of Government assurances during passage of the legislation necessary to implement the Lisbon Treaty in the UK. In the event, on 11 February 2010, the European Parliament refused its necessary assent to the proposal — so the SWIFT Agreement was not concluded, the question of the UK’s opt-in no longer arose and the document, being redundant, was cleared from scrutiny. However the Committee noted that it was possible that negotiations would now begin on a permanent agreement, which would be subject to scrutiny.

The documents

6.7 The Commission Recommendation, document (a), was the basis for a Council Decision on a confidential negotiating mandate for a permanent agreement between the EU and the US on the processing and transfer of financial payment messaging data from the EU to the US for the purposes of the TFTP. The negotiating mandate set out the primary points for the EU in concluding an agreement with the US and was based on the failed interim agreement, taking into account the concerns raised by the European Parliament on data protection. The mandate allowed the Commission, accompanied by a specially designated Committee, to negotiate with the US on behalf of the EU. Given that they concerned a confidential negotiating mandate, neither the Recommendation nor the subsequent Council Decision have been published.

6.8 The draft agreement, document (b), is the outcome of the negotiation authorised by the Council Decision proposed in document (a). The purpose of the agreement is to maintain the availability of data stored in the EU to the TFTP and so ensure that the TFTP continues to have coverage of all regions and continues to support counter-terrorism authorities in the US and the EU.

6.9 The arrangement in the agreement for the transfer of data is a mechanism under which designated providers of international payment messaging services may be compelled to provide data to the US Treasury. The agreement provides:

• for designation of SWIFT as the provider;

• that, in order for data transfer to take place, the US must submit a request (a “production order”) to the provider under US law;

• for Europol (the EU police cooperation agency) to verify that each request satisfies certain criteria — it must clearly identify the data necessary for preventing, investigating, detecting, or prosecuting terrorism or terrorist financing, it must substantiate the necessity of the data, it must be tailored as narrowly as possible in order to minimise the amount of data requested, it must take account of past and current terrorism risk analyses and it must not request any data relating to the Single Euro Payment Area;\(^\text{26}\) and

• that, if Europol deems the request to be compliant with these criteria, the request will have binding legal effect in the EU and the US and the provider must submit the data requested to the US Treasury.

6.10 In order to ensure that any data transferred is adequately protected, the agreement stipulates a number of safeguards that the US Treasury must adhere to:

• the data may only be used for preventing, investigating, detecting or prosecuting terrorism or terrorist financing;

• the TFTP shall not involve data mining or any other type of algorithmic or automated profiling or computer filtering;

• data shall be held in a secure physical environment and access shall be limited to analysts investigating terrorism or its financing and to those involved in the technical support, management and oversight of the TFTP;

• data shall not be interconnected with any other database, or subject to any manipulation, alteration or addition;

• no copies shall be made other than for disaster recovery back-up purposes; and

• all searches of TFTP data held by the US Treasury shall be based upon pre-existing information or evidence which demonstrates a reason to believe the subject has a nexus to terrorism or its financing.

The agreement:

• places a five year limit on the period for which the data that has not been extracted for examination may be retained;

• limits the possibility for onward transfer of data to scenarios involving the investigation, detection, prosecution, or prevention of terrorism and terrorist financing; and

• provides for the appointment of an independent person to ensure that these safeguards are properly enforced.

6.11 In relation to EU access to TFTP data the agreement:

• requires the US to make data available to law enforcement, public security or counter terrorism authorities in Member States to assist in combating terrorism and terrorist financing;

• gives Member States, Europol and Eurojust (the EU judicial cooperation agency) the right to request a search for information obtained through the TFTP in situations where they have reason to believe that a person or entity has a nexus to terrorism or its financing; and

• requires, if the EU were to decide to establish its own system equivalent to the TFTP, the US to cooperate with, and provide assistance to, it.

6.12 For citizens’ right of access to data and to means of redress the agreement provides that:

• any person has the right to obtain from their own data protection authorities confirmation that the data has been adequately protected;

• they may also request that use of their data be disclosed to them;

• disclosure may only be denied where there are reasonable legal limitations in place to safeguard activities to prevent, detect, investigate or prosecute terrorism or terrorist financing, or to protect public or national security; and

• any person who considers their personal data to have been processed in breach of the agreement is entitled to seek effective administrative and judicial redress in accordance with the laws of the EU, its Member States and the US.

6.13 The draft Council Decision, document (c), is to authorise the Commission to sign, on behalf of the EU, the agreement. After its adoption by the Council, the second draft Council Decision, document (d), to authorise conclusion of the agreement, would go to the European Parliament for it to consent to the Council adopting the Decision.

The Government’s view

6.14 The then Exchequer Secretary to the Treasury (Sarah McCarthy-Fry) wrote twice about the draft Council Decision, document (a), to explain the then Government’s intention to opt-in to the Council Decision. She said that it was regrettable that neither Parliament nor the Government would have the normal periods allowed them for consideration of an opt-in decision. But the Government felt it had no alternative, given the very real security gap in the EU created by the cessation of the TFTP, but to opt-in to and support the proposal. However she emphasised the attention the Government expected to be given to fully addressing data protection concerns in any agreement negotiated.
6.15 In his Explanatory Memorandum on the agreement and the draft Council Decisions about its signature and conclusion, documents (b)-(d), the Commercial Secretary to the Treasury (Lord Sassoon) tells us that the Government is fully supportive of the agreement. He continues that the TFTP is an extremely important counter terrorist tool, noting that leads it has generated have provided valuable contributions to a number of investigations, including:

- the Bali bombing in 2002;
- the van Gogh terrorist-related murder in the Netherlands in 2004;
- the plan to attack New York’s John F. Kennedy airport in 2007;
- an Islamic Jihad Union plot to attack Germany;
- the attacks in Mumbai in 2008; and
- the Jakarta hotel attacks in 2009.

Additionally, to date more than 1550 leads generated by the TFTP have been shared with Member State governments.

6.16 The Minister then discusses a number of aspects of the agreement, saying that:

- the agreement would increase the effectiveness of the TFTP, as it imposes a binding requirement on the US Treasury to search SWIFT data on request from Member States that comply with the terms of the agreement and this should benefit the EU’s counter terrorism efforts;
- the agreement stipulates strict data provisions to which the US Treasury must adhere, including proportionality requirements, limitations on access to and onward transfer of data; a five year limit on the period for which data may be retained (consistent with global standards on money laundering and terrorist financing) and mechanisms for independent oversight of the programme;
- the Government considers that these provisions are sufficiently strong and are in line with existing EU data protection law;
- the Government welcomes the provision for EU citizens whose data is misused to seek independent redress in the US;
- the Government has carefully considered the legal basis for compelling SWIFT to transfer the data to the US to ensure that it would not compromise the integrity of the UK’s criminal justice system;
- under the agreement, Europol is given legal responsibility for ensuring the transfer of data from Belgium and the Netherlands to the US — this would extend the jurisdiction of the ECJ over this particular task assigned to Europol;
- both the Council and the Commission legal services have, however, stated that the ECJ’s jurisdiction would not extend any further than this task; and
6.17 In his letters the Minister first alerts us to the conclusion of the negotiation of the new agreement, document (a), and notes the probability of the process for signing and concluding the agreement would be carried on quickly. Noting in his second letter, of 24 June 2010, the probability that the Council Decision to sign the agreement, document (c) would be adopted on 28 June 2010, the Minister then announces the Government’s intention to opt-in to the Decision. He recognises that this is before we (and the Lords EU Committee) have had the opportunity to scrutinise the proposal. He tells us that there are, however, compelling reasons behind this decision, explaining that:

- under the TFEU the UK is usually entitled to a three-month period to consider whether it wishes to opt-in to a Justice and Home Affairs measure;
- in this case, however, the Presidency indicated that it would present the Council Decision for adoption on 28 June 2010;
- as a result of the very real security gap created by the TFTP’s lack of access to data, the Government has decided that it would not be appropriate to insist on the full three-month period being granted;
- the Government was therefore required to make a rapid decision on whether to opt-in to the Decision to sign the agreement or not;
- as stated in the Explanatory Memorandum, the Government strongly supports the agreement itself;
- the TFTP has brought significant benefits to the UK and the EU and the agreement would further increase its effectiveness by further imposing a binding requirement on the US Treasury to search financial data carried on the SWIFT payment system on request from the Member States that comply with the terms of the agreement;
- not opting-in prior to the decision to sign, would put the agreement at risk, as the vote would be by qualified majority basis; and
- the Government did not feel that it was appropriate to run such a risk, in view of the significant benefits the agreement would bring to the UK.

6.18 Finally, in this letter, the Minister comments that Treasury Ministers take issues of parliamentary scrutiny very seriously, that he regrets that, on this occasion, it has not been possible to complete that scrutiny through the appropriate mechanism and that he hopes we will agree that under the circumstances, the Government’s decision was the most appropriate one.

6.19 In his third letter, of 8 July 2010, the Minister reports further developments. First, on 25 June 2010 the UK opted into the Council Decision, document (c), to sign the agreement, the final text of which contained one minor change. This is to give the Commission the right to appoint a person to be part of the team of independent overseers to monitor the implementation of the safeguards. The Minister comments that the Government believes
that this is a further strengthening of the data protection safeguards and therefore welcomes it.

6.20 Secondly, the Minister tells us that the agreement was signed between the EU and the US on 28 June 2010 and on the same day a revised draft Council Decision to conclude the agreement was published.27 This differs from the previous version, document (d):

- to reflect the Commission appointment of an independent overseer; and
- by inviting the Commission to submit a proposal for establishing an EU system to extract financial data on EU territory.

In an accompanying declaration the Commission undertakes to develop a proposal in the near future.28 The Minister comments that this builds on an existing provision in the agreement, that the Government believes that there is merit in this scoping exercise, and as such supports the provision, but that the details of the Commission proposal will require careful scrutiny.

6.21 The Minister says that in addition to publication of the revised Council Decision the Council issued two declarations.29 In the first the Council undertakes to review the agreement once an EU-US agreement on data protection has been finalised. In the second it undertakes, together with the Commission to establish the technical basis for Europol to verify US requests before the agreement comes into force. He comments that the Government supports both objectives.

6.22 Finally in this letter the Minister tells us that:

- on 8 July 2010 the European Parliament voted to give consent to conclusion of the agreement; and
- the Council is likely to adopt the draft Decision to conclude the agreement, document (d), at a forthcoming Council meeting.

He reminds us that if the Government wishes the UK to be bound by the agreement it must opt into that Decision.

6.23 In his final letter, of 22 July 2010, the Minister tells us that the Decision was adopted at the ECOFIN on 13 July 2010 that the Government opted into the Decision and that the UK will therefore be bound by the terms of the agreement. He adds that by opting into the Decision UK law enforcement and counter terrorism authorities will be able to request targeted searches of the TFTP database where they have reason to believe that a person or entity has a nexus to terrorism or its financing and that this will be of great security benefit to the UK. And he again expresses regret that there was not opportunity for scrutiny of these issues.

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29 Ibid.
Conclusion

6.24 Although the security benefits of the TFTP seem plain we think the agreement is sufficiently important, and its predecessor, the rejected agreement, sufficiently controversial, as to warrant the three documents concerned with it, (b)-(d), being debated. So we recommend that there should be a debate in European Committee B, even though the draft Council Decisions have already been adopted. Amongst the matters that might be explored with the Government in that debate are:

- its view of the apparent intention to establish the EU’s own TFTP; and
- whether possible data protection risks arising from the agreement are too heavy a price to pay for the security benefits.

6.25 As for the scrutiny breach in relation to the documents for debate, both in terms of the normal scrutiny of the substance and of the special scrutiny of opt-in proposals, we note the Minister’s explanation and understand the timetabling problems the Government faced. However we are concerned that it appears that fast moving business may often, as in this case, negate the Government’s right to have three months to consider an opt-in decision. And equally threatened is the Government’s commitment to Parliament to allow an eight-week period for scrutiny of such a decision. So we suggest that this matter also be addressed in the debate we are recommending.

6.26 Turning to the Council Decision about opening negotiations on the agreement, document (a), since this was not published, and was therefore not depositable for scrutiny, we clear it.
7 Financial assistance for Member States

(a) Council Regulation establishing a European financial stabilisation mechanism  
(31611) 9606/10

(b) Draft amending budget No. 7 to the general budget 2010:  
(31796) 12119/10 statement of expenditure by section: Section III — Commission  
COM(10) 383

Legal base  
(a) Article 122(2) TFEU; —; QMV  
(b) Article 314 TFEU; co-decision; QMV

Document originated  
(a) 10 May 2010  
(b) 12 July 2010

Deposited in Parliament  
(a) 25 May 2010  
(b) 15 July 2010

Department  
HM Treasury

Basis of consideration  
Two EMs of 15 July 2010 and Minister’s letter of 18 July 2010

Previous Committee Report  
None

Discussion in Council  
(a) 9 May 2010  
(b) 26 July 2010

Committee’s assessment  
Politically important

Committee’s decision  
For debate in European Committee B

Background

7.1 At an extraordinary meeting of the ECOFIN Council on 9 May 2010 agreement was reached for a Regulation creating a European Financial Stabilisation Mechanism (EFSM), as part of a comprehensive package of measures to preserve financial stability in the EU. The Regulation was based on Article 122(2) TFEU, which allows EU financial assistance to be granted to a Member State facing “severe difficulties caused by natural disasters or exceptional occurrences beyond its control”. It provides for the EU Budget to guarantee EU borrowing to support Member States in need, up to the level of €60 billion (£49.10 billion). Support under the EFSM would be provided in parallel with IMF funding and would be subject to joint EU/IMF conditionality.

7.2 The Financial Regulation governing EU budgetary matters allows the Commission, in exceptional or unforeseen circumstances, to submit Draft Amending Budgets to alter the EU Budget for the current financial year.
The documents

7.3 The Regulation establishing the EFSM, document (a), details the process, terms and conditions for any activation of the mechanism:

- a Member State seeking activation of the EFSM must discuss with the Commission, in liaison with the European Central Bank, an assessment of its financial needs and submit a draft economic and financial adjustment programme to the Commission and the Economic and Financial Committee;

- the committee would then agree a mandate for the Commission, in parallel with IMF staff, to negotiate a programme of support with the Member State;

- the final decision of the provision of financial assistance would be taken by the ECOFIN Council, acting by a qualified majority on a proposal from the Commission;

- the financial details of the assistance are unequivocal and non-negotiable;

- the funds underlying the assistance would exist as a loan or credit line and would be raised from the capital markets or financial institutions;

- all financial transactions would be carried out in euros and be supervised by the European Central Bank;

- the Member State would have to open a special account with its own central bank to manage the assistance;

- in order to maintain the Commission’s reputation in the markets and maximise the effect of funding, it would raise funds at the most appropriate time in between planned disbursements;

- any raised funds not currently required would be held in a dedicated cash or securities account and could not be used for any other purpose than for the one already agreed under the loan;

- interest payments due under the loan would be paid to an account with the European Central Bank;

- if the Member State requested an improvement on the interest of the loan, the Commission could re-finance all or part of its initial borrowing or restructure the financial conditions;

- costs incurred by the EU in concluding and carrying out any operation connected to the assistance would be borne by the Member State;

- once the programme had commenced and the details, such as the size of tranches and timing of their release, were decided, the Member State would provide all necessary information and data to the Commission;

- the Commission would then decide on the release of further instalments based on this information;
• the European Court of Auditors and the Commission, including the European Anti-Fraud Office, have the right to carry out any technical or financial controls and audits that they consider necessary; and

• the case of the Member State would be reviewed every six months, effective from the time that the Regulation was enacted.

7.4 The Commission’s Draft Amending Budget (DAB) No. 7 to the 2010 EU Budget, document (b), proposes creation of a new budget line for the guarantee provided by the EU under the EFSM, and a corresponding article on the revenue side of the EU budget.

7.5 To grant financial assistance under the EFSM, the Commission will raise the funding required by borrowing on the capital markets or with financial institutions on behalf of the EU. Should the debtors default, the Commission may draw on its cash resources to service the debt provisionally. Subsequently, the operation may need to be budgeted within the EU Budget and so creation of a new line on expenditure side of the EU Budget is proposed. At the same time, a corresponding new article on the revenue side is also proposed, for the eventuality that reimbursements after an initial default, or any other revenue arising from the exercise of rights in connection with the guarantee, also need to be budgeted.

7.6 The DAB proposes a token entry (a so-called “pour memoire” entry) for commitment and payment appropriations as well as for revenue. If it becomes necessary, the Commission would propose a transfer or amending budget to provision the budget line with the relevant appropriations.

The Government’s view

7.7 On the Regulation establishing the EFSM, document (a), the Economic Secretary to the Treasury (Justine Greening) comments that:

• the facility created is available to all Member States;

• a similar facility, the Medium Term Balance of Payment facility, already exists for non-euro area Member States and had previously been used to provide EU support to Hungary, Latvia and Romania in parallel with IMF support;

• the Government believes that financial problems within the euro-area should be primarily resolved by euro-area Member States — however, it is in the interests of all Member States to support a stable and fully functioning euro-area;

• on 9 May 2010 the ECOFIN Council also agreed up to €440 billion (£359.70 billion) to complement this Regulation through a Special Purpose Vehicle, the European Financial Stabilisation Facility;

• this is a voluntary intergovernmental agreement of euro-area Member States, lasting three years, which has no bearing on the EU Budget; and

• the Government has chosen not to participate in the Special Purpose Vehicle, will not make contributions and there is, therefore, no question of any liability arising to the UK.
7.8 On the financial implications of the Regulation the Minister says that:

- up to €60 billion (£49.10 billion) of emergency finance could be provided;
- should the mechanism be called upon the Commission would raise the money on capital markets, guaranteed by the EU Budget;
- loans would be granted in parallel with IMF programmes and would be subject to policy conditionality;
- only where there were defaults on loan repayments would the EU Budget be called on to meet the cost of that repayment;
- this would require an increase in the Budget and, in turn, an increase in Member States’ contributions to the EU Budget;
- as an indicative guide, the UK’s GNI-share contribution to the 2010 budget is currently estimated at 13.8%; and
- any increase to the UK’s contribution would be within the limits of the ceiling already agreed by Parliament through the European Communities (Finance) Act 2008.

7.9 Finally, the Minister says that the Government regrets that we (and the Lords EU Committee) did not have time to consider this document before it was agreed. However, she comments that “It should be noted that whilst agreement on behalf of the UK was given by the previous administration, cross-party consensus had been gained.”

7.10 The Minister says that DAB No. 7/2010, document (b), is necessary to make the EFSM fully operational and, as such, the Government supports its proposals. She adds that the proposals have no immediate financial implications.

7.11 In her letter covering her two Explanatory Memoranda the Minister first reiterates that the EFSM is part of a package of exceptional measures agreed to support vulnerable EU economies, that it was endorsed by decisions of the previous administration, but that the Government judges these decisions to be an appropriate response to the crisis and that it is regrettable that the draft Regulation could not be scrutinised. Secondly the Minister reiterates the description of the DAB’s purpose, its technical nature and that it has no immediate resource implications. She then outlines the rushed timetable for considering the proposal, publication on 13 July 2010 and adoption by the Council on 26 July 2010, which was to ensure that there is no undue delay in making the EFSM operational, in the event that a Member State should need to draw upon the funds available at short notice. The Minister continues that it is important that the EFSM is seen to have the full backing of Member States if it is to achieve its purpose and therefore that the UK supports the technical steps proposed in the DAB. She regrets therefore that, in this instance, the Government must override the scrutiny reserve resolution in order to give its support to the measures proposed.
Conclusion

7.12 We are grateful to the Minister for the information she gives us about the Regulation establishing the European Financial Stabilisation Mechanism, document (a), and the rationale for it. As for the scrutiny breaches we note and accept the need for the urgent adoption of both measures, even though proper scrutiny was not possible. However given the possible budgetary liability the UK may be exposed to we recommend the documents should be debated in European Committee B.

8 Economic policy coordination

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Commission Communication: *Reinforcing economic policy coordination*
Commission Communication: *Enhancing economic policy coordination for stability, growth and jobs: tools for stronger EU economic governance*

Legal base

Document originated

(a) 12 May 2010
(b) 30 June 2010

Deposited in Parliament

(a) 25 May 2010
(b) 7 July 2010

Department

HM Treasury

Basis of consideration

EM of 26 July 2010

Previous Committee Report

None

Discussion in Council

Not known

Committee’s assessment

Politically important

Committee’s decision

For debate on the Floor of the House

Background

8.1 The main elements of the EU’s common economic policies are the Economic and Monetary Union, with the eventual aim that all Member States would adopt the euro, and the Stability and Growth Pact.

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30 At present 16 Member States (Austria, Belgium, Cyprus, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain) have adopted the euro.
8.2 The Stability and Growth Pact adopted by the Amsterdam European Council in June 1997 emphasised the obligation of Member States to avoid excessive government deficits, defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a “reference value” of 3%. Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State. These Opinions, which are not binding on Member States, are based on a recommendation from the Commission. The economic content of the programmes is assessed with reference to the Commission’s current economic forecasts. If a Member State’s programme is found wanting, it may be invited by ECOFIN, in a Recommendation, to make adjustments to its economic policies, though such Recommendations are likewise not binding on Member States. This whole procedure is essentially the Pact’s preventative arm.

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

8.4 In response to the current economic problems the EU has adopted a number of measures including the European Economic Recovery Plan of 2008 for fiscal stimulus and the May 2010 package of a European Financial Stabilisation Mechanism which allows EU financial assistance to be granted to a Member State facing “severe difficulties caused by natural disasters or exceptional occurrences beyond its control” and a Special Purpose Vehicle for a voluntary intergovernmental agreement of eurozone Member States for mutual financial support, the European Financial Stabilisation Facility. Such measures have been adopted whilst there has been a parallel discussion of the perception the EU’s economic policy framework has been tested by the global economic crisis, that the EU does not have a mechanism to provide crisis support to its Member States, particularly in the eurozone, and that ex ante budgetary surveillance of some countries had not always been sufficiently robust. The June 2010 European Council reiterated Heads of Government agreement on the need to address some of the issues.

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31 This obligation does not apply to Member States, including the UK, whilst they remain outside the eurozone, but they are required to endeavour to avoid excessive deficits.
32 The Member States have adopted the euro have Stability Programmes, whereas the other 11 Member States (including the UK) produce Convergence Programmes.
34 (31611) 9606/10 (31796) 12119/10: see chapter 7 in this Report.
The documents

8.5 These two Commission Communications have a wide range of suggestions of how the EU economic governance framework could be strengthened, in order to prevent and manage future crises. The Commission believes that all of these ideas could be taken forward within the current Treaty framework. These Commission suggestions can be summarised under six headings:

- strengthening the Stability and Growth Pact via sanctions;
- stronger focus on the debt criterion of the Stability and Growth Pact;
- improving macroeconomic surveillance;
- creation of an “EU semester” for fiscal and budgetary policy co-ordination;
- national fiscal frameworks; and
- a crisis management framework for the euro-area.

Strengthening the Stability and Growth Pact via sanctions

8.6 Both Communications stress that sanctions under the Stability and Growth Pact should be used more frequently and should be drawn from a wider range of sources. The current sanctions regime only allows for fines or suspension of Cohesion Funds, but the second Communication, document (b), proposes that sanctions could involve suspension of other EU funds to Member States, such as Common Agricultural Policy or fisheries funds. The first Communication, document (a) proposes that the Stability and Growth Pact should be much more strictly enforced in future, particularly for Member States that persistently breach the Pact. The second Communication makes the same point, and suggests that sanctions in the excessive deficit procedure could be applied on a semi-automatic basis:

- where a Member State is placed into excessive deficit EU funds to the Member State are temporarily suspended, but payments can restart when the Member State shows that it is meeting the Council recommendations. Because there is a significant time lag between commitments by the EU to fund particular programmes and the actual payments being made, the Member State should normally have sufficient time to announce deficit reduction plans that would enable the payment of these funds to be made on time, without delay to the end beneficiary; and

- where a Member State is in excessive deficit and not meeting its Council recommendations EU funds to the Member State could be stopped for a period of one year. The Communication makes clear that end beneficiaries of funds, such as farmers or fisheries owners, should not suffer, as their government would be required to make up the extra money from the national budget.

In addition to these punitive measures the second Communication floats the idea of positive performance rewards to Member States that run sound fiscal policies.
8.7 The first Communication suggests that the timeframe for the excessive deficit procedure is currently too lengthy and that the steps under this process should be accelerated in future, particularly when dealing with Member States that have repeatedly breached their recommendations under the procedure.

8.8 The second Communication proposes sanctions also for the preventative arm of the Stability and Growth Pact:

- if a Member State in the eurozone is not consolidating fast enough towards its medium term objective (a fiscal benchmark below 3% of GDP), it would be required to make an interest-bearing deposit with the EU and could be given Council rules dictating its expenditure plans;

- this deposit would only be released back to the Member State once its fiscal position was closer to the medium term objective;

- Cohesion Funds for a Member State that is making insufficient progress on fiscal consolidation could also be suspended, unless the Member State made improvements to the way in which it used cohesion funding, so that funds were being used more efficiently and effectively;

- all these sanctions should be created for eurozone Member States by means of a new Regulation; and

- the Commission will work on ways in which such sanctions could be applied to non-eurozone Member States in future.

(The UK cannot be made subject to sanctions under the Stability and Growth Pact, as sanctions are explicitly disapplied from the UK in Protocol No 15 TFEU.)

**Stronger focus on the debt criterion of the Stability and Growth Pact**

8.9 There are two fundamental rules of the Stability and Growth Pact — Member States are required to keep their deficits below 3% of GDP and their debt to GDP ratios below 60%. If they breach these limits, they can be placed in the excessive deficit procedure. Historically, the focus has been purely on the deficit criterion of the Pact, so some Member States have run debt levels well above 60% without being placed in excessive deficit procedure because their deficits have been below 3% of GDP.

8.10 The Communications propose that there should be new emphasis on the debt criterion of the Stability and Growth Pact. They suggest that:

- Member States with high debt levels above 60% should be required to make greater annual efforts towards their medium term objective than Member States with lower debt levels; and

- Member States that fail to reach these targets could be placed in the excessive deficit procedure even if their deficit is below 3% (or, if they were already in excessive deficit, these Member States could be kept in the excessive deficit procedure even if the deficit level has fallen back below 3%).
The second Communication:

- recommends that the Council should still retain some discretion in analysis of Member States’ debt levels, as debt is complex and has many drivers. Therefore Member States would not be automatically placed into the excessive deficit procedure on the basis of the debt criterion alone; and
- proposes that a numerical benchmark should be set to define the appropriate pace of annual debt reduction once Member States are in the excessive deficit procedure. The current legislative provisions require that, once in the procedure, Member States should reduce their debt levels “at a satisfactory pace” — such a benchmark would make this more precise.

**Improving macroeconomic surveillance**

8.11 The first Communication suggests that the Commission should play a greater role in macroeconomic surveillance in future, in order to prevent Member States from building up imbalances that could pose a threat to their competitiveness or macroeconomic stability. The second Communication:

- proposes a scoreboard of competitiveness indicators, including productivity, labour costs, employment, productivity, current accounts, foreign assets and real exchange rates;
- says the scoreboard would be used to assess Member States’ performance against these indicators, in order to develop tailored recommendations for individual Member States;
- says such monitoring would go into more detail for eurozone Member States, in order to ensure that imbalances did not jeopardise the functioning of the single currency;
- suggests that eurozone Member States could be given policy recommendations by the Commission and other euro-area Member States in the Council and, if necessary, the Commission could issue a warning directly to a Member State under the new provisions in Article 136 TFEU; and
- recommends that in addition to preventative monitoring systems, there should also be an enforcement mechanism — an “excessive imbalances procedure”.

This new procedure seems to be akin to the existing excessive deficit procedure. Member States with “excessive imbalances” would be required to make more regular reports to the ECOFIN Council and, for eurozone Member States, to the Eurogroup on progress of their reforms that the Council had recommended to them. As with the Stability and Growth Pact, a more stringent approach is suggested for eurozone Member States, given the greater potential for problems to spread to other members of the single currency.
Creation of an “EU semester” for fiscal and budgetary policy co-ordination

8.12 Both Communications suggest that fiscal and structural policies should be assessed at the same time of year as part of an “EU semester”:

- in January the European Council would identify the most significant economic challenges in the EU and give Member States guidance as to what their economic priorities should be for the coming year;

- Member States would then factor this guidance into the preparation of their Stability and Convergence Programmes, which would be submitted in April, alongside the National Reform Programmes (reports under the Europe 2020 Strategy). This would allow the macroeconomic situation of a Member State to be taken into account when deciding fiscal policy recommendations for it;

- in June the ECOFIN Council would agree individual recommendations to Member States that could be incorporated into their draft national budgetary plans;

- the European Council would subsequently endorse those recommendations;

- Member States would then prepare their budgets over the autumn, as is currently the case for most of them, taking the EU recommendations into account; and

- in January, the cycle would begin again, with the Commission making an analysis of how far Member States had acted on their Council recommendations.

National fiscal frameworks

8.13 The Communications stress that Member States’ national fiscal frameworks should reflect their Treaty obligations under the Stability and Growth Pact. The second Communication:

- calls for Member States that still prepare budgets with a twelve month horizon to move to a multiannual budgetary framework, like that of the UK, where each annual Budget also contains forecasts and projections for the next few years — this increases transparency and facilitates monitoring of the impact of fiscal decisions over the longer term;

- recommends that Member States take action to improve the independence and quality of their national statistical and accounting systems, to ensure that they are sending accurate and reliable data to the EU; and

- indicates that the Commission will propose draft legislation this autumn to set out the minimum standards that Member States’ national fiscal frameworks must meet.

36 (31573) 9231/10 (31574) 9233/10: see chapter 9 in this Report.


A crisis management framework for the euro-area

8.14 The first Communication:

- states the importance of a permanent, clear framework for providing emergency financial support to eurozone Member States, in order to prevent problems spreading to other members of the eurozone;

- refers to the need for financial assistance to be provided in the form of loans and under stringent policy conditionality in order to address the underlying imbalances; and

- says such assistance would be based on the temporary European Stabilisation Financial Mechanism agreed at the emergency 9 May 2010 ECOFIN Council meeting.37

The Government’s view

8.15 The Financial Secretary to the Treasury (Mr Mark Hoban) says that there are no immediate policy implications for the UK, as these documents are not proposals for legislation. He adds, however, that the Government agrees with many of the ideas in these Communications, noting that the EU is the UK’s single largest trading partner and, as such, measures to improve the functioning of the eurozone and to reinforce economic stability across the EU are welcome.

8.16 The Minister then comments that:

- from a legislative and a policy perspective, the UK is different from most other Member States by virtue of its opt-out from euro membership and of Protocol No 15 TFEU;

- a number of ideas relating to the Stability and Growth Pact will, therefore, either not apply to the UK at all or will apply in a different way;

- the Protocol makes it clear that the UK only has to “endeavour to avoid” excessive deficits, whereas under Article 126 TFEU all other Member States “shall avoid” excessive deficits;

- because of this provision, sanctions cannot apply to the UK under the Stability and Growth Pact;

- this is a point that has been made by both the Chancellor to the Van Rompuy Taskforce on economic governance38 and the Prime Minister at June 2010 European Council;

- although sanctions under the Stability and Growth Pact do not apply to the UK, the Government supports the idea that sanctions should be used more frequently in future for other Member States and should be applied on an automatic basis in

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37 See footnote 34.
cases where Member States have breached their excessive deficit procedure recommendations; and

• Member States should be clear that failure to comply with excessive deficit procedure recommendations will result in sanctions, otherwise the Stability and Growth Pact will lack credibility as a mechanism to monitor and enforce fiscal discipline by Member States.

8.17 The Minister comments further that:

• the Government believes that there is some merit in the idea of the “EU semester”, which would allow the EU to consider each Member State’s fiscal position at the same time as analysing its performance on structural reform issues;

• this would also allow all Member States to be given recommendations under the Stability and Growth Pact at the same time of year, which would improve transparency and fairness of these recommendations;

• as the June 2010 European Council conclusions\(^{39}\) indicate, national budgetary procedures must, however, continue to be respected within the context of the “EU semester”;

• Section 5 of the European Communities (Amendment) Act 1993 provides that the Government can only submit information to the EU if it has first been approved by Parliament;

• the Government has made it clear at the meetings of the Van Rompuy Taskforce and at June 2010 European Council that the UK will not submit its draft budget to the EU before it has been approved by Parliament;

• instead, the Government will send its final Budget to the Commission at the same time as other Member States submit their national budgetary plans;

• the Government supports the proposed greater focus on public debt within the framework of the Stability and Growth Pact;

• the impact of the economic crisis will, however, leave many Member States with debt levels above 60% of GDP for a number of years;

• the Government therefore believes that there should be an appropriate period of adjustment and that the primary focus should be on the path of debt;

• it may be appropriate for countries with rapidly increasing debt levels to be put into the excessive deficit procedure or kept in the procedure when their deficits fall below 3% — debt is, however, a complex issue and some degree of discretion needs to be maintained;

• the Government agrees that there may be some benefit in reinforcing national fiscal frameworks within eurozone Member States — measures to improve the
quality of national statistics and the independence of national statistical authorities would be particularly welcome;

- it supports the idea that Member States working on annual budgets should move to multiannual budgetary frameworks;

- it will look closely at the detail of any legislative proposals made by the Commission on minimum requirements for national fiscal frameworks, to ensure that these respect the UK’s national fiscal competence;

- it believes that any minimum requirements for national fiscal frameworks must take due account of subsidiarity and must reflect Member States’ respective responsibilities under the Stability and Growth Pact;

- it believes that macroeconomic surveillance is important and agrees with the Commission that there should be a stronger surveillance mechanism for the eurozone, to avoid eurozone Member States building up unsustainable imbalances;

- it believes that any new surveillance mechanism must be simple and proportionate in order to be effective and that it must not place unnecessary reporting burdens on Member States;

- it will look carefully at the detail of any proposals to reinforce the macroeconomic surveillance mechanism, to ensure that the UK will not be made subject to onerous reporting under this process;

- it understands the eurozone’s apparent wish to improve the capacity to resolve any crises that emerge;

- the Van Rompuy Taskforce was specifically tasked by the Spring 2010 European Council to identify the measures necessary to achieve “an improved crisis resolution framework” and those discussions are ongoing;

- ultimately, it will be for the eurozone to decide whether there should be a permanent successor to the Special Purpose Vehicle European Financial Stabilisation Facility;40 and

- the Government’s decision not to participate in the facility reflects its view that these are issues for the eurozone to resolve.

Conclusion

8.18 These documents suggest options important both for economic policy formation at the EU level and for policy formation by individual Member States. We recommend that the documents be debated on the Floor of the House, when Members might particularly wish to examine the possible consequences of the various suggestions for the freedom of action for individual Member States.

40 See footnote 34.
9 Europe 2020 Strategy: integrated guidelines

Legal base
(a) Article 121 TFEU; —; QMV
(b) Article 148(2) TFEU; consultation; QMV

Documents originated
27 April 2010

Deposited in Parliament
25 May 2010

Department
(a) HM Treasury
(b) Work and Pensions

Basis of consideration
(a) EM of 9 June 2010 and Minister’s letter of 20 July 2010
(b) EM of 8 June 2010

Previous Committee Report
None

Discussion in Council
(a) ECOFIN 8 June 2010, European Council 17–18 June 2010, ECOFIN 13 July 2010
(b) Employment, Social Policy, Health and Consumer Affairs Council 7 June 2010, European Council 17–18 June 2010, further consideration possibly in September 2010

Committee’s assessment
Legally and politically important

Committee’s decision
For debate in European Committee B, after receipt of further information

Background

9.1 In 2000 an action plan, known as the Lisbon Agenda or Lisbon Strategy, was launched to “make Europe, by 2010, the most competitive and the most dynamic knowledge-based economy in the world”. In 2005 the action plan was relaunched for the remainder of the decade as the Lisbon Strategy for Jobs and Growth. As part of the relaunch two-part “integrated guidelines” were agreed. They contained broad guidelines for the economic policies of the Member States and the then Community and guidelines for the employment policies of the Member States. The guidelines were to be taken into account by Member States in preparing and annually updating their National Reform Programmes. Each Member State reported annually on its reform programme and received non-binding recommendations, proposed by the Commission and endorsed by the Council, for future policies.
9.2 In March 2010 the Commission proposed a “Europe 2020 Strategy” for the coming decade, to follow on from the Lisbon Strategy. It set out the challenges facing the EU over the coming decade and the need for “a strategy to turn the EU into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion” and proposed:

- policy priorities that focused on smart, sustainable and inclusive growth;
- seven flagship initiatives to deliver on those policy priorities;
- mobilising EU instruments and policies such as the single market to pursue the strategy’s objectives; and
- a governance structure that included five headline targets that the EU should aim to achieve by 2020.

The strategy was to continue with integrated guidelines and the associated reporting and monitoring process.\(^{41}\) The plan for a strategy was endorsed by the European Council in March 2010.\(^{42}\) The Lisbon Treaty contains the legal base for the integrated guidelines — Article 121 TFEU for broad economic policy guidelines and Article 148 TFEU for employment policy guidelines. The latter article provides that the employment guidelines must be consistent with the economic guidelines.

9.3 Alongside the Lisbon Strategy has been the Growth and Stability Pact. The Pact, adopted in 1997, emphasised the obligation of Member States to avoid excessive government deficits, defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a “reference value” of 3%. Each year the Economic and Financial Affairs Council (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State. These Opinions, which are not binding on Member States, are based on a recommendation from the Commission. The economic content of the programmes is assessed with reference to the Commission’s current economic forecasts. If a Member State’s programme is found wanting, it may be invited by ECOFIN, in a Recommendation, to make adjustments to its economic policies, though such Recommendations are likewise not binding on Member States. This whole procedure is essentially the Pact’s preventative arm. On the other hand, the Pact also endorsed a dissuasive or corrective arm involving action in cases of an excessive government deficit — the excessive deficit procedure provided for in Article 126 TFEU (formerly Article 104 EC) and the relevant Protocol. The March 2010 European Council, in endorsing the Europe 2020 Strategy said that “The timing of the reporting and assessment of the National Reform Programmes and Stability and Convergence Programmes should be better aligned, in order to enhance the overall consistency of policy advice to Member States”.\(^{43}\)

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\(^{43}\) Ibid.
The documents

9.4 These two documents present the Commission’s proposals for the integrated guidelines for the Europe 2020 Strategy. It suggests the guidelines should remain largely stable until 2014 to ensure a focus on implementation. The Commission proposes ten guidelines:

- Guideline 1: Ensuring the quality and the sustainability of public finances;
- Guideline 2: Addressing macroeconomic imbalances;
- Guideline 3: Reducing imbalances in the euro area;
- Guideline 4: Optimising support for research and development and for innovation, strengthening the knowledge triangle and unleashing the potential of the digital economy;
- Guideline 5: Improving resource efficiency and reducing greenhouse gases emissions;
- Guideline 6: Improving the business and consumer environment and modernising the industrial base;
- Guideline 7: Increasing labour market participation and reducing structural unemployment;
- Guideline 8: Developing a skilled workforce responding to labour market needs, promoting job quality and lifelong learning;
- Guideline 9: Improving the performance of education and training systems at all levels and increasing participation in tertiary education; and
- Guideline 10: Promoting social inclusion and combating poverty.

Guidelines 1–6 are the proposed broad economic policy guidelines, which come within the remit of the Economic and Finance Affairs Council (ECOFIN), and Guidelines 7–10 the employment policy guidelines, which come within the remit of the Employment and Social Policy Council.

9.5 The details of the first six proposed guidelines are set out in document (a), which presents a draft Recommendation to Member States for adoption by the Council. The proposed guidelines, which are annexed to the draft Recommendation, include:

**Guideline 1: Ensuring the quality and the sustainability of public finances**

- calls for Member States to “implement budgetary consolidation strategies under the Stability and Growth Pact and in particular recommendations addressed to Member States under the excessive deficit procedure, and/or in memoranda of understanding, in the case of balance-of-payments support”;
- calls for Member States, in designing and implementing budgetary consolidation strategies to favour taxes that do not harm growth and employment and, where taxes may have to rise, for this to be done in conjunction with making tax systems
more growth friendly by shifting the tax burden from labour to other tax bases and
to prioritise growth-enhancing expenditure items such as education, skills and
employability, research and development and innovation and investment in
networks (high-speed internet and transport interconnections);

• calls for Member States to strengthen national budgetary frameworks, enhance the
quality of public expenditure and improve the sustainability of public finances,
through a combination of a fast pace of debt reduction, reform of age-related
public expenditure and raising effective retirement ages;

**Guideline 2: Addressing macroeconomic imbalances**

• an argument that “Member States should avoid unsustainable macroeconomic
imbalances, arising notably from developments in current accounts, asset markets
and the balance sheets of the household and corporate sectors. Member States with
large current account imbalances rooted in a persistent lack of competitiveness or
prudential and taxation policies should address the underlying causes by acting on
fiscal policy, on wage developments, on structural reforms relating to product and
financial services markets, on labour markets, in line with the employment
guidelines, or on any other relevant policy area”;

**Guideline 3: Reducing imbalances in the euro area**

• a proposal that “Euro area Member States should regard large and persistent
divergences in current account positions and other macroeconomic imbalances as
a matter of common concern and take action to reduce the imbalances where
necessary” and that “macroeconomic imbalances should be regularly monitored
within the Eurogroup, which should propose remedial actions when needed”;

**Guideline 4: Optimising support for research and development and for
innovation, strengthening the knowledge triangle and unleashing the
potential of the digital economy**

• calls for Member States to review national (and regional) research and
development and innovation systems, so as to ensure adequate and effective public
investment and to orient them towards higher growth while addressing major
societal challenges (for example energy, resource efficiency, climate change, social
cohesion, ageing, health, and security);

• calls for Member States’ research and development and innovation policies to be
set within an EU context in order to enhance opportunities for pooling public and
private resources in areas with EU value added, exploiting synergies with EU funds
and, in line with proposed Guidelines 8 and 9, for Member States to equip people
with a broad range of skills needed for innovation in all its forms and to ensure a
sufficient supply of science, mathematics, and engineering graduates;

• a link to the EU headline target, agreed at the March 2010 European Council, and
on the basis of which Member States will set their national targets, that by 2020 3%
of the EU’s GDP should be invested in research and development and to the
proposed new indicator — still being developed — that would reflect research and
development and innovation intensity;

**Guideline 5: Improving resource efficiency and reducing greenhouse gases emissions**

- calls for Member States to decouple economic growth from resource use, turning
  environmental challenges into growth opportunities and making efficient use of
  their natural resources;

- calls for Member States to reduce emissions through making extensive use of
  market-based instruments, including taxation, to support green growth and jobs;

- a link to the EU headline targets, agreed at the March 2010 European Council, and
  on the basis of which Member States will set their national targets, to reduce by
  2020 greenhouse gases emissions by at least 20% compared to 1990 levels or by
  30%, if the conditions are right, to increase the share of renewable energy sources
  in final energy consumption to 20% and to increase energy efficiency by 20%;

**Guideline 6: Improving the business and consumer environment and modernising the industrial base**

- calls for Member States to put in place predictable framework conditions and
  ensure well-functioning, open, and competitive goods and services markets,
  particularly through fostering single market integration and effective
  implementation and enforcement of single market and competition rules and
  developing the necessary physical infrastructure; and

- calls for Member States to support small and medium-sized enterprises, and a
  modern, diversified, competitive, resource- and energy-efficient industrial base,
  partly by facilitating any necessary restructuring in full compliance with EU
  competition rules and other relevant rules.

9.6 The details of the four proposed employment guidelines are set out in document (b),
which presents a draft Decision for adoption, after consultation with the European
Parliament, by the Council. The Decision would require Member States to take account of
the guidelines in their employment policies. Illustrative examples of what is suggested in
the guidelines are:

- for Guideline 7: Increasing labour market participation and reducing structural
  unemployment — making full use of “flexicurity,” reviewing tax and social
  security systems to remove obstacles to employment and disincentives to take paid
  work and ensuring the provision of care for children and other dependents;

- for Guideline 8: Developing a skilled workforce responding to labour market
  needs, promoting job quality and lifelong learning — promoting education and

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44 Flexicurity means flexible employment contracts combined with life-long learning, policies to encourage and
support labour mobility, help to find secure jobs and social security systems which cushions people against
unemployment caused by, for example, globalisation.
training to improve productivity and employability and to equip people with the knowledge and skills needed to meet employers’ changing demands;

- Guideline 9: Improving the performance of education and training systems at all levels and increasing participation in tertiary education — taking action to reduce the number of children who leave school prematurely, to improve the accessibility and relevance of education and training and to develop partnerships between training and work; and

- Guideline 10: Promoting social inclusion and combating poverty — improving employment opportunities, ensuring equal opportunities, removing unfair discrimination in employment and making full use of the European Social Fund.

9.7 The draft Council Recommendation, document (a), was agreed by ECOFIN on 8 June 2010. The draft Council Decision, document (b), was agreed by the Employment, Social Policy, Health and Consumer Affairs Council on 7 June 2010. Both documents were considered by the European Council on 17–18 June 2010 with subsequent further consideration by the appropriate functional Councils — that is adoption of the draft Recommendation, on 13 July 2010, and further consideration of the draft Decision after consultation with the European Parliament, possibly in September 2010.

The Government’s view

9.8 In his Explanatory Memorandum about the draft Recommendation, document (a), the Commercial Secretary to the Treasury (Lord Sassoon) first says that during the negotiations the approach of the Government has been to seek to ensure that surveillance of Member States’ policies in line with these guidelines does not expand or alter the competencies set out in the Treaties. He continues that:

- the Government welcomes the Commission’s proposals as a useful starting point for the negotiations on the broad economic policy guidelines, including their narrower focus than under the current Lisbon Strategy (which had 24 guidelines); and

- the economic and financial crisis has severely impacted on Europe’s growth prospects, and it is critical that the EU and its Member States undertake the structural reforms needed to promote growth in Europe.

9.9 The Minister tells us that during the negotiations on the broad economic policy guidelines, the Government’s approach has been to seek to amend the broad economic policy guidelines, so that they:

- highlight the action needed to promote growth in Europe and its Member States;

- are consistent with the objectives as set out by the Government in its Coalition Agreement;

- respect the principles of subsidiarity, including with respect to education policy;

- fully respect the integrity of the Stability and Growth Pact; and
do not prejudice negotiations on the EU budget review and future EU budgets.

He says that the Government has been pleased at the direction that these negotiations have taken the broad economic policy guidelines in, for example:

- tempering the language on the composition of national expenditure and revenue to make it less prescriptive (Guideline 1);
- removing language that could have prejudiced negotiations on the EU budget review and future EU budgets (all Guidelines);
- material on addressing macroeconomic imbalances (Guidelines 2 and 3);
- adding references to EU level action to complement Member State action to improve resource efficiency and reduce greenhouse gases (Guideline 5); and
- the inclusion of positive material on the single market and administrative burdens (Guideline 6).

9.10 The Minister reports that:

- at ECOFIN on 8 June 2010 the broad economic policy guidelines were agreed under qualified majority voting, with a UK abstention;
- the Government issued a Minute Statement at that meeting, which read “The United Kingdom abstention on the Broad Economic Policy Guidelines (BEPGs) reflects a parliamentary scrutiny reservation on this item. The United Kingdom is also reviewing the language and implications of the education elements in the innovation guideline of the BEPGs and reserves the right to return to the issue”;
- the specific text on education (at the end of the second paragraph of Guideline 4 on innovation) reads “In line with guidelines 8 and 9, Member States should equip people with a broad range of skills needed for innovation in all its forms, including eco-innovation, and should seek to ensure a sufficient supply of science, mathematics and technology graduates”; and
- the Government is considering the implications of this language and whether it could give rise to detailed recommendations on UK education policy.

9.11 In his letter the Minister says the broad economic policy guidelines, document (a), were politically endorsed at the European Council on 17 June 2010 and were formally adopted by the ECOFIN Council on 13 July 2010. He says that the Government at this meeting signalled agreement for the broad economic policy guidelines, overriding scrutiny in this House, that he regrets that as we had not been appointed we did not have the opportunity to complete scrutiny on this document, but that it was important for the UK to play an active role on this important issue at the EU level.

9.12 The Minister also tells us, in relation to the Government’s review of the language and implications of the education elements in the earlier draft of the broad economic policy...
guidelines, that the European Council was clear in politically endorsing them that any
recommendations following the guidelines “shall be fully in line with relevant Treaty
provisions and EU rules and shall not alter Member States’ competences, for example in
areas such as education.”

9.13 The Minister concludes that the Government welcomes the adoption of the broad
economic policy guidelines as an important part of the Europe 2020 strategy and wider EU
economic governance framework, which can contribute towards EU economic recovery.

9.14 On the draft Council Decision, document (b), the Minister of State for Employment,
Department for Work and Pensions (Chris Grayling) says that the employment policy
guidelines are not binding on the UK, but adds that if the Council were to make any
recommendations after considering the UK’s annual employment report, the Government
would consider them. The Minister tells us that the guidelines were agreed at the
Employment, Social Policy, Health and Consumer Affairs Council on 7 June 2010, but that
the Government abstained pending its consideration of the whole Europe 2020 Strategy
package.

Conclusion

9.15 The potential impact of the integrated guidelines for the Europe 2020 Strategy and
for EU commentary on Government policies is important. We think the Government
should be examined about that potential in a debate in European Committee B and so
recommend such a debate on the two documents.

9.16 However, before that debate takes place we should like a comment from the
Government on two points, related to the employment guidelines, document (b). We
note that these guidelines, which Member States “shall take into account in their
employment policies” under Article 148(2) TFEU, are adopted on the basis of a legally
binding Council Decision, whereas the economic guidelines are adopted on the basis of
a non-legally binding Council Recommendation. We would be grateful if the Minister
could explain to us the thinking behind why the employment guidelines are adopted by
a Decision and not a Recommendation, and whether this affects their legal status in the
Member States. On this note we see that, under guideline 8, Member States are told that
“[q]uality initial education and attractive vocational training must be complemented
with effective incentives for lifelong learning, second-chance opportunities, ensuring
every adult the chance to move one step up in their qualification, and by targeted
migration and integration policies”. If these are indeed guidelines, we think this
recommendation should have been expressed in terms of “should” rather than “must”.

9.17 Secondly, we also ask the Minister whether, in his view, the Decision adopting the
employment guidelines falls within the definition of a “legislative act” under the TFEU.
If it does the subsidiarity early warning mechanism in Protocol 2 would apply, meaning
that the House could submit a “reasoned opinion” to the Commission if it thought that
the proposal did not comply with the principle of subsidiarity. As the excerpt from the
guidelines above shows, this is a policy field in which the Commission is making

detailed recommendations; but it is also one where competence is shared with the Member States. So the principle of subsidiarity is particularly important. We think that the draft Decision is a legislative act because the Council adopts the Decision after the “participation” — in this case consultation — with the European Parliament: so the procedure comes within the generic definition of a “special legislative procedure” in Article 289(2) TFEU. However, doubt arises because the legal base does not state in terms that it is a special legislative procedure. In correspondence with us, the previous Government took the view that, where a legal base in the TFEU does not state that it is an ordinary or special legislative procedure, the act adopted is always non-legislative rather than legislative, irrespective of the participation of the European Parliament. Were that interpretation to be right, the House could not have invoked the subsidiarity early warning mechanism on this proposal.

10 European Heritage Label

Draft Decision to establish a European Union action for the European Heritage Label
Commission staff working documents: impact assessment and summary of assessment

Legal base Article 167 TFEU; co-decision; QMV
Document originated 9 March 2010
Deposited in Parliament 15 March 2010
Department Culture, Media and Sport
Basis of consideration EM of 31 March 2010
Previous Committee Report None
To be discussed in Council No date set
Committee’s assessment Politically important
Committee’s decision Not cleared; further information requested

Background

10.1 The concept of a European Heritage Label (EHL) is not new. In 2006, France, Hungary and Spain made an inter-governmental agreement to introduce an EHL to “strengthen the support of European citizens for a shared European identity and foster a sense of belonging to a common cultural space”. Since 2007, 64 sites in 17 Member States and in Switzerland have been awarded the label.

10.2 In November 2008, the Council invited the Commission to make a proposal for the creation of an EU European Heritage Label, transforming the existing inter-governmental agreement into an EU initiative. In 2009, the Commission issued a consultation paper on
the idea. The then Minister for Culture and Tourism (Barbara Follett) wrote to our predecessors about the consultation paper and enclosed a copy of the Government’s response to it. In a nutshell, the Government said that the UK had 27 UNESCO World Heritage Sites and was trying to reduce the number of heritage designations. It doubted the justification for creating another designation scheme.

10.3 Article 167 of the Treaty on the Functioning of the European Union (TFEU) requires the EU to contribute to “the flowering of the cultures of the Member States […] at the same time bringing the common cultural heritage to the fore”. The Article provides that EU action should support and supplement the efforts of Member States to improve and disseminate the culture and history of the European peoples. It gives the Council and the European Parliament power to adopt incentive measures to contribute to the achievement of the Article’s objectives.

The document

10.4 The Commission proposes this draft Decision in response to the Council’s invitation. Article 3 provides that the objectives of the EU EHL would be to:

- strengthen EU citizen’s sense of belonging to the EU;
- strengthen inter-cultural dialogue, especially between young people;
- increase public awareness of sites which have played an important part in the history of the EU;47
- increase EU citizen’s — and particularly young people’s — understanding of the development of Europe and their common but diverse cultural heritage;
- develop the European significance of sites;
- facilitate sharing of experience and best practice;
- increase public access to sites; and
- contribute to the attractiveness and sustainable development of the regions where sites are located.

10.5 Article 4 provides that participation in the EU EHL scheme would be open to all Member States and entirely voluntary.

10.6 Article 7 provides that:

- applicants for the award of an EU EHL would have to satisfy the specific criteria set out in the Article (demonstrate, for example, that the site is of more than national interest or has links with important European events or personalities);

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47 Article 2 of the draft Decision defines sites as “monuments, natural or urban sites, cultural landscapes, places of remembrance, cultural goods and objects, intangible heritage attached to a place, including contemporary heritage”.
applicants would also have to produce a statement showing how they would organise and run the project (so as, for example, to promote multilingualism by using several EU languages); and

in addition, applicants would have to produce a management plan showing how they would, for example, ensure access to the site by the widest range of people, provide visitor information and protect the environment.

10.7 Article 8 provides for the appointment of an independent European panel to select sites to receive an EHL. The panel would have 12 members who are expert in European history, culture or other relevant matters. Four would be appointed by the Council, four by the Commission and four by the European Parliament. Their term of office would be three years.

10.8 Article 10 gives participating Member States responsibility for “pre-selection”: that is, for deciding which applications for the award of an EU EHL to a site in the participating State’s territory should go forward for consideration by the European selection panel. The State could not pre-select more than two sites a year.

10.9 Under Article 11, the European selection panel would be required to evaluate all the pre-selected sites and, using the criteria listed in Article 7, recommends no more than one site from each participating Member State for the award of the EU EHL. Article 13 gives the Commission responsibility for making the award to the sites recommended by the panel. The Label is permanent unless the panel recommends its withdrawal because the site no longer satisfies the criteria for the EU EHL.

10.10 Article 17 gives the Commission responsibility for ensuring that there is an independent and external evaluation of the EU EHL scheme every six years and for reporting the findings to the Council and the European Parliament.

10.11 Article 19 allocates the scheme a budget of €1,350,000 for the three years from the beginning of 2011 until the end of 2013.

The Government’s view

10.12 In her Explanatory Memorandum of 31 March 2010, the then Minister for Culture and Tourism (Margaret Hodge) said that the Government retained its doubts about the need for an EU EHL scheme (see paragraph 10.2 above). In its view, the UNESCO World Heritage List is sufficient for designating supra-national significance. Moreover, the Government believed that there is a risk that, over time, the complexity and burden of managing an EU EHL scheme would grow.

10.13 The Minister said that, at present, the Government considered that the UK should not take part in the scheme. Even so, the Government would try to ensure, during the negotiations on the draft Directive, that the burdens and obligations placed on Member States and the owners and managers of heritage sites are minimised.
Conclusion

10.14 We share the Government’s view that an EU Heritage Label scheme should be created only if there is a strong justification for it. We also share its doubts that the case has been made. It is clear, however, that many other Member States value the current inter-governmental scheme. So there may be wide support for the draft Decision. We agree with the Government that it is vital that participation in the EU scheme should be entirely voluntary.

10.15 The negotiations on the draft Decision are still at an early stage. We should be grateful, therefore, if the Minister would send us progress reports on the negotiations. Meanwhile, we shall keep the document under scrutiny.

11 Cultivation of genetically modified crops

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<tr>
<th>(a)</th>
<th>Commission Communication on the freedom for Member States to decide on the cultivation of genetically modified crops</th>
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<tbody>
<tr>
<td>(31798)</td>
<td>COM(10) 380</td>
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<td>12371/10</td>
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<tr>
<th>(b)</th>
<th>Commission Recommendation on guidelines for the development of national co-existence measures to avoid the unintended presence of GMOs in conventional and organic crops</th>
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<tbody>
<tr>
<td>(31799)</td>
<td>C(10) 4822</td>
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<tr>
<th>(c)</th>
<th>Draft Regulation amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of GMOS in their territory</th>
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<tbody>
<tr>
<td>(31800)</td>
<td>COM(10) 375</td>
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Legal base: Article 144 TFEU; co-decision; QMV
Documents originated: 13 July 2010
Deposited in Parliament: 16 July 2010
Department: Environment, Food and Rural Affairs
Basis of consideration: EM of 19 July 2010
Previous Committee Report: None
To be discussed in Council: No date set
Committee’s assessment: Politically import
Committee’s decision: Not cleared; further information awaited
Background

11.1 Authorisation of the cultivation and use of genetically modified organisms (GMOs), and of food and feed products containing them, is laid down in EU legislation. More specifically, Directive 2001/18/EC\(^{48}\) deals with the environmental release of GMOs, whilst Regulation (EC) No 1829/2003\(^{49}\) governs the marketing of related products, and Regulation (EC) No 1830/2003\(^{50}\) sets out rules on their traceability and marketing. Requests for approval are assessed by the European Food Safety Authority (EFSA) and by the scientific authorities in Member States in order to consider any risks to human and animal health and the environment, and, where formal approval has been granted (following a legislative proposal from the Commission), the provisions apply throughout the EU. However, Directive 2001/18/EC does enable Member States to take safeguard measures to prohibit or restrict the cultivation of GMOs on their territory if they can produce new evidence to demonstrate that an approved product presents a risk, and a number have chosen to do so from time to time (though in each case the Commission has sought — unsuccessfully — to persuade the Council to repeal the measures on the grounds scientific assessment had shown that no evidence had been produced to support the course of action taken). Directive 2001/18/EC also enables a Member State to take measures to avoid the unintended presence of GMOs in other products.

The current documents

11.2 Despite this, concerns have been expressed by the Council over the way in which this legislation has been implemented, and some Member States subsequently called on the Commission to prepare proposals to give them freedom to decide whether GMOs should be cultivated on their territory, whilst retaining an EU system based on science. As a result, and in the light of the political guidelines issued by President Barroso in September 2009 on the application of the subsidiarity principle to this area, the Commission has now brought forward these three documents — (a) a background Communication, (b) guidelines for the development of national co-existence measures to avoid the unintended presence of GMOs in conventional and organic crops, and (c) a draft Regulation which would amend Directive 2001/18/EC to provide a greater measure of national discretion as regards the cultivation of GMOs.

11.3 In considering whether there should be greater flexibility in this area, the Commission says that it has always considered that measures to avoid the unintended presence of GMOs in conventional and organic crops should be developed and implemented by Member States, and that it published in 2003 a Recommendation (2003/556/EC)\(^{51}\) providing guidelines for the development of national strategies to ensure co-existence between GM and other crops, so as to avoid the potential economic impact of admixture, particularly in the case of organic crops where an associated price premium could be put at risk. At the same time, it comments on the extent to which Member States have adopted different aims and approaches regarding the permitted level of unintended GMOs in other

\(^{48}\) OJ No. L.106, 14.4.02, p.1.
\(^{49}\) OJ No. L.268, 18.10.03, p.1.
\(^{50}\) OJ No. L.268, 18.10.03, p.24.
\(^{51}\) OJ No. L.189, 29.7.03, p.36.
crops, and it says that it would be appropriate to replace its 2003 Recommendation with a new one (document (c)) reflecting the experience gained and incorporating greater flexibility. Among other things, this would address transparency, cross-border cooperation and stakeholder involvement; proportionality; the level of admixture to be attained through national co-existence measures; the establishment of larger “GM-free areas”; and liability rules.

11.4 The Commission then considers the case for providing Member States with greater freedom to regulate the cultivation of GM crops on their territory. It suggests that, although the existing EU-wide authorisation system is based upon a scientific risk assessment, it is possible in principle for such an assessment to differentiate between regions, and it says that, if it is then concluded that the cultivation of a GMO raises particular regional concerns, these must be addressed in the EU authorisation, including restrictions or prohibitions, if these can be scientifically justified. At the same time, it notes that there are a number of other diverse reasons why Member States impose a ban — varying from agronomic (and land use) justifications relating to difficulties of ensuring co-existence, to political or economic considerations (including consumer preference), and to national policies on biodiversity (or other broad nature conservation goals) — but that the current legislative framework does not provide them with the necessary freedom to take these into account.

11.5 It therefore believes that the relevant EU legislation on GMOs should be amended to provide an explicit legal base authorising Member States to restrict or prohibit the cultivation of all or particular authorised GMOs in part or all of their territories on the basis of their specific conditions (though it stresses that this would not apply to the movement within the EU of GM seed, of food and feed produced from GM crops, or of imported material, which would remain subject to EU-wide rules relating to their free circulation). It also stresses that, since the conditions which seek to protect human and animal health and the environment are based on the assessment made by the EU in granting an authorisation, these cannot be amended. Consequently, any discretion exercised by Member States as regards cultivation would have to rest on other grounds, and would also need to conform both to the provisions in the Treaties, notably as regards non-discrimination on national grounds and the free movement of goods, and to the EU’s international obligations, such as those under the World Trade Organisation.

11.6 The Commission adds that, in addition to these measures, it is analysing how to reinforce post-market environmental monitoring of GM crops, and is addressing a request from the Council to provide a report on the socio-economic implications of GMOs (which it will seek to finalise by the end of 2010), whilst the EFSA is updating its guidelines on environmental risk assessment. The Commission has also launched two major evaluations of the EU legislative framework, covering respectively GM food and feed and the cultivation of GMOs, which will be finalised in the last quarter of 2010, and followed by an analysis of possible policy changes by mid-2012.

The Government’s view

11.7 In his Explanatory Memorandum of 19 July 2010, the Parliamentary Under-Secretary at the Department for Environment, Food & Rural Affairs (Lord Henly) notes that the
This is an interesting proposal, and a somewhat unusual one, in that it seeks to return to Member States certain powers in relation to the cultivation of GM crops which are currently exercised by the EU. To that extent, it is of course consistent with the principles of subsidiarity, and thus to be welcomed in principle. On the other hand, the UK in particular has consistently placed considerable emphasis on the need for decisions of the kind involved here to be taken with strict regard to scientific assessment, and, if that approach is not to be undermined in a way which could set an unfortunate precedent for other areas, it will be important to be quite clear on what basis Member States would in this instance be free to take their own decisions. In our view, the Commission’s proposal leaves some room for doubt on this point, and we would therefore be glad if the further material which the Minister has promised to provide could address this particular concern.

Pending receipt of this further information, we propose to hold these documents under scrutiny, but in the meantime, we are drawing them to the attention of the House.
Background

12.1 In 1996 the EU adopted Guidelines for the development of a Trans-European Transport Network (TEN-T) — defined as road, rail, inland waterways, motorways of the sea, seaports, inland waterway ports, airports and traffic management and navigation systems. The Guidelines provided that the TEN-T, should be a single multimodal network, with corridors of common interest and integration of land, sea and air transport infrastructure networks. They identified 14 priority axes deemed to be of European significance in supporting trans-national trade and cohesion. In 2004 the Guidelines were revised — changes made included:

- extension of the deadline for completing the TEN-T to 2020;
- extension of priority axes from 14 to 30 (the United Kingdom is involved in five of these); and
- the possibility of coordinators (termed European coordinators) to be appointed for cross-border priority axes.

12.2 Responsibility for implementing the network rests with Member States. TEN-T projects are mainly financed by them and to a lesser extent by private investors. The EU also provides support, primarily through instruments adopted under the Trans-European Networks Finance Regulation, as well as from the Cohesion and European Regional Development Funds, and other non-financial instruments, such as coordination initiatives.

12.3 In February 2009 the Commission published a Green Paper with which it sought to open a debate questioning not only whether the objectives of the 2004 Guidelines had been achieved, but whether or not those objectives were still sufficient to meet future TEN-T challenges. The Commission published the responses to the Green Paper in July 2009 and set up a number of working groups involving external experts to develop the policy review.

The document

12.4 The expert working groups have reported to the Commission and on the basis of these reports the Commission has launched a further consultation in this Working Document. This consultation focuses on three main areas:

- methodology for TEN-T planning — this develops thinking on a dual layer planning approach, involving a core network of nodes and links of the highest strategic and economic importance covering all modes of transport as the top layer. Underlying this will be a comprehensive network based on the current network but enhanced to take account of changes in national planning, including missing links and nodes, and removing dead ends;

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• TEN-T implementation — this looks at how to make the TEN-T policy more effective by having a more coherent approach to network planning and the available means for implementing the network. It also considers prioritising funding for projects with the highest European value and developing the role of the European coordinators to improve delivery of complex cross border projects; and

• the legal and institutional framework of the TEN-T policy review — this looks at ways of improving the legislative and institutional framework to deliver the policy more effectively.

The Commission calls for responses by 15 September 2010.

The Government’s view

12.5 The Minister of State, Department for Transport (Mrs Theresa Villiers), noting that the consultation is not a proposal for legislation, says that there are no policy implications at this stage. She continues that the Government is still formulating its position on the latest stage of the Policy Review, in order to respond by the consultation deadline. But she comments that whilst the proposed methodology is more complicated than recommended in the UK’s initial response it could still deliver a more effective and focussed programme that will deliver benefits to Europe as a whole.

Conclusion

12.6 The future direction of the TEN-T policy, and associated legislation and finance, is important and we will wish to scrutinise in due course the outcome of the Commission’s consultations. Meanwhile before considering further this present document, which remains under scrutiny, we wish to see the Government's response to it.
13 Quality and safety of human organs for transplantation

<table>
<thead>
<tr>
<th>(a)</th>
<th>(30265)</th>
<th>Draft Directive on standards of quality and safety of human organs intended for transplantation</th>
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<tr>
<td>16521/08 COM(08) 818</td>
<td>+ ADDs 1–2</td>
<td>Commission staff working documents: impact assessment and summary of assessment</td>
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<td>(b)</td>
<td>(30266)</td>
<td>Commission Communication: Action Plan on Organ Transplantation (2009–15): Strengthened cooperation between Member States</td>
</tr>
<tr>
<td>16545/08 COM(08) 819</td>
<td>+ ADDs 1–2</td>
<td>Commission staff working documents: impact assessment and summary of assessment</td>
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**Legal base**
- (a) Article 168(4)(a) TFEU; co-decision; QMV
- (b) —

**Department**
- Health

**Basis of consideration**
- Minister’s letter of 28 June 2010

**Previous Committee Report**
- HC 19–iii (2008–09), chapter 5 (14 January 2009); HC 19–vii (2008–09), chapter 6 (25 February 2009);
- HC 19–xii (2008–09), chapter 5 (22 April 2009); and

**To be discussed in Council**
- 28 June 2010

**Committee’s assessment**
- Politically important

**Committee’s decision**
- (a) Cleared.
- (b) Not cleared; further information requested

**Background**

13.1 Article 168(1) of the Treaty on the Functioning of the European Union (TFEU) provides that action by the EU on public health should complement national policies and be directed to the improvement of public health and the prevention of illness and disease. Article 168(2) requires the EU to encourage cooperation between Member States to improve public health. Article 168(4)(a) authorises the Council to adopt measures setting standards of quality and safety for human organs, blood and other substances of human origin. Article 168(7) requires EU action to pay full respect to the responsibilities of the Member States for the organisation and delivery of health services and medical care and says that measures adopted under Article 168(4)(a) “shall not affect national provisions on the donation or medical use of organs”.
13.2 Similar provision was made in Article 152 of the EC Treaty; in particular, Article 168(4)(a) and Article 168(7) TFEU are word for word the same as Article 152(4)(a) and Article 152(5) of the EC Treaty.

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

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

13.4 The draft Directive (document (a)) and the proposed Action Plan (document (b)) are the documents the Commission had advocated in the Communication.

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

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

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

13.7 In December 2008, the then Minister of State at the Department of Health (Dawn Primarolo) told the previous Committee that the Government supported the proposed Directive but would argue strongly that the common standards should be kept to the minimum necessary to ensure safety and quality, should not be excessively bureaucratic and should not impose requirements beyond those which were clinically justified.

13.8 In the Conclusion to its report of 14 January 2009, the previous Committee noted that the Commission had cited Article 152(4)(a) of the EC Treaty as the legal base for the draft Directive and that Article 152(5) expressly said that the measures referred to in Article 152(4)(a) “shall not affect national provisions on the donation of or medical use of...”

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organs”. The Human Tissue Act 2004 and the Human Tissues (Scotland) Act 2006 make national provision on those matters. It was not readily apparent to the previous Committee, therefore, that the draft Directive complied with Article 152(5).

13.9 In the course of the subsequent Council negotiations, amendments were made to the draft Directive which satisfied the previous Committee that the measure would be compliant with Article 152(5) EC (and now Article 168(7) TFEU).57

The Minister’s letter of 28 June 2010

13.10 In her letter of 28 June, the Parliamentary Under-Secretary of State for Public Health at the Department of Health (Anne Milton) tells us that the Council and the European Parliament have reached a First Reading deal on the Directive.

13.11 The Minister also tells us that the vast majority of the UK’s negotiating aims have been achieved. For example:

- the draft Directive has been amended to permit national competent authorities to delegate their functions or to be assisted by other bodies (this will permit existing organisations in the UK — such as NHS Blood and Transplant — to perform some of the competent authority’s key functions);

- the draft Directive has also been amended to give Member States discretion to maintain protective requirements which are more stringent than the minimum standards set out in the Directive’s Technical Annex;

- provision has been introduced to allow medical teams, on the basis of a risk analysis, to proceed with transplants even if not all the information required by the Directive has been received; and

- the Commission’s delegated powers to make subordinate legislation have been reduced.

13.12 The Minister says that she hopes that the Committee will understand that, because the UK has achieved most of its negotiating aims, the Government intends to take part in the adoption of the Directive even though it is still under scrutiny.58

Conclusion

13.13 In the circumstances the Minister describes, we accept that it was reasonable for the Government to give its agreement to the adoption of the Directive. Accordingly, we clear the Directive from scrutiny. But we ask the Minister to send us progress reports on the consideration of the Action Plan; meanwhile, we shall keep document (b) under scrutiny.

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58 The Council adopted the Decision on 28 June with the Government’s agreement.
14 Iceland’s application for membership of the European Union

Commission Communication: Commission Opinion on Iceland's application for membership of the European Union

Legal base: Article 49 TEU; unanimity
Department: Foreign and Commonwealth Office
Basis of consideration: Minister’s letter of 22 July 2010
Previous Committee Report: HC5–xv (2009–10), chapter 3 (24 March 2010); also see (31101) 15367/10: HC 5–xii (2009–10), chapter 2 (3 March 2010)
Discussed in Council: 26 July 2010 Foreign Affairs Council
Committee’s assessment: Politically important
Committee’s decision: Not cleared; further information requested

Background

14.1 Article 49 TEU states that:

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

14.2 Article 2 states that:

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

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

— that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
— the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union; and

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

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

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

The Commission Opinion


14.7 The Opinion recommends opening accession negotiations.

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

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

The previous Government’s view

14.10 In his Explanatory Memorandum of 18 March 2010, the then Minister for Europe (Chris Bryant) noted that, as Iceland was already a member of the EEA, the Opinion had been split into three sections: Chapters covered by the EEA, Chapters partially covered by the EEA, and Chapters not covered by the EEA.

14.11 He said that the then Government welcomed the Commission’s Opinion of Iceland and fully supported Iceland’s EU membership application. His comments on the Opinion are set out in the previous Committee’s Report of 24 March 2010. He noted that certain chapters covered areas of the acquis which were of significance to UK policy, and/or which he felt might require particular attention in accession negotiations. In particular, he noted:
“Chapter 9 — Financial services is covered by the European Economic Area (EEA) Agreement. Iceland is already a member of the EEA. The Commission assesses that Iceland generally applies the acquis on financial services but that some improvements are necessary in order to fully implement the acquis, in particular. Iceland must address the weaknesses in its financial supervisory system and the deposit guarantee scheme at an early stage. The Government has made clear that it is essential for Iceland to meet its international obligations, including those under the Deposit Guarantee Directive which is part of its obligations under the EEA agreement.

“As the Committee will be aware, on 6 March Icelanders voted ‘No’ in the referendum on the Icesave loan bill agreed by the Icelandic government in December 2009. We hope further talks with Iceland on this issue will resume soon. A satisfactory resolution of the Icesave issue is necessary to rebuild the confidence of the international financial community, aid the recovery of the Icelandic economy and enable Iceland to meet the criteria and obligations for EU membership.”

14.12 The then Minister concluded his Explanatory Memorandum by noting that: at the time of writing, EU Member States were considering the Opinion; the issue was not on the agenda for the Spring European Council; and it was not yet clear when the Presidency would bring this issue to the Council for a decision.

The previous Committee’s assessment

14.13 The previous Committee noted that the then Minister had made no mention in his Explanatory Memorandum of the European Parliament, and thus of the meeting on 8 March 2010 — the day after the referendum — between its Foreign Affairs Committee and Štefan Füle, Commissioner for Enlargement and European Neighbourhood policy, on the Commission Opinion. At that meeting, the Commissioner had said that the outcome of the referendum should not hinder the accession process as this was a bilateral matter between Iceland, the Netherlands and the UK; the European Parliament’s rapporteur and others, including the chair of the Parliament’s delegation to Switzerland, Iceland and Norway and the EEA, agreed that Iceland, the Netherlands and the UK needed to resolve it by themselves and that it should not affect the accession process.

14.14 The previous Committee made it clear that it mentioned this, not to take issue with the then Government’s position, but rather to illustrate that there were different, important views about the relevance of the Icesave issue in this context.

14.15 The Minister having said that there was no imminent prospect of the Opinion being put to the Council or European Council, the previous Committee retained the Communication under scrutiny until the then Minister was in a position to write with a clear timetable and an explanation of what had changed in the interim, to include what he knew of the then views of the Commissioner and of the European Parliament.

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

The then Minister’s letter of 31 March 2010

14.16 The then Minister’s immediate response added nothing to what he had said in his Explanatory Memorandum, other than to say that “at the time of writing the UK is waiting for a new proposal from Iceland for the finalisation of the Icesave loan agreement”. He concluded by undertaking, “as requested [to] keep the Committee informed of the progress of Iceland’s membership application”.

The Minister for Europe’s letter of 22 July 2010

14.17 In his letter, the Minister for Europe (David Lidington) says that the EU Negotiating Framework for Iceland (which he encloses with his letter) is expected to be agreed at the General Affairs Council on 26 July, and that practical negotiations would then be launched at a first formal Ministerial level meeting with Iceland on 27 July. He recalls that the EU agrees a Negotiating Framework for each country aspiring to join the EU, establishing the general guidelines for the accession negotiations and identifying in broad terms the reforms and adaptations that the candidate country must undertake to join the EU. He continues as follows:

“The Negotiating Framework for Iceland is similar to those drafted for previous EU candidate countries. Of particular note is that the UK has successfully lobbied to include language building on the European Council Conclusions of 17 June that makes clear that the pace of the negotiations will depend on Iceland fulfilling its obligations under the European Economic Area Agreement. This includes fulfilling its obligations under the Deposit Guarantee Directive. In its letter of 26 May, the EFTA Surveillance Authority made clear that in order to bring itself into compliance with this EU Directive Iceland would need to reach agreement with the UK and Netherlands on repayment of the Icesave loan (worth £2.3bn).

“The relevant extract of the Negotiating Framework reads:

“The advancement of the negotiations will be guided by Iceland’s progress in preparing for accession, within a framework of economic and social convergence. This progress will be measured in particular against the following requirements:

“The fulfilment of Iceland’s obligations under the European Economic Area Agreement, taking full account, inter alia, of the European Council conclusions of 17 June 2010, the Agreement associating Iceland with the implementation, application, and development of the Schengen acquis, as well as Iceland’s progress in addressing other areas of weakness identified in the Commission’s Opinion.”61

“This language should enable the UK to negotiate more detailed criteria requiring Iceland to address its breach of the EU Deposit Guarantee Directive at an early stage.”

61 The Minister’s italics.
14.18 The Minister concludes his letter by undertaking to keep the Committee informed of the progress of Iceland’s accession negotiations.

14.19 The European Council Conclusions to which the Minister refers say:

“The European Council welcomes the Commission opinion on Iceland’s application for membership of the EU and the recommendation that accession negotiations should be opened. Having considered the application on the basis of the opinion and its December 2006 conclusions on the renewed consensus for enlargement, it notes that Iceland meets the political criteria set by the Copenhagen European Council in 1993 and decides that accession negotiations should be opened.”

14.20 The 26 July 2010 General Affairs Council Conclusions say:

“Referring to the conclusions adopted by the European Council on 17 June 2010, the Council adopted the general EU position, including the negotiating framework, with a view to the opening of accession negotiations with Iceland. The Council is accordingly looking forward to the opening session of the Intergovernmental Conference on 27 July 2010.”

14.21 On the basis of the positions of the Parties, the first meeting, on 27 July 2010, of the Accession Conference with Iceland at Ministerial level decided the opening of the Intergovernmental Conference (IGC) on the Accession of Iceland to the European Union, following the decision of the European Council of 17 June that accession negotiations should be opened.

Conclusion

14.22 Quite a lot would appear to have changed since the then Minister for Europe’s 18 March Explanatory Memorandum and 31 March letter to the previous Committee, when he said that it was not yet clear when the Presidency would bring this issue to the Council for a decision, and that the then Government was waiting for a new proposal from Iceland for the finalisation of the Icesave loan agreement. Despite assurances that the Committee would be kept informed of the progress of Iceland’s membership application, nothing has been received until now. We should therefore be grateful if the Minister would explain what has transpired since the end of March that has persuaded the Government to agree to the Opinion being adopted and negotiations to begin.

14.23 Only time will tell whether the Minister’s analysis of a linkage between the Icesave issue and progress in Iceland’s accession negotiations comes to pass. For now, we note only that there is no mention of this or of obligations under the Deposit Guarantee Directive in the detailed statement issued after the Accession Conference, which otherwise specifies a number of areas in which Iceland will need to make serious efforts in order to meet the accession criteria.62

14.24 In the meantime we shall continue to retain the document under scrutiny.

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15 Control of the Commission’s implementing powers

Article 202 of the EC Treaty included provision for the Council to confer on the Commission power to make rules for the implementation of legislation adopted by the Council. In exercising the powers, the Commission is assisted by committees comprised of representatives of the Member States. The committees are of four kinds:

- **Advisory** for uncontroversial technical measures. A committee of representatives of the Member States gives its opinion on the Commission’s proposal for the legislation. The Commission was not bound by the views of the committee and may adopt a measure against the opinion of the majority of the members.

- **Management** for measures of a primarily management nature, such as the rules for the administration of big spending programmes. The Commission chairs a committee of the representatives of the Member States. The Committee considers the Commission’s proposal and votes on it by QMV. If a qualified majority does not support the proposal, the Council may take a decision disagreeing with the Commission’s proposal.

- **Regulatory** for measures to update or modify substantive provisions of the parent legislation because, for example, circumstances have changed. The procedure is used for delegated legislation on matters such as the health or safety of humans, animals and plants. The Commission chairs a committee of representatives of the Member States. If a qualified majority of the committee supports the proposal, the Commission adopts it. If the committee does not support it, the Commission is required to submit the proposal to the Council and inform the European Parliament (EP). If the EP concludes that the proposal exceeds the Commission’s delegated powers, it is required to tell the Council. If the Council opposes the proposal, the Commission is required to re-examine it and resubmit the proposal or amend it or propose new primary legislation.
**Regulatory with scrutiny** was introduced to deal with proposals for the adoption of “measures of general scope designed to amend non-essential elements” of the parent co-decided legislation. The Commission refers its proposal for such an act to a committee comprised of representatives of the Member States and chaired by the Commission. If the committee supports the proposal, the Commission is required to submit the draft to the Council and the EP. If the EP or the Council opposes the draft, the Commission is prohibited from adopting it. If neither the EP nor the Council opposes the measure, the Commission may adopt it. If the committee opposes the draft, the Commission is required to send it to the Council and the EP. If the Council opposes the draft, the Commission may not adopt it. If the Council is minded to agree with the proposal, it is required to send the draft to the EP. If the EP does not oppose it, the Commission may adopt it. If the EP opposes it, the measure falls.

15.2 The Treaty on the Functioning of the European Union contains provisions for procedures which will replace the present comitology procedure.

15.3 Article 290(1) TFEU provides that the legal base for any legislative act may include provision for the delegation to the Commission of power to adopt non-legislative acts of a general nature to supplement or amend non-essential elements of the legislative act.

15.4 Article 290(2) provides that the legislative act which delegates power to the Commission may include:

- power for the Council or the EP to revoke the delegation; and/or
- a proviso that the delegated act may come into effect only if neither the EP nor the Council has objected to it within a specified time.

15.5 Article 291 TFEU requires Member States to adopt all the measures of national law necessary to implement legally binding EU acts. Where uniform conditions for implementing such acts are necessary, the acts should include provision to confer implementing powers on the Commission. The European Parliament and the Council are required, by regulation, to lay down the rules and general principles for the mechanism by which the Commission’s exercise of its implementing powers will be subject to control by the Member States.

15.6 The existing comitology arrangements will continue to operate until delegated legislation is proposed in accordance with Article 290 TFEU and the Regulation required by Article 291 has been adopted.

**The draft Regulation**

15.7 The draft Regulation sets out the Commission’s proposals for the rules and general principles to which Article 291 TFEU refers. It provides for the Commission’s drafts of implementing acts to be subject to either a new advisory procedure or a new examination procedure. The *examination procedure* would apply only to specified classes of implementing measures, including those relating to the common agriculture and fisheries policies; the environment; and the common commercial policy. The *advisory procedure* would apply to all other implementing measures. The main provisions of the draft Regulation are as follows.
15.8 **Provisions common to advisory and examination committees** — the following would be common to both types of committee:

i) the committee would be comprised of representatives of Member States, chaired by a representative of the Commission;

ii) the chairman would circulate the draft of the proposed implementing act;

iii) the committee would be required to give its opinion on the draft within the period set by the chairman;

iv) the chairman would be entitled to require the members of the committee to give their opinions in writing with or without the agreement of the committee to that procedure; and

v) each Member State would be entitled to have its opinion recorded in the minutes.

15.9 **The advisory procedure**: an advisory committee would be able to deliver its opinion by a vote supported by a simple majority of its members. After taking account of discussions with the committee, the Commission would have discretion whether to adopt, amend or withdraw the proposed implementing act.

15.10 **The examination procedure**: an examination committee would deliver its opinion by QMV. If the committee agreed with the proposal, the Commission would adopt it, unless there were exceptional circumstances. If the committee disagreed with the proposal, the Commission would be prohibited from adopting it, but the chairman could ask the committee to think further about the proposal or circulate an amended draft. If the Commission considered that non-adoption of an implementing act within an imperative deadline would create a significant disruption of the markets or a risk to security, human safety or the EU’s financial interests, the Commission would be able to adopt the act. In that event, the Commission would have to put the measure to the committee for a second opinion. If the second opinion were adverse, the Commission would be required to repeal the act.

**The Government’s view**

15.11 In his Explanatory Memorandum of 11 June, the Minister for Europe (Mr David Lidington) tells us that the Government’s firm view is that the draft Regulation should be re-balanced in favour of greater Member State control of the Commission’s implementing acts. Member States should retain at least as much control as they have under the existing comitology procedure. This has been the Government’s aim in the negotiations so far. For example, it has sought changes to ensure greater flexibility in the circumstances in which the examination procedure may be used and to limit or minimise the scope for the Commission to ignore the opinion of an examination committee.

15.12 The Minister says:

“new Ministers have wished to have the opportunity to consider the UK’s position afresh and in the light of the progress of the negotiations since the Commission’s proposal was originally published. The Government is keen to ensure that the
[European Scrutiny Committees in both Houses] are provided with the most up-to-date and relevant information on this dossier to enable them to discharge their scrutiny functions effectively. I therefore propose to write to the Committees before the end of June, when I expect that a General Approach will have been distributed by the Presidency, and will set out the newly agreed Government position on the General Approach.”63

Conclusion

15.13 We share the view that the draft Regulation would give the Commission excessive freedom from Member States’ control of the exercise of its implementing powers. We should be grateful, therefore, if the Minister would send us progress reports on the negotiations. We look forward to receiving his views on the Presidency’s revised draft of the Regulation. Meanwhile, we shall keep the Commission’s draft under scrutiny.

16 Financial services

<table>
<thead>
<tr>
<th>(31697) 10827/10</th>
<th>Draft Regulation on amending Regulation (EC) No. 1060/2009 on credit rating agencies</th>
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</table>

**Legal base**

Article 114 TFEU; co-decision; QMV

**Document originated**

2 June 2010

**Deposited in Parliament**

11 June 2010

**Department**

HM Treasury

**Basis of consideration**

EM of 17 June 2010

**Previous Committee Report**

None

**To be discussed in Council**

Not known

**Committee’s assessment**

Legally and politically important

**Committee’s decision**

Not cleared, further information requested

Background

16.1 The Credit Rating Agency Regulation, Regulation (EC) No 1060/2009, which came into force on 7 December 2009, established an EU wide regulatory regime for such agencies. The Regulation:

- introduced a harmonised approach to the regulation of credit rating activities in the EU;

63 The Minister’s references to a “General Approach” are references to the Presidency’s revised draft of the draft Regulation.
• established a registration system for credit rating agencies;

• required registered agencies to comply with various provisions relating to independence, conflicts of interest, employees and analysts, methodologies and models, outsourcing, and disclosure and presentation of information;

• provided that specified financial institutions may only use credit ratings for regulatory purposes if they have been issued or endorsed by a registered credit rating agency or if issued by an overseas agency that has been certified in accordance with the Regulation;

• stated, in a recital, that the current supervisory architecture should not be considered as the long-term solution for the oversight of credit rating agencies; and

• requested the Commission to put forward by 1 July 2010 a report on supervisory and regulatory reform and any legislative proposal needed to tackle the shortcomings identified as regards supervisory coordination and cooperation arrangements.\footnote{64 (30168) 15661/08: see HC 19–ii (2008–09), chapter 1 (17 December 2008) and Stg Co Deb, European Committee B, 27 January 2009, cols 3–24.}

16.2 In its May 2009 Communication \textit{European financial supervision} the Commission proposed a new regulatory and supervisory regime for financial services with a European Systemic Risk Council (subsequently named the European Systemic Risk Board) and a European System of Financial Supervisors, including three European Supervisory Authorities. It suggested the system should have a role in supervising credit rating agencies.

16.3 In September and October 2009 the Commission proposed legislation, which is nearing adoption, in relation to the relevant supervisory authority, the European Securities and Markets Authority and its role in relation to credit rating agencies.\footnote{65 (30954) 13654/09 (30955) 13656/09 (30956) 13657/09 (30957) 13658/09 and (31088) 15093/09: see HC 19–xxviii (2008–09), chapter 6 (21 October 2009), HC 19–xxx (2008–09), chapter 2 (4 November 2009, HC 5–i (2009–10), chapters 1 and 2 (19 November 2009 and HC Deb, 1 December 2009, cols 989–1030.)}

\textbf{The document}

16.4 The Commission has now proposed this draft amending Regulation in order to introduce centralised oversight of credit rating agencies. It provides for:

• the European Securities and Markets Authority to assume general competence in matters relating to the registration and on-going supervision of registered credit rating agencies, as well as matters related to the endorsement of ratings issued by rating agencies established in third countries, or the certification of such agencies;

• national competent authorities (the Financial Services Authority in the UK), which currently perform these functions, to retain some specific supervisory powers;

• replacement, throughout the present Regulation, of any reference to competent authorities in charge of the registration and supervision of credit rating agencies by a reference to the European Securities and Markets Authority;
• powers for the European Securities and Markets Authority to request information, to launch investigations and to perform on-site inspections;

• alignment of the current Regulation with the current proposals for the Alternative Investment Fund Managers Directive, with the objective of treating alternative investment funds in the same way as other EU financial institutions with regard to the use of credit ratings — meaning that the credit ratings used for regulatory purposes by alternative investment fund managers, including hedge fund managers and private equity managers, must be issued or endorsed by a credit rating agency registered under the Regulation, or issued by an agency certified under the Regulation; and

• the issuer of a structured finance instrument, such as a credit institution or investment firm, to give access, upon request, to the information necessary for rating the structured finance instrument — so providing all other registered or certified credit rating agencies with access to the information they need to issue their own unsolicited ratings of the instrument, the Commission’s intention being a more competitive ratings environment and a better deal for the investor who will be able to rely on more than one rating for the same instrument.

The Government’s view

16.5 The Financial Secretary to the Treasury (Mr Mark Hoban) tells us that the Government is content in principle for the European Securities and Markets Authority to supervise credit rating agencies, provided that the authority ensures high quality supervision and is efficient and legal. However, he qualifies this comment by saying that:

• as drafted the draft Regulation could give rise to problems of workability and effectiveness of supervision;

• the powers proposed for the European Securities and Markets Authority appear very broad; and

• the proposal implies significant and unmet ongoing costs for national authorities.

16.6 Expanding on the matter of costs the Minister says first that the Commission’s impact assessment:

• envisages that no additional administrative costs would be created as a result of the proposal;

• claims, on the contrary, that an immediate consequence of the centralization of supervision for credit rating agencies is that the administrative burden would be reduced;

notes that the time for registration would be reduced from the current two to seven months to a maximum of 65 working days, implying a substantial reduction of costs for credit rating agencies as they would be able to start issuing credit ratings under the new regime earlier than under the old system; and

notes that, moreover, credit rating agencies would no longer have to deal with several supervisors and the number of reporting obligations and other contacts would be reduced, as agencies would have to deal with only one supervisor.

16.7 Turning to the costs of the European Securities and Markets Authority the Minister, noting that under the draft European Securities and Markets Authority Regulation the revenues of the authority would consist in particular of contributions from the national competent authorities, a subsidy of the EU and any fees paid to it in cases specified in relevant legislation, comments that:

- the European Securities and Markets Authority’s credit rating agencies oversight activity would be funded from its overall revenues, including proceeds from fees it charged from credit rating agencies;
- it is unclear in the Commission’s proposal how national competent authorities would be reimbursed and supervisory fees charged; and
- the impact assessment acknowledges that there will be implications for the EU budget.

16.8 The Minister, noting that cost to each competent national authority would depend on the amount of delegation of tasks to national supervisors, comments that the Commission’s impact assessment says that:

- whilst competent authorities would not be responsible for the supervision of the credit rating agencies, they would nonetheless be expected to offer all necessary assistance to the European Securities and Markets Authority and fulfill tasks delegated by the authority; and
- competent authorities would be entitled in some clearly defined circumstances to request the European Securities and Markets Authority to take a concrete enforcement action.

But he adds that the assessment does not attribute a cost to competent authorities.

16.9 The Minister tells us that, given the short period between the publication of the proposed Regulation and the first Council working group meeting (on 21 June 2010), a formal domestic consultation has not been possible and that the Treasury and the Financial Services Authority intend to convene a stakeholder group shortly to canvass views.

**Conclusion**

16.10 How the introduction of centralised oversight of credit rating agencies, under the aegis of the European Securities and Markets Authority, is to be arranged is important and we note the Government’s cautious approach to the proposal and its planned
consultations with a stakeholder group. So before considering the document further we should like to hear about:

- first, the Government’s further thoughts about the scope of the European Securities and Markets Authority’s powers in the draft amending Regulation. In this regard we refer the Government to the Report of the previous Committee on draft legislation for the financial services sector,\(^{67}\) in which it raised doubts over the legality of delegating broad executive powers to the European Supervision Authorities; and also to the Report of the Treasury Committee on European financial supervision\(^ {68}\) on the same point;

- secondly, its attitude to significant and unmet ongoing costs for national authorities implicit in the proposal; and

- thirdly, the outcome of its consultations.

Meanwhile the document remains under scrutiny.

### 17 EU Budget 2010

<table>
<thead>
<tr>
<th>(31728)</th>
<th>Draft amending budget No 6 to the general budget 2010:</th>
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<tbody>
<tr>
<td>11251/10</td>
<td>Statement of revenue and expenditure by section: Section II — European Council and Council, Section III — Commission, Section X — European External Action Service</td>
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**Legal base** Article 314 TFEU; co-decision; QMV  
**Document originated** 17 June 2010  
**Deposited in Parliament** 22 June 2010  
**Department** HM Treasury  
**Basis of consideration** EM of 13 July 2010  
**Previous Committee Report** None  
**To be discussed in Council** Not known  
**Committee’s assessment** Politically important  
**Committee’s decision** Not cleared, further information requested

### Background

17.1 During the course of a financial year the Commission presents a number of draft amending budgets (DAB) to change specific aspects of the current EU general budget.

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\(^{67}\) (30954) 13654/09: see HC 19–xxx (2008–09), chapter 2 (4 November 2009).  
\(^{68}\) Sixteenth Report from the Treasury Committee, 2008–09, The Committee’s Opinion on proposals for European financial supervision, HC 1088, paras 55–64.
These DABs normally propose relatively minor changes to the budget, are usually uncontroversial and are often budget neutral.

17.2 In April 2010 the previous Committee considered a draft Council Decision to establish a European External Action Service (EEAS) to support the High Representative for Foreign Affairs and Security Policy, as provided for in the Lisbon Treaty. The personnel of the EEAS were to be drawn from the Commission, from the General Secretariat of the Council and from Member States’ diplomatic services. Our predecessors also considered draft Regulations to amend, as a consequence of establishing the EEAS, the Staff Regulations, which govern the conditions of employment of servants of the EU, and the Financial Regulation, which governs management of the EU general budget. These three proposals, which are still being negotiated, were cleared from scrutiny after a debate on the Floor of the House.69

The document

17.3 This DAB proposes an increase to the 2010 EU general budget of €9.5 million (£8.1 million) to fund additional costs arising this year from the establishment of the EEAS. The Commission’s proposal is based on the High Representative’s draft Council Decision to establish the EEAS. Recalling that the EEAS is to be guided by the principles of cost efficiency, budget neutrality and sound and efficient management, the Commission says that:

- transitional arrangements and a gradual build-up of capacity will be used in establishing the EEAS;
- unnecessary duplication of tasks, functions and resources with other structures must be avoided and rationalisation and streamlining of existing systems should be used to the maximum;
- this is particularly important in view of the EU-wide efforts for fiscal consolidation and constraints on public finances;
- it is expected that one third of EEAS staff will be composed of representatives from Member States by 2013;
- in the first year of operation, 2010, it is envisaged that the EEAS will comprise posts transferred from the Commission and the General Secretariat of the Council, with some additional posts filled by Member States’ diplomats;
- there are 20 such new posts foreseen at AD (administrator) level for the EEAS headquarters in Brussels, for additional tasks of acting as the Presidency of Working Groups and Committees that prepare the Foreign Affairs Council, posts for the EEAS corporate and policy boards and for creation of a small legal unit;
- these will be supplemented by an additional ten support staff;

69 (31439) 8029/10, (31445) —, (31446) 8134/10 + ADD 1: see HC 5–xvii (2009–10), chapters 1 and 2 (7 April 2010) and HC Deb, 14 July 2010, cols. 1034–1060.
• in the last quarter of 2010 there is also envisaged an additional 80 AD posts in EU
deviations around the world, including to reflect the fact that, since 1 January
2010, 60 EU delegations have taken on a range of tasks of the local Presidency in
relation to the Common Foreign and Security Policy;

• of the 80 new posts 40 will be deployed in delegations where there is currently no
political officer, will support delegations to multilateral organisations and 20 posts
will be in upgraded regionalised delegations and new Deputy Head of Delegation
slots; and

• these new posts will be supplemented by an additional 60 locally-recruited support
staff.

17.4 Due to the complexity of creating the EEAS in-year as a new institution, with its own
budget within the EU general budget, and transferring over it significant appropriations
related to staff and contracts from the Commission and the General Secretariat of the
Council, the Commission proposes a special transitional arrangement for the budgeting
process for 2010:

• a section will be created in the EU budget for the EEAS;

• the posts due to be transferred from the existing two institutions to the EEAS will
continue to remain in those institutions’ establishment plans until the end of 2010,
although will be clearly identified within those plans; and

• additional appropriations needed for new EEAS staff will appear against the
appropriate budget lines of the Commission and General Secretariat of the Council
budgets until the end of the year.

It is envisaged that the EEAS will have its own full budget for 2011.

17.5 The Commission notes that the establishment plan of the EEAS in 2010 will consist of:

• 1,114 posts transferred from the Commission, made up of 675 in headquarters and
439 in delegations;

• 411 posts transferred from the General Secretariat of the Council, made up of 387
in headquarters and 24 in delegations; and

• 100 new posts for Member States’ diplomats, made up of 20 in headquarters and 80
in delegations.

### The Government’s view

17.6 The Economic Secretary to the Treasury (Justine Greening) says that:

• the Government wants to ensure both that the EEAS is useful to the Member States
and respects the role of national diplomatic services;
• to be effective, and to increase nation states’ ability to project themselves in the world, it is right that the EEAS is given adequate resources to begin working as soon as possible; and

• the Government considers that the arrangements the Commission proposes to ensure continuity of budgeting, in the technical sense, this year are well-advised.

17.7 The Minister continues that, in terms of the justification given for the additional costs, the Government:

• welcomes the efforts made to incorporate staff from all three institutional sources from the start of the EEAS’s existence; and

• will be pushing for further details about the additional posts proposed and about their functions and distribution around the world and for evidence that cost efficiencies and streamlining of existing systems have been rigorously pursued.

She notes as relevant to this a reference in the recitals in the latest text of the draft Council Decision to establish the EEAS:

"8 (bis) the establishment of the EEAS should be guided by the principle of cost-efficiency aiming towards budget neutrality. To this end, transitional arrangements and gradual build-up of capacity will have to be used. Unnecessary duplication of tasks, functions and resources with other structures should be avoided. All opportunities for rationalisation should be used."

17.8 On the financial implications of the DAB for the UK the Minister, noting that it proposes an additional €9,521,362 (£8,079,828) in both commitment and payment appropriations this year, says that:

• this will increase the overall level of the EU budget and will therefore require increased contributions from Member States;

• the UK’s GNI share of EU budget financing in 2010 is currently estimated at 13.8%; and

• the pre-abatement cost to the UK of the proposal in 2010 would be roughly €1,313,948 (£1,115,016).

Conclusion

17.9 We note that this budgetary adjustment is a necessary consequence of establishing the European External Action Service and that the Government is content with the proposal from a technical point of view. However before we consider the matter further we should like to hear about the further details the Government is seeking on the additional posts proposed and about evidence of a rigorous pursuit of cost efficiencies and streamlining of existing systems. Meanwhile the document remains under scrutiny.
18 Value added taxation


Legal base
Article 113 TFEU; consultation; unanimity

Document originated
15 July 2010

Deposited in Parliament
22 July 2010

Department
HM Treasury

Basis of consideration
EM of 27 July 2010

Previous Committee Report
None

To be discussed in Council
Not known

Committee’s assessment
Politically important

Committee’s decision
Not cleared, further information requested

Background

18.1 Under Council Directive 2008/9/EC, with effect from 1 January 2010, VAT registered taxpayers have until 30 September of the calendar year following the refund period to submit their VAT refund claims. This means, for example, that businesses have until 30 September 2010 to submit any VAT refund claims in respect of the 2009 calendar year. Under the previous paper-based EU VAT refund system, businesses only had a six-month period to submit their refund claims, so the new arrangements are relatively generous and business-friendly. However, although Member States tax authorities were meant to have their electronic VAT refund portals up and running from 1 January 2010, a small number did not do so until mid-May 2010.

18.2 Council Directive 2008/9/EC specifies in some detail the core common data fields that must be included on each Member State web-based portal. However, Member States have had divergent views about the detailed design of their own portals. Some businesses have contended that the different approaches adopted by tax administrations make it difficult for them to submit claims in several Member States.

The document

18.3 Given the delay in some Member States in setting up electronic VAT refund portals the Commission presents this draft Directive to ensure that EU businesses in all Member States can obtain their VAT refunds by allowing an exceptional six-month extension for the first year, that is from 30 September 2010 to 31 March 2011.

18.4 The Commission suggests also, in the draft Directive, that Member States harmonise some features of their national VAT refund web portals to make them more inter-operable and accessible for taxpayers. It proposes, subject to the opinion of the EU Standing
Committee for Administrative Cooperation, it be granted the power to adopt and implement a more fully harmonized EU system.

**The Government’s view**

18.5 The Exchequer Secretary to the Treasury (Mr David Gauke) says that although at first sight the draft Directive seems sensible and reasonable, the impact and consequences are not straightforward and the Government has concerns about both aspects of the proposal. He tells us first that:

- any extension of the deadline for making claims will entail costly IT system changes for HMRC and VAT refund agents;
- it will create operational problems for HMRC, as it has deployed additional resources to deal with the anticipated surge in refund claims ahead of the September 2010 deadline;
- it will create confusion for EU businesses as it is very unlikely that any Member State would be able to change their IT systems to accept late claims before the current 30 September deadline expires;
- although the Commission has provided some background information in its explanatory memorandum on the proposal there is no detailed analysis or supporting evidence; and
- the Government has concerns that the proposed deadline extension has not been fully thought through and that it is a superficial knee-jerk response to lobbying by a small number of EU businesses.

The Minister adds that the proposed extension to the deadline would impose additional IT system change costs on HMRC of between £100,000 and £150,000 (and could not be implemented in time). It would also impose un-quantified costs on VAT refund agents.

18.6 As regards the Commission’s proposal that it be granted additional powers to develop and implement a fully harmonised pan-EU VAT refund system, the Minister says that:

- the Government questions whether this is either necessary or appropriate;
- it has recently implemented a new web-based portal in accordance with core requirements agreed by the Commission and the adoption of new, revised requirements would require costly amendment of the UK’s IT system; and
- as the Commission’s explanatory memorandum lacks detailed analysis or supporting evidence, it would be inappropriate to agree to what has been proposed.

18.7 Finally the Minister tells us that:

- the proposal does not currently feature on any advance ECOFIN Council agenda, although it would need to be adopted before the end of September 2010, when the current deadline expires;
• given that the first Council working group discussion on this proposal will not take place until 20 September 2010 the timetable is unrealistic; and

• time would also need to be factored in for consultation with the European Parliament and the Economic and Social Committee.

Conclusion

18.8 We agree with the Minister that this proposal seems ill-considered and inappropriate. We note also the unrealistic timetable. However, before considering the matter further we should like to hear how Council consideration of the proposal develops. Meanwhile the document remains under scrutiny.
19 Financial services: corporate governance

(a)  
(31695) Commission Report on the application by Member States of the  
10825/10 EU of the Commission 2009/384/EC Recommendation on  
+ ADD 1 remuneration policies in the financial services sector  
COM (10) 286

(b)  
(31696) Commission Report on the application by Member States of the  
10826/10 EU of the Commission 2009/385/EC Recommendation (2009  
+ ADD 1 Recommendation on directors' remuneration) complementing  
COM (10) 285 Recommendations 2004/013/EC and 2005/162/EC as regards the  
regime for the remuneration of directors of listed companies

(c)  
(31702) Green Paper: Corporate governance in financial institutions and  
10823/10 remuneration policies  
+ ADD 1
 
COM (10) 284

Legal base  —
Documents originated 2 June 2010
Deposited in Parliament (a) and (b) 11 June 2010
(c) 14 June 2010
Department HM Treasury
Basis of consideration (a) and (b) EM of 19 July 2010
(c) Second EM of 19 July 2010
Previous Committee Report None
To be discussed in Council Not known
Committee’s assessment Politically important
Committee’s decision (a) and (b) Cleared
(c) Not cleared; further information requested

Background

19.1 In May 2009 the Commission published a Communication setting out the context of  
and justification for Commission Recommendation 2009/384/EC on remuneration  
policies in the financial services sector and Recommendation Commission 2009/385/EC  
complementing Commission Recommendations 2004/013/EC and 2005/162/EC as regards  
the regime for the remuneration of directors of listed companies. The Commission said  
that it was recommending a series of principles and best practices, which Member States  
should ensure that companies apply, by 31 December 2009, in the design and  
implementation of pay policies that reward long-term sustainable performance. The  
objective of the first Recommendation was to ensure that remuneration policies of  
financial institutions do not encourage excessive risk taking and are in line with the long-
term interests of financial institutions. The purpose of the second Recommendation, and
the Recommendations it was complementing, is to improve transparency of listed
company reporting on the remuneration of directors, appropriate shareholder
accountability and effective supervision by independent directors and the remuneration
committee.70

The documents

19.2 The first Commission Report, document (a), is about the application of
Recommendation 2009/384/EC and the second, document (b), is about the application of
Recommendation 2009/385/EC. Both documents were produced on the basis of replies
that Member States made to Commission questionnaires. And each report is accompanied
by a Commission staff working paper, which contains tabular information on the state of
application of the Recommendations.

19.3 In the Report on Recommendation 2009/384/EC the Commission evaluates the extent
to which Member States have given effect its main areas of the recommendation. It says
that, overall, 16 Member States71 were found to have adopted national measures in
accordance with the Recommendation, whereas 11 Member States72 have not yet adopted
any specific national measures. It notes that the UK is one of the Member States that has
taken action to implement the vast majority of this Recommendation.

19.4 The Recommendation and the Report deal with four areas of remuneration.

Structure of pay

19.5 The Recommendation dealt with a number of issues, including the balance between
fixed and variable pay, deferral of bonuses and the potential for claw-back of a bonus where
there has been subsequent poor performance. The Commission finds that:

- all 16 Member States that took action have implemented the Recommendation’s
general requirements on remuneration policies being linked to sound risk
management and being aligned with the long-term interest of the financial
institution; and

- significant differences exist in the actions Member States have taken in relation to
the more detailed requirements on the structure of pay.

Governance

19.6 The Recommendation said remuneration policies should be transparent internally
and contain measures to avoid conflicts of interest and dealt with the board’s oversight of
remuneration and the involvement of internal control functions. The Commission notes
that:

70 (30268) 9495/09 (30641) 9589/09 + ADDs 1–2 (30642) 9590/09: see HC 19–xviii (2008–09), chapter 27 (3 June 2009).
71 Belgium, Bulgaria, Cyprus, Germany, Spain, France, Hungary, Italy, Lithuania, Latvia, Luxembourg, Malta,
Netherlands, Romania, Sweden, UK.
72 Austria, Czech Republic, Denmark, Estonia, Greece, Finland, Ireland, Poland, Portugal, Slovenia, Slovakia.
European Scrutiny Committee, 1st Report, Session 2010–11

112

• a limited number of Member States fully implemented recommendations on governance;

• implementation was patchy on recommendations concerning the role of boards and the expertise of remuneration committee members; and

• there was fuller implementation of the aspects relating to the need to avoid conflicts of interest and the involvement of control functions in setting remuneration.

Disclosure

19.7 The Recommendation said that remuneration policies and the decision making process should be adequately disclosed to relevant stakeholders. The Commission finds that:

• of the 16 Member States that had taken action almost all had either required disclosure or were in the process of enacting legislation aimed at enhancing disclosure; and

• there is variation in the type of firms that Member States have chosen to cover.

Supervision

19.8 The Recommendation said that Member State supervisors (the Financial Services Authority in the case of the UK) should ensure that financial institutions apply these remuneration principles and that information should be communicated by firms to their supervisor. The Commission finds good implementation of this area of the Recommendation among the 16 Member States that had taken action.

19.9 The Commission concludes that:

• there are substantial differences in the state of national implementation and “[f]urther efforts are needed” to address this;

• the main area of concern is differences in approach to the structure of pay;

• it believes that EU legislation is necessary to ensure the application of sound remuneration principles across the financial services sector; and

• proposals are being or will be taken forward through the Capital Requirements Directive, the Alternative Investment Fund Managers Directive, the Undertakings for Collective Investment in Transferable Securities Directive and the Solvency II Directive.


• production of annual policy statement, to include information on the breakdown of fixed and variable remuneration, performance criteria and contract policy;
• inclusion of remuneration policy as an AGM agenda item — to increase accountability it should be submitted to a vote, which may be either binding or advisory;

• individual disclosure of details about share-based payment and contributions to pension schemes;

• shareholder approval of share-based remuneration schemes;

• boards to include an appropriate balance of executive and non-executive directors to provide for balanced decision-making;

• nomination, remuneration and audit committees to be created to deal with conflicts of interest, with minimum standards defined for the creation, composition and role of these committees; and

• the need for diversity of knowledge, judgement, and adequate time and attention to the role amongst independent directors.

19.11 Recommendation 2009/385/EC supplemented these Recommendations by adding more detail about the structure of directors’ remuneration and the role of the remuneration committee, including:

• the need for performance criteria for variable and equity-based elements of remuneration;

• performance criteria should promote long-term value creation and be deferred as appropriate;

• directors’ service and remuneration agreements should include provisions about the “reclaim” of variable remuneration where remuneration was awarded “on the basis of data which subsequently proved to be manifestly misstated”; 

• any payments for termination of services should not be excessive;

• at least one member of the remuneration committee should have relevant expertise; and

• remuneration consultants advising the remuneration committee should not also advise other directors or the human resources department of the company.

19.12 The Commission finds that:

• ten Member States\(^73\) have implemented at least half of the recommendations; and

• endorsement of the disclosure and shareholder vote provisions of the 2004 Recommendation has increased significantly in recent years, although there are differences in Member States’ approaches.

\(^73\) Austria, Belgium, Germany, Denmark, Lithuania, Italy, Netherlands, Portugal, Slovenia and the UK.
19.13 The purpose of the Commission’s Green Paper, document (c), on which it invites responses by 1 September 2010, is to identify and propose possible solutions to the failures of corporate governance that contributed to the financial crisis. It is accompanied by a staff working document “Corporate governance in financial institutions: Lessons to be drawn from the current financial crisis, best practices”.

19.14 The Commission analyses the contribution of failures in the areas of management of conflicts of interest, board composition, role and functioning, oversight of risk management and remuneration, shareholder control, the role of supervisory authorities and auditing.

19.15 The Commission puts forward a number of proposals for discussion, including:

- improving board composition and functioning by limiting the number of boards on which a director might sit, prohibiting combining the role of chairman and chief executive, specifying directors’ job descriptions, increasing board diversity and external board evaluation;
- requiring firms to have a risk committee, make a risk declaration and seek board approval of new financial products;
- an obligation by directors to inform supervisors of material risks and a duty of care to depositors and other stakeholders;
- improving risk management by enhancing reporting to the board and the status of the chief risk officer;
- improving cooperation between auditors and supervisors and extending auditor responsibilities to provide information to directors and supervisors and to cover risk-related information;
- strengthening the role of supervisors by extending their oversight of the board and risk management and of director eligibility criteria to cover technical and professional skills;
- strengthening the legal framework by increasing the accountability of directors and reinforcing civil and criminal liability;
- improving the consistency and effectiveness of EU action on remuneration, including addressing the treatment of stock options, strengthening the role of shareholders, improving severance arrangements and addressing variable pay in firms receiving public assistance; and
- measures to prevent conflicts of interest.

The Commission discusses how these measures could address the failures of corporate governance identified and seeks to generate a wider debate on these issues. It raises the question as to whether these issues are better dealt with at the EU or national level and of the costs and benefits of greater harmonisation in these areas.
19.16 The Commission seeks views on both the analysis and potential improvements, which it will take into account in deciding on next steps. However, the Commission identifies a linkage between governance problems in the financial sector and the governance of listed companies and suggests that some measures proposed for the financial sector may also be appropriate in listed companies. It intends to consider this further in a broader review of corporate governance in listed companies. This review will examine the place and role of shareholders, the distribution of duties between shareholders and boards of directors with regard to supervising senior management teams, the composition of boards of director, and corporate social responsibility.

**The Government’s view**

19.17 In relation to the Commission Report on Recommendation 2009/384/EC on remuneration policies in the financial services sector, document (a), the Financial Secretary to the Treasury (Mr Mark Hoban) tells us that:

- the UK has adopted measures which cover much of the ground of the Recommendation;
- under the Financial Services Act, the Financial Services Authority has an obligation to ensure that remuneration in the financial services sector is consistent with prudent risk taking;
- the authority has adopted a Rule on remuneration which has been applied to a group of large banks and other financial institutions;
- the Rule is supported by a code of practice on remuneration, which contains principles relating to the governance of remuneration, risk management and performance measurement and the structure of remuneration for senior staff;
- the Rule includes guidance on deferral of compensation, performance contingency and avoidance of guaranteed bonuses of more than one year;
- the authority can subject firms to supervisory and enforcement action, including requiring firms to hold additional capital, for breaches of its remuneration code;
- the code came into force on 1 January 2010, ahead of which regulated firms subject to it were required to supply a remuneration policy statement for review by the authority;
- the authority will be consulting on changes to its code later this year;
- in its Budget the Government announced that in addition to introducing a banking levy, it is taking action to tackle unacceptable bank bonuses;
- the Independent Commission on Banking will look at structural and non-structural measures to reform the banking system and promote competition;
- the Government will consult on a remuneration disclosure scheme and, working with international partners, will explore the costs and benefits of a Financial Activities Tax on profits and remuneration;
• the Government has asked the Financial Services Authority, in its forthcoming review of its remuneration code to consider imposing more stringent requirements on the deferral and award of variable pay, to examine the mechanism for strengthening the link between performance and remuneration to ensure that incentives are aligned with the long-term performance of the firm and to consider how to vary capital requirements to offset risk in remuneration practices; and

• at EU level the Government is participating in negotiations on legislation with remuneration provisions — the revised Capital Requirements Directive will shortly be finalised and contains requirements on the governance, structure and disclosure of remuneration of investment firms and credit institutions in the EU and the draft Alternative Investment Fund Managers Directive, still under negotiation with finalisation scheduled for Summer 2010, contains requirements for payment structuring and risk adjustment conditions on remuneration in hedge funds, private equity investment firms and other specialist asset managers.

19.18 In relation to the Commission Report on Recommendation 2009/385/EC on the regime for the remuneration of directors of listed companies, document (b), the Minister says that:

• the original Recommendations, 2004/913/EC and 2005/162/EC, drew heavily on UK experience and their content was closely aligned to UK practice, for example the Directors’ Remuneration Report Regulations 2002, the Combined Code on Corporate Governance and the Listing Rules;

• the Government supported the Recommendations as they matched the UK’s strategic approach to EU action in the field of corporate governance — that is using measures which respect the diversity of corporate governance frameworks in Member States and allow for a flexibility of approach;

• the UK’s performance in terms of applying the Recommendation is good — it is among the group of Member States which has implemented the greater part of it, through the requirement in the Companies Act 2006 and the Financial Reporting Council’s UK Corporate Governance Code;

• there are two main areas that are not addressed in the revised Code — that remuneration consultants should be prevented from having any other contractual relationship with the company (the Code states that any other relationship must be disclosed) and that at least one member of the remuneration committee should have “knowledge of and expertise in the field of remuneration policy”;

• the Commission has said that intends to consider whether further measures are needed to improve the coherence and effectiveness of EU action in this area; and

• it is likely that the Commission will propose a Directive in this area — depending on its scope, the UK would be well-placed to implement it with minor changes to current requirements.

19.19 On the Commission’s Green Paper, document (c), the Minister comments that:
• governance shortcomings in parts of the banking sector contributed to the onset and severity of the financial crisis;

• the Government believes that a co-ordinated response at the national, EU and international levels is desirable; and

• it welcomes the Green Paper and will carefully consider the proposals and respond to them.

19.20 The Minister continues that in the UK the Walker Review has already assessed corporate governance practices in the financial services sector and its recommendations are now being implemented and this provides a valuable benchmark in shaping an effective and proportionate EU response. He tells us that the Walker Review measures fall into four thematic areas:

“First, in response to the failure by some bank boards to effectively fulfil their role in challenging executive management, the Governance Code has been changed and proposals for more intensive scrutiny of boards by regulators are being consulted on. These will promote further improvements to board quality and oversight, including better selection processes, more relevant skills and greater time commitment by directors, and improved board, training and evaluation processes.

“Secondly, in risk management, some boards showed insufficient understanding of risk, information flows were poor and there was a lack of independence in risk management functions. Supervisors are putting in place measures to address these. These include board level risk committees for significant firms, setting the parameters used to align remuneration with risk, to ensure board ownership of risk appetite and strategy. The independence of the risk function is to be secured through a chief risk officer with access to the risk committee and to external advice. The risk committee will oversee enhanced reporting to shareholders of risk strategy and appetite.

“The third area of governance shortcomings concerns shareholder oversight. Institutional shareholders acquiesced in banks’ ‘gearing up’ and were sometimes slow and ineffective in acting on concerns. To encourage institutional shareholders to engage more effectively to protect the interests of their beneficiaries, the Financial Reporting Council has established a Stewardship Code as a standard of engagement best practice against which performance can be assessed. The FSA is considering how to frame a rule ensuring that fund managers disclose their approach to engagement.

“Finally, boards were not sufficiently accountable for the poorly structured remuneration policies that incentivised excessive risk taking. Supervisors are taking steps to require appropriate control of remuneration in significant firms through a board remuneration committee responsible for firm-wide remuneration policy and the remuneration of staff whose activities have a material impact on the firm’s risk profile.”

19.21 The Minister concludes by saying that:
the Government will consider how the measures being implemented in the UK might be applicable in the EU context and how they could best be taken forward;

the process for developing a EU response must thoroughly consider the costs and benefits of different options for improving corporate governance in the financial services sector, and in particular the need for legislation;

many aspects of corporate governance regulation in the UK rely on flexible application of qualitative principle, for example, ‘comply-or-explain’ disclosures against the Governance Code, or flexible application of supervisory principles; and

the Government will want to see a robust justification for any legislative proposals, where non-legislative proposals might be appropriate.

**Conclusion**

19.22 We have no questions to ask in relation to the Reports on the Commission Recommendation 2009/384/EC on remuneration policies in the financial services sector and the Recommendation Commission 2009/385/EC on the regime for the remuneration of directors of listed companies, documents (a) and (b), and clear them.

19.23 However, before considering the Green Paper, document (c), further we should like to see the Government’s response to it. Meanwhile this document remains under scrutiny.

### 20 Implementation of the Asylum Qualifications Directive

<table>
<thead>
<tr>
<th>(31722) 11212/10 COM(10) 314</th>
<th>Commission Report on the application of Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection</th>
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</table>

**Legal base** —

**Document originated** 16 June 2010

**Deposited in Parliament** 21 June 2010

**Department** Home Office

**Basis of consideration** EM of 5 July 2010

**Previous Committee Report** None

**To be discussed in Council** No date set

**Committee’s assessment** Legally important

**Committee’s decision** Not cleared; further information requested
Background

20.1 In 2004, the Council adopted a Directive on minimum standards for the qualification and status of third country nationals or stateless people as refugees or people who otherwise need protection (“the Qualifications Directive”). It contains chapters on:

- the assessment of applications for international protection;
- qualification for being a refugee;
- refugee status;
- qualification for subsidiary protection;
- subsidiary protection status;
- content of international protection (including rights to family unity, residence permits and access to employment, education, health care and social assistance); and
- administrative cooperation between Member States and between them and the Commission.

The Government opted into the Directive and so the UK is bound by its provisions.

20.2 The Qualifications Directive came into effect in October 2004. Article 37 required the Commission to make a report to the Council and the European Parliament by 10 April 2007 on the implementation of the Directive, together with any proposals for amendments the Commission considered necessary. Article 38 required Member States to bring into force, by 10 October 2006, the law and other provisions necessary to comply with the Directive.

20.3 In October 2009, the Commission proposed the repeal of the Qualifications Directive 2004 and its replacement by a new one. It considered this necessary because, in the Commission’s opinion, the minimum standards set by the 2004 Directive are vague and ambiguous.

20.4 In January 2010, the Government told the previous Committee that it had decided not to opt into the draft Directive because of its concerns about the likely effects of the proposals on the UK’s asylum system. The Government is, however, taking part in the

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75 “Asylum” is granted to people who are unable to seek protection in their country of citizenship or residence for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.
A “refugee” is a person who, because of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his or her country of nationality and is unable or unwilling to avail himself or herself of the protection of that country or a person who is stateless and unable or unwilling to return to the country of his or her habitual residence because of such fears of persecution.
“Subsidiary protection” is the status given to people who do not qualify as refugees but who are at risk of serious harm if returned to their country of origin.
negotiation of the draft with a view to applying to be bound by the new Directive after its adoption if its concerns have been dealt with satisfactorily.77

The Commission’s report on implementation

20.5 The Commission has produced the report in discharge of the obligation placed on it by Article 37 of the Qualifications Directive. The report gives the Commission’s assessment of the extent to which Member States have correctly transposed the 2004 Directive into their domestic law and implemented its provisions. It also identifies some possible problems. The report is based on a study conducted at the Commission’s request by the Academic Network for Legal Studies in Immigration and Asylum in Europe and on other studies by, for example, the UNHCR and the Dutch Refugee Council.

20.6 The report comments on the way each of the main provisions of the Directive has been transposed. The analysis is detailed. The Commission says, for example, that:

- seven Member States did not transpose Article 4(4) and four Member States transposed it incorrectly (Article 4(4) requires Member States to regard previous persecution or serious harm as an indication of likely future persecution or serious harm unless there are good reasons to believe that the persecution or harm will not be repeated);

- twelve Member States did not implement, or implemented only in part, the requirements of Articles 14(2) and 14(4) which place the burden of proof on Member States to demonstrate that a person has ceased to be or never was a refugee or eligible for subsidiary protection;

- only three Member States implemented Articles 20(6) and 20(7) which give Member States discretion to reduce benefits where the protection was given on the basis of activities engaged in for the purpose of obtaining protection; and

- the Commission began cases in the ECJ against nine Member States for failure to communicate or fully to communicate their transposition legislation; five of the cases were withdrawn; but the Court gave judgement in four cases, one of which was against the UK.

20.7 The Commission draws the following main conclusions:

- the levels of protection granted by Member States differ;

- the objective of creating “a level playing field” for the qualification and status of beneficiaries of international protection has not been achieved;

- deficiencies in the drafting of the Qualifications Directive (such as imprecision and ambiguity) caused disparities in Member States’ transposition and implementation of the Directive; and

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77 The previous Committee’s summary of what the Government said about its concerns last January are summarised in paragraph 2.7 of our predecessors’ Report of 27 January (see HC 5–viii (2009–10), chapter 2 (27 January 2010).
• the aim of the draft Directive the Commission proposed last autumn is to remedy the deficiencies in the 2004 Directive.

**The Government’s view**

20.8 In his Explanatory Memorandum of 5 July, the Minister of State for Immigration at the Home Office tells us that the Qualifications Directive was transposed into UK law by *The Refugee or Person in need of International Protection (Qualification) Regulations 2006* and *Part 11 of the Immigration Rules (HC 395)*, both of which came into effect on 9 October 2006. He notes that the Commission’s report contains no new proposals for EU legislation and says that it has “no direct policy implications”.

20.9 The Minister adds that:

> “In general the [Commission’s] report suggests that the UK has fared well amongst its EU counterparts in transposing the Qualifications Directive.”

He draws our attention to the Commission’s favourable comments about the way the UK has implemented some of the provisions. For example, the report notes that the UK goes above the minimum requirement for the length of residence permits issued to both refugees and beneficiaries of subsidiary protection; and that the UK provides refugees and beneficiaries of subsidiary protection equal access to integration facilities.

20.10 The Minister goes on to rebut the Commission’s criticisms of the way in which the UK has implemented some of the Directive’s provisions. For example, he says that:

> “In their evaluation the Commission alleges in section 5.1.1 of the report that the UK’s approach to assessing an applicant’s ‘general credibility’ is more restrictive than allowed by the Directive ‘because it raises the standard of the level of credibility required by Article 4(5)”. We do not agree with this statement. Our assessment of credibility can be found in Part 11 of the Immigration Rules, under paragraphs 339I-339L, which transpose Article 4 of the Qualifications Directive accurately. In particular, the principle of ‘the benefit of the doubt’ required by Article 4(5) of the Directive is transposed by paragraph 339L of the Immigration Rules.”

**Conclusion**

20.11 It seems to us that the value of the Commission’s report is much diminished by the delay in producing it. Article 37 of the Qualifications Directive required the Commission to report on the implementation of the Directive by 10 April 2008. In the event, the report was not issued until June 2010, over two years after the due date and over eight months after the Commission published its proposal for the repeal and replacement of the 2004 Directive. The report offers no explanation for the delay.

20.12 Member States should, of course, transpose EU Directives promptly and accurately. There is, however, scope for difference of opinion about whether the

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78 Minister’s Explanatory Memorandum, paragraph 16.
transposition of a provision is or is not correct, as the Commission’s report and the Minister’s Explanatory Memorandum illustrate. Ultimately such differences can be resolved definitively only by the Court of Justice. It is not our function to express views on the disagreements between the Commission and the Government about the transposition of the Directive in the UK.

20.13 The Minister says that the Commission’s report has “no direct policy implications”. We should be grateful if he would enlarge on that statement. This is because the Government has not opted into the draft of the new Qualifications Directive and may not do so after it has been adopted. That leads us to ask the Minister two questions:

- If the Government does not opt into the new Directive, will the UK remain bound by the 2004 Directive?
- If it would remain bound, what is the likelihood that the Commission would initiate infraction proceedings against the Government for all or some of the matters criticised in the report?

20.14 We shall keep the Commission’s report under scrutiny pending the Minister’s replies to our questions.
21 Agency for the management of JHA databases

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<tr>
<th>(a)</th>
<th>(30737)</th>
<th>11722/09</th>
<th>COM(09) 293</th>
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<td>Draft Regulation to establish an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice</td>
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<th>(31456)</th>
<th>8151/10</th>
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**Legal base**
(a) Articles 62(2)(a), 62(2)(b)(ii), 63(3)(b) and 66 EC; co-decision; QMV  
(b) Articles 30(1)(a) and (b) and 34(2)(c) EU; consultation; unanimity;  
(c) Articles 77(2)(a) and (b), 78(2)(e), 79(2)(c), 74, 82(1)(d) and 87(2)(a) TFEU; co-decision; QMV

**Document originated**
(a) and (b) 24 June 2009; (c) 19 March 2010

**Deposited in Parliament**
(a) and (b) 3 July 2009; (c) 1 April 2010

**Department**
Home Office

**Basis of consideration**
(a) and (b) Minister’s letter of 18 November 2009;  
(c) EM of 25 May 2010 and Minister’s letter of 21 July 2010

**Previous Committee Report**
(a) and (b) HC 19–xxv (2008–09), chapter 7 (21 July 2009) and HC 19–xxix (2008–09), chapter 5 (28 October 2009);  
(c) None

**To be discussed in Council**
October 2010

**Committee’s assessment**
Legally important

**Committee’s decision**
(a) and (b) cleared;  
(c) Not cleared; further information requested

**Background**

21.1 The EU has or is developing three large Justice and Home Affairs (JHA) databases:

- **EURODAC**, which stores asylum seekers’ fingerprints and is used to help Member States decide which of them is responsible for deciding an asylum application; the UK participates fully in Eurodac;
• **SIS II**, which will contain information about, for example, people wanted for arrest and extradition and third country nationals to be denied entry to Schengen states. Its purpose is to help the participating states enforce the provisions of the Schengen *acquis* on the free movement of people and on police and judicial cooperation in criminal matters; the UK will participate in those parts of SIS II related to police and judicial cooperation but not in those related to visas, asylum and immigration; and

• **VIS** (the Visa Information System), which will store records of all Schengen visa applications together with the applicants’ photographs and fingerprints. VIS will make it easier for Member States to exchange visa information so as, for example, to detect visa fraud. VIS may be consulted by immigration authorities and (with the exception of the UK and Ireland) by Member States’ law enforcement authorities and Europol for the purposes of the prevention and detection of terrorist and other serious offences; the UK will take no part in VIS.

The Commission manages EURODAC and is responsible for developing SIS II and VIS.

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

21.2 In June 2009, the Commission proposed documents (a) and (b). They are the drafts of a Regulation and a Decision to create an Agency to manage EURODAC, SIS II, VIS and other large JHA IT systems, if developed. At that time, a Regulation was needed because the EC Treaty provided the legal basis for EURODAC and the parts of SIS II and VIS which relate to visas, asylum and immigration; and a Decision was needed because the EU Treaty provided the legal base for the aspects of SIS II and VIS which relate to police and judicial cooperation in criminal matters.

21.3 When the previous Committee considered the documents in July 2009, it noted that, insofar as it related to SIS II and VIS, the draft Regulation built on provisions of the Schengen *acquis* in which the UK does not take part. To that extent, the UK could not take part in the Regulation.

21.4 The previous Committee also noted that the UK:

• could not take part in the Decision to the extent that it applied to VIS; but

• would be bound by the Decision to the extent that it related to SIS II for the purposes of police and judicial cooperation in criminal matters.

21.5 The proposed Agency to manage the databases would be an EU body with its own legal personality and budget. The Management Board would comprise one representative of each Member State and two representatives of the Commission. Europol and Eurojust would have observer status at the Board when matters relevant to their functions were discussed. The Agency would be established in 2011 and take over the management of the databases in 2012. It would employ 120 staff.

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21.6 In his Explanatory Memorandum of 14 July 2009, the then Minister of State at the Home Office (Mr Phil Woolas) told the previous Committee that there appeared to be some merit in having one Agency to run the databases. But the Government was still examining the details of the proposals and had not yet decided whether to opt into the Regulation.

21.7 In September 2009, the Government decided to opt into the Regulation. The opt-in was partial. It applied only to those IT systems in which the UK was already participating and all future systems in which it wished to participate.  

21.8 In her letter of 18 November 2009, the then Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) told our predecessors that the Government had taken legal advice before opting into the draft Regulation and had been advised that a partial opt-in was possible. This was also the view of the Commission. But the Commission had not provided written confirmation of its view and the opinion of the Presidency on the question was not yet known. Our predecessors asked the Minister to tell them the response of the Presidency and the Commission to the Government’s formal letter notifying its opt-in decision.

**Document (c)**

21.9 Document (c) is a draft Regulation to establish an Agency for the operational management of JHA databases. It conflates documents (a) and (b) and supersedes them. The new proposal is necessary because the Council and the European Parliament had not completed their consideration of documents (a) and (b) by 1 December 2009. That was the day when the Treaty of Lisbon came into effect. As a consequence, the EC Treaty and the EU Treaty could no longer be used to provide the legal bases for the legislation to establish the Agency. The legal base for the proposed legislation is now provided by the Treaty on the Functioning of the European Union (TFEU).

21.10 Except for the different legal bases and some minor drafting differences, the provisions of document (c) are the same as those of documents (a) and (b) taken together.

**The Government’s view on document (c)**

21.11 In his Explanatory Memorandum of 25 May, the Parliamentary Under-Secretary of State at the Home Office (James Brokenshire) said that the Government regards document (c) as an amended version of the original draft Regulation (document (a)) because the original draft has been amended to incorporate the provisions of document (b), the draft Decision. It is the Government’s view, therefore, that the UK remains bound by its decision in September 2009 to opt into document (a).

21.12 The Government’s primary negotiating aim will be to ensure that the UK has voting rights on the Agency’s Management Board which mirror the UK’s participation in the IT systems to be managed by the Agency.

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21.13 The Minister also said that the Government is considering whether Article 82(1)(d) TFEU (one of the Articles cited as the legal base for the draft Regulation) is appropriate. The Government intends to raise the matter with the Commission.

**The Minister’s letter of 21 July 2010**

21.14 On 21 July, the Minister wrote to us to confirm that the Government has decided to participate fully in the proposal to create the IT Agency and to explain how it will achieve this. The text of his letter is as follows:

“I am writing to update you on developments in relation to the above proposal, confirming that the Government has decided to participate fully and I will explain in this letter how we will achieve this.

“I think it would first be helpful to set out the background to this decision. The original proposals (for a Regulation and a Council Decision) were published on 3 July 2009. On 23 September 2009, the UK’s Permanent Representative to the European Union wrote to Carl Bildt, President of the Council of the European Union, informing him of the UK’s intention to take part in the adoption and application of the proposed Regulation. However, before negotiations on the Regulation and Council Decision could be concluded, the Lisbon Treaty entered into force, making the Council Decision obsolete. An amended version of the Regulation was consequently presented on 22 March 2010.

“Both the original proposals for a Regulation and a Council Decision in 2009, and the amended proposal for a Regulation in 2010, raised complex legal and practical issues as a result of the variable degree of the UK’s participation in the IT systems to be managed by the IT Agency. As a result, and following presentation of the amended proposal, UK officials met with Council officials to discuss the issue of the UK’s participation. The outcome of these discussions was an agreement that:

- The UK remained bound by its opt-in to the earlier proposal for a Regulation in respect of EURODAC and any future systems the UK chooses to participate in;

- The UK was bound by the elements of the proposal relating to the police and judicial cooperation aspects of the second generation of the Schengen Information System (“the SIS II”), but, under Article 5(2) of the Schengen Protocol, had the right to opt out of these if it decided to do so and conveyed this by 21 June 2010;

- The UK was not able to participate in the elements of the proposal relating to the Visa Information System (“the VIS”) and the parts of the SIS II which build upon the part of the Schengen acquis in which the UK does not participate (i.e. the non-police and judicial cooperation part), as per recital 25 of the original proposed Regulation (Com (2009) 293).

“To overcome the legal and practical complexities, it was suggested creating a Council Decision based on Article 4 of the Schengen Protocol. Article 4 provides that the UK (and Ireland) may at any time request to take part in some or all of the provisions of the Schengen Acquis. The proposed Council Decision would treat the IT Agency Regulation as already part of the Schengen Acquis and provide that the
UK was taking part in it. Whilst this would represent a nominal extension of our involvement in Schengen — in that we would participate in the IT Agency and its functioning — it would not mean that we were participating in other aspects of the Schengen Acquis in which we do not wish to participate (e.g. on visas or on external border controls). This mechanism achieves the outcome we want and allows flexibility in the use of the Schengen and Title V opt-ins which is in the UK interest.

“In order to implement this solution, the Council Decision would need to be agreed by the Council in a unanimous decision. The upcoming Belgian Presidency indicated that it supports this approach and Member States in the Council are not expected to oppose it.

“The Government has decided that it would be in the UK’s best interests to seek to participate on these terms to ensure the UK is a full participant in the IT Agency and its activities. The reasons for this are the same as those for which the UK decided to opt in to the original proposal: by doing so we would be protecting the UK’s position vis-à-vis the European IT systems we participate in currently and in the future; and we would also be supporting more effective management of European IT systems.

“We have also indicated to the Belgian Presidency and the Commission that we wish to pursue the solution set out above to create a Council Decision allowing the UK to participate, for the purposes of this proposal, in the non-police and judicial cooperation aspects of the Schengen acquis. The UK’s Permanent Representative to the EU will be writing to the President of the Council of the European Union to this effect. It will be deposited for scrutiny as soon as it is published and we anticipate that it will be presented for adoption in parallel with adoption of the Regulation, which is scheduled to be considered by the October JHA Council. The Presidency has indicated that it wishes to secure a Council common position on the text of the Regulation in October.”

Conclusion

21.15 Article 82(1)(d) TFEU requires the Council and the European Parliament to adopt measures to facilitate cooperation between Member States’ judicial or equivalent authorities in relation to proceedings in criminal matters and the enforcement of decisions. We agree with the Minister that the Article does not appear to be an appropriate legal base for the proposed Regulation. We should be grateful if he would tell us what reply the Government receives when it puts the point to the Commission.

21.16 We should also be grateful for the Minister’s views on the following questions:

- Does the September 2009 opt-in decision apply to document (c)?

In his letter of 21 July, the Minister says that the UK remains bound by its decision in September 2009 to opt in to document (a). This was the view of Council officials as well as the opinion of UK officials. We find the view surprising because document (c) not only has a different legal base from document (a) but also has a wider scope, incorporating the substantive provisions of document (b). We ask the Minister to tell us the reasons why the Government considers that the September opt-in applies to
document (c) and why a new opt-in is not needed to reflect the substantive changes to the original proposal.

The Minister also says that UK and Council officials agreed that the UK was bound by the elements of the proposal relating to the police and judicial co-operation aspects of the second generation of the Schengen Information System (“the SIS II”) but, under Article 5(2) of the Schengen Protocol, had the right to opt out of these if it decided to do so and conveyed this by 21 June 2010. Article 5(2) of that Protocol enables the UK to opt out of proposals or initiatives which build on parts of the Schengen acquis in which the UK already participates. We should be grateful if the Minister would explain the apparent conflict between his statement that the UK remains bound by the Government’s original opt-in to document (a) but that document (c) triggers the opt-out under Article 5(2) of the Schengen Protocol.

- **What should the legal base be for the proposed Council Decision?**

The fourth paragraph of the Minister’s letter appears to say that the proposed Decision, which would treat the IT Agency Regulation as already part of the existing Schengen acquis, would be based on Article 4 of the Schengen Protocol. Article 4 entitles the UK at any time to make a request to take part in all or some of the provisions of the Schengen acquis and provides for the Council to decide on the request by unanimity, comprising in this particular case all the Member States listed in Article 1 of the Schengen Protocol (all EU Member States bar the UK and Ireland) and the UK. Article 4 does not appear to provide a legal base for a Council Decision to add to the Schengen acquis. We should be grateful for the Minister’s views on what would provide an appropriate legal base for the proposed Council Decision.

We also ask the Minister to explain how the Eurodac database, which has not hitherto been considered to be a Schengen or Schengen-building measure, can by virtue of the Council Decision be deemed to form part of the Schengen acquis.

- **Would this represent only a “nominal extension”?**

The fourth paragraph of the Minister’s letter also says that the proposed Council Decision would represent a nominal extension of the UK’s involvement in the Schengen acquis. We find this surprising. Would not the extension be actual, having legal effect, and not merely nominal?

21.17 Pending the Minister’s replies to our questions, we shall keep document (c) under scrutiny. We clear documents (a) and (b) because they have been superseded by document (c).
22 European Investigation order

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<tr>
<th>(a)</th>
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<td>(b)</td>
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Legal base

Article 82(1)(a) TFEU

Document originated

(a) 27 April 2010
(b) 21 May 2010

Deposited in Parliament

(a) 25 May 2010
(b) 4 June 2010

Department

Home Office

Basis of consideration

EMs of 5 and 25 May 2010; Minister’s letter of 21 July

Previous Committee Report

None; but see (31166) 17691/09: HC 5–v (2009–10), chapter 2 (6 January 2010)

To be discussed in Council

No date set

Committee’s assessment

Legally and politically important

Committee’s decision

(a) Cleared; (b) Not cleared; further information requested

Background

22.1 The draft Directive is an initiative of Belgium, Bulgaria, Estonia, Spain, Austria, Slovenia and Sweden acting under Article 76(b) TFEU (under which a quarter or more of Member States can propose legislation in the field of judicial cooperation in criminal matters and police cooperation). Its objective is to create a single instrument for obtaining evidence located in another Member State in the framework of criminal proceedings. Currently judicial or law enforcement authorities have to use two different regimes: mutual legal assistance (MLA) on the one hand, and mutual recognition on the other. MLA is regulated by a number of legal instruments,82 the most important of which is the 2000 EU MLA Convention, and may be used for all cases, irrespective of the type of investigative measure or the type of evidence concerned. Mutual recognition, on the other hand, is

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82 Council of Europe Convention on mutual assistance in criminal matters 1959, supplemented by its additional protocol of 1978 and the second additional protocol of 2001; the Benelux Treaty of 1962; the Schengen Implementing Convention of 1990; and the Convention on mutual assistance between the Member States of the EU of 2000. Many provisions of the 2000 Convention are similar to those of the second additional protocol of 2001 to the 1999 Convention, which some of the Member States also ratified, and the additional protocol from 2001. Bilateral Treaties also exist.
limited to areas covered by one of the two instruments currently adopted in the EU: the Framework Decision on the execution in the European Union of orders freezing property or evidence, and the Framework Decision on the European evidence warrant (EEW) for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters. The EEW has not yet come into force.

22.2 The Stockholm Programme, adopted by the European Council in November 2009, identified the need for EU action in this area:

“The European Council considers that the setting up of a comprehensive system for obtaining evidence in cases with a crossborder dimension, based on the principle of mutual recognition, should be further pursued. The existing instruments in this area constitute a fragmentary regime. A new approach is needed, based on the principle of mutual recognition but also taking into account the flexibility of the traditional system of mutual legal assistance. This new model could have a broader scope and should cover as many types of evidence as possible, taking account of the measures concerned” (para 3.1.1).

22.3 The European Council went on to invite the Commission to:

“propose a comprehensive system, after an impact assessment, to replace all the existing instruments in this area, including Council Framework Decision 2008/978/JHA of 18 December 2008 on the European Evidence Warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters, covering as far as possible all types of evidence and containing deadlines for enforcement and limiting as far as possible the grounds for refusal” (emphasis added).

22.4 As a consequence of this recommendation, the Commission produced a Green Paper in November 2009. It sought the views of EU Member States and concerned “stakeholders” on whether there was a case for replacing the existing MLA instruments with a new single regime designed to make MLA easier and more effective and based on uniform rules on the admissibility of evidence in criminal trials. Our predecessors reported on this in January of this year, and recommended it for debate in European Committee, which took place on 8 February.

22.5 It appears, however, that this Member State initiative for a Directive on MLA takes the place of a Commission proposal in the same field.

The Document

Legal base

22.6 The proposed legal base is Article 82(1)(a) TFEU — “lay[ing] down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and
judicial decisions” — which means that the ordinary legislative procedure (formerly co-decision) is to be applied. This requires the Council to act by qualified majority voting and gives the European Parliament equal legislative rights in the adoption of the Directive. Under the Lisbon Treaty reforms compliance with this Directive will fall within the jurisdiction of the Court of Justice. The proposal is a “draft legislative act”; as such a national parliament can send a reasoned opinion to the EU institution making the proposal stating why it thinks the proposal does not comply with the principle of subsidiarity. The Council has informed national parliaments that the deadline for reasoned opinions is 24 October 2010.

Summary

22.7 The main changes to MLA procedures that would be brought by the draft Directive on a European Investigation Order are:

- replacement of all existing instruments on obtaining evidence in the EU in so far as they deal with measures covered in the draft Directive, including the MLA Conventions and the Framework Decisions on freezing orders and the EEW — see Article 29;

- a new focus on the investigative measure to be executed rather than on the type of evidence to be collected (as in the Framework Decision on the EEW). Therefore, in accordance with the principle of mutual recognition, it is the issuing authority which decides on the type of investigative measure to be executed — see Article 8(1) and (2);

- extension of MLA provisions to proceedings brought by administrative and judicial authorities for administrative offences carrying either civil or criminal penalties — see Article 4;

- a reduction in the grounds on which to refuse to execute or recognise the request for MLA — see Article 10;

- acceleration of the MLA procedures through mandatory deadlines (90 days to execute the order) — see Article 11, and

- a right for the issuing authority to be present in the territory of the executing State to assist in the execution of the investigative measure — see Article 8(3).

Chapter 1: the European Investigation Order

Article 1: Definition of the European Investigation Order and obligation to execute it

22.8 Paragraph 1 of this Article provides that a European Investigation Order (EIO) is a “judicial decision” issued by a “competent authority” for one or several specific investigative measures to be carried out; paragraph 2 that Member States are to execute an
EIO on the “basis of the principle of mutual recognition;” and paragraph 3 that the Directive will not have the “effect of modifying” Member States’ obligations to respect fundamental rights or “constitutional rules relating to the freedom of association, freedom of the press and freedom of expression in other media.”

**Article 2: Definitions**

22.9 Article 2 provides for the definition of several concepts used in the proposal. The definition of the issuing and executing authorities is dealt with in Article 2(1) and (2). An “issuing authority” is either a judge, a court, an investigating magistrate or a public prosecutor; or, in order to take into account different national systems, “another type of judicial authority as defined by the issuing State, and [in the case concerned] acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence”. The Council’s explanatory memorandum says that a Member State may for example designate a police authority as an issuing authority for the purpose of the EIO but only if that police authority has the power to order the investigative measure concerned at national level. This solution is said to be in line with existing MLA instruments and the Framework Decision on the EEW.

22.10 It is up to the Member States to decide which authority will be designated as an “executing authority” on the condition that it would be competent to undertake the investigative measure mentioned in the EIO. So if the EIO is issued to search a house in a specific location in Member State A, the executing authority must be an authority which would be competent, in a similar national case, to decide to search a house.

**Article 3: Scope of the EIO**

22.11 As one of the main objectives of this proposal is to facilitate cooperation in the gathering of evidence by replacing the existing instruments with a single framework, the EIO’s scope is wide. Under paragraph 1 it covers “any investigative measure” subject to the limited exceptions listed in paragraph 2. The exceptions are setting up a Joint Investigation Team (JIT), the gathering of evidence within a JIT (which are regulated both in the 2000 EU MLA Convention and in the 2002 Framework Decision on joint investigation teams), interception of satellite telecommunications and interception of telecommunications with immediate transmission to the requesting State. Cooperation for the carrying out of these measures will still be possible under the existing rules in the 2000 EU MLA Convention (see Article 29). Only these types of interception of telecommunications are excluded from the scope of the EIO — standard interception of telecommunication is covered by Article 27 of the proposal.

**Article 4: types of procedure for which the EIO can be issued**

22.12 The EIO is designed for obtaining evidence in criminal proceedings, but it also covers some proceedings “brought by administrative authorities in respect of acts which are punishable under the national law of the issuing state by virtue of being infringements

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87 Article 13.
of the rules of law and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters.” However, a ground for refusal has been inserted which provides for the possibility to refuse the execution of the EIO if the EIO has been issued for administrative proceedings (Article 10(1)(d)).

**Article 5: content and form of the EIO**

22.13 The EIO itself is the form provided in the Annex to the Directive, duly completed and signed by the issuing authority (Article 5(1)). The form is therefore not a “certificate” which accompanies a separate decision, as it is the case for several mutual recognition instruments (for example the Framework Decision on freezing orders): there is only one document to be transmitted by the issuing authority. This is the same as the EEW. As for languages (Article 5(2)), each Member State has to decide, as executing State, in which language EIOs will have to be transmitted to it.

**Chapter II — Procedures and safeguards for the issuing State**

**Article 6: transmission and form of the EIO**

22.14 Article 6 on the transmission and form of the EIO has the same content as Article 8 of the Framework Decision on the EEW which itself contains standard wording for mutual recognition instruments. All official communications have to be done through direct contacts between the issuing and executing investigative authorities (Article 6(1)). There is however a possibility to designate central authorities to assist the investigative authorities: they may be involved in the transmission and reception of the EIO but this only concerns the administrative tasks (Article 6(2)). The obligation to notify the use of a central authority is provided in Article 28(1)(c).

22.15 Other paragraphs concern the use of the European Judicial Network (Article 6(3) and (4)), and, as with other mutual recognition instruments, under Article 6(6) competent authorities are encouraged to communicate directly to resolve difficulties.

**Article 7: EIO related to an earlier EIO**

22.16 Article 7 is based on Article 9 of the Framework Decision on the EEW. It provides for the possibility to issue an EIO to supplement an EIO previously transmitted (Article 7(1)). It also clarifies the fact that, if the issuing authority is present during the execution of the measure, it can, during this execution, hand a supplementary EIO directly to the executing authority. It is therefore not necessary that the supplementary EIO be issued in the issuing State nor to transmit the EIO via central authorities where they exist in accordance with Article 6(2).

**Chapter III — Procedures and safeguards for the executing State**

**Article 8: Recognition and execution**

22.17 Under Article 8(1)
“the executing authority shall recognise an EIO (...) without any further formality being required, and shall forthwith take the necessary measures for its execution in the same way and under the same modalities as if the investigative measure in question had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 10 or one of the grounds for postponement provided for in Article 14”.

22.18 The Council’s explanatory memorandum provides an example of how Article 8(1) would work in practice. In the case of an EIO issued for the purpose of searching a house, the issuing authority is competent to decide whether or not the search of a house is a necessary measure in the case concerned. However, the nature of the search will be governed by the law of the executing State. If, however, the search of a house is possible at night in the issuing State but not in the executing State, Article 8(1) makes it possible for the executing authority to carry out the measure during daytime in accordance with its own legislation.

22.19 The explanatory memorandum continues:

“[t]he fact that the law applicable for the modalities of the carrying out of the measure is the law of the executing State may however create problems in terms of admissibility of evidence in the issuing State. Therefore, the proposal contains in Article 8(2) a rule which already exists in the 2000 EU MLA Convention and in mutual recognition instruments. It provides for a possibility for the issuing authority to indicate in the EIO which formalities will have to be complied with to ensure the admissibility of evidence. There is an obligation for the executing authority to comply with these formalities as long as they are not contrary to the fundamental rules of the executing State. This practical solution reconciles the need to ensure admissibility of evidence and the rule on applicable law”.

22.20 Article 8(3) has not been seen before in MLA or mutual recognition instruments. It provides a legal basis for the presence of “one or several authorities of the issuing State” to be present at the execution of the EIO in order to provide assistance to the executing authorities. The explanatory memorandum comments that nothing prevents such presence in the existing instruments but the lack of explicit reference contributes to the fact that “this presence is not enough applied for or granted”. Such presence may for example “be crucial to ensure admissibility of evidence or to issue supplementing EIOs in the course of the execution of a measure (see Article 7(2))”. Article 8(3) also creates an obligation for the executing State to accept the presence of the issuing authority “provided that such participation is not contrary to the fundamental principles of law of the executing State”. Recital 10 clarifies the fact it does not imply any law enforcement powers for the authorities of the issuing State in the territory of the executing State. Criminal and civil liability for acts committed by the persons concerned in the executing State is provided for in Articles 16 and 17.

**Article 9 : recourse to a different type of investigative measure**

22.21 Under Article 9(1) the executing authority may decide to have recourse to an investigative measure other than that provided for in the EIO when: a) the investigative
measure indicated in the EIO does not exist under the law of the executing State; or b) the investigative measure indicated in the EIO exists in the law of the executing State but its use is restricted to a list or category of offences which does not include the offence covered by the EIO, or c) the investigative measure selected by the executing authority will have the same result as the measure provided for in the EIO by less coercive means. Article 9(1) is to be read together with Article 10(1)(c) which makes it possible to refuse the execution of the EIO if, in cases covered in Article 9(1), there is no alternative measure in the executing State.

**Article 10: Grounds for non-recognition or non-execution**

22.22 One of the main changes brought by this proposal compared to other MLA instruments and the EEW is a stricter limitation on the grounds of refusal. In existing MLA agreements, the list of grounds for refusal to execute the request is typically short but the grounds themselves are very wide, in particular with reference to “sovereignty” and “public order”. The main provision in this regard is Article 2 of the 1959 Council of Europe Convention on Mutual Legal Assistance in Criminal Matters (“the 1959 MLA Convention”), which provides that:

> “Assistance may be refused:
>
> a if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;

> b if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of its country.”

22.23 Article 10(1) of the proposal limits the grounds for refusal to four cases.

- The first one (a) refers to an “immunity or privilege” existing under the law of the executing State. If there is a likelihood that the immunity or privilege may be lifted within a reasonable time, the executing authority may decide instead to postpone execution in accordance with Article 14.

- The second ground is copied from Article 9(1)(g) of the Framework Decision on the EEW. It makes it possible to refuse the execution of the EIO “if, in a specific case, its execution would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities”. The Council’s explanatory memorandum informs us that such grounds may be invoked only on a case by case basis.

- If there is no alternative measure under Article 9, the execution of the EIO may be refused (Article 10(1)(c)).

- The fourth ground for refusal relates to administrative proceedings (Article 4). The explanatory memorandum comments that “it is unreasonable to combine this application to administrative proceedings, which also exists in the Framework Decision on the EEW, together with an extension to all investigative measures. Some margin of manoeuvre should be left to the executing State in this respect”.

Therefore, the fact that the EIO is issued in the framework of administrative proceedings is as a possible ground for refusal.

22.24 Article 10(2) emphasises the need for proper consultation between the authorities involved before one of the above grounds for refusal is invoked.

**Article 11: Deadlines for recognition and execution**

22.25 The explanatory memorandum says that the proposal is expected to speed up the MLA procedure by inserting a new principle that “the decision on the recognition or execution should be taken and the investigative measure should be carried out with the same celerity and priority as for a similar national case” (Article 11(1)). It comments that “most of the current delays should be avoided if this principle is complied with, as should be the case in a common area of freedom, security and justice. This principle here takes the form of a legal obligation inserted in Article 11(1) and becomes the basis for this provision on deadlines for recognition and execution. The other rules are there to supplement this principle”.

22.26 Articles 11(3) and (4) include specific time limits but Article 11(2) makes it clear that the executing authority should endeavour to execute the EIO in even shorter deadlines if requested in the EIO. It also adds an explicit possibility for the issuing authority to state that the measure must be carried out on a specific date. This may for example be useful when searches of premises have to be carried out simultaneously in several locations.

22.27 Article 11(3) provides a 30-day time limit for a decision to be taken on the execution or recognition of the EIO. Article 11(5) brings some flexibility, with the possibility to postpone the decision for a further 30 days having given notice and stated the reasons to the issuing State.

22.28 Article 11(4) provides a 90-day time limit for the carrying out of the measure itself; the 90-day period runs from the date of the decision in Article 11(3). There is also a possibility to prolong this period without any limitation. The explanatory memorandum comments: “[w]hile it must be possible to take within 30 to 60 days a decision on whether or not the EIO may be executed, and although it should be possible to carry out the measure within 3 months, the wide scope of the EIO in terms of investigative measures covered makes it necessary to allow for greater flexibility”.

**Article 12: Transfer of evidence**

22.29 Under Article 12 the collected evidence is to be transmitted “without undue delay” to the issuing State and the executing authority may require the evidence to be returned. The Article also makes it clear that the issuing authority may request that the evidence be immediately transmitted to the authorities which are present during the execution of the
EIO. The executing authority is obliged to comply with this request if it is possible under its national law.

**Article 13: Remedies**

22.30 Article 13 provides that legal remedies “shall be available for the interested parties in accordance with national law”. The explanatory memorandum comments: “[a]s this proposal contains a general regime and does not distinguish between the types of investigative measures, it is not appropriate to provide in this proposal a single regime for legal remedies. It is however necessary, under the principle mutual recognition, to prevent that substantive reasons for issuing the EIO are challenged in an action brought before a court of the executing State”.

**Article 14: Grounds for postponement of recognition or execution**

22.31 Article 14 provides standard wording in mutual recognition instruments to allow the postponement of the recognition or execution of the EIO. Such postponement is possible if the execution of the EIO would prejudice an ongoing criminal investigation or prosecution or if the evidence concerned is already used in other criminal proceedings. The postponement must be as brief as possible.

**Article 15: Obligation to inform**

22.32 Article 15(1) ensures that the issuing authority will, within a week of the reception of the EIO, receive information from the concerned executing authority confirming that the EIO has been received and that the procedure is ongoing. It will also enable the issuing authority to contact the executing authority directly, for example if it wishes to supplement the EIO with additional measures to be executed or with additional information.

22.33 Article 15(2) provides for other obligations for the executing authority to inform the issuing authority in the course of the procedure. These include information on the fact that the EIO is incomplete or manifestly incorrect, that additional enquiries may be appropriate, that the formalities or procedures requested by the issuing authority cannot be complied with, or that the execution of the EIO has been refused or postponed.

**Article 16 and 17: Liability regarding officials**

22.34 Because it is possible for officials of the issuing State to be present in the executing State in the course of the execution of an EIO, rules on their liability for the actions carried out in the executing state are necessary.

22.35 Article 16 deals with the commission of criminal offences by (or against) the officials of the issuing State and states that they should be treated as if they were officials of the executing State.

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90 Articles 16 and 17 are based on Articles 15 and 16 of the 2000 EU MLA Convention.
22.36 Article 17 provides for the civil liability of the officials of the issuing State for any damage caused by them. The explanatory report under Article 16 of the 2000 EU MLA Convention explains how this works in practice:

“the purpose of this Article is to provide arrangements for the satisfaction of civil claims that may arise from operations carried out by the officials of a Member State on the territory of another Member State (…). The basic rule that applies is that a Member State is liable for any damage that is caused by its officials during the operations concerned. However, the Member State where the damage was caused is required, in the first instance, to make good such damage on the same basis as if the damage had been caused by its own officials. In such an event, the other Member State must reimburse in full any compensation that has been paid out to victims of the damage or persons claiming on their behalf. Subject to such reimbursement and to any claims that it may make from third parties, for example the officials who carried out the operations, no further claims for reimbursement are permitted by the Member State where the damage occurred”.

Article 18: Confidentiality

22.37 Most EIO will contain information which has to be protected in order to safeguard the investigation. The same goes for information to be transmitted as part of the evidence collected in execution of the EIO. Paragraphs (1) to (3) of Article 18 oblige Member States concerned to take the necessary measures to ensure that both the issuing and the executing authorities preserve the confidentiality of information or alternatively inform each other when confidentiality requirements cannot be fully complied with.

22.38 Article 18(4) is based on Article 4 of the 2001 EU MLA Protocol. It deals specifically with an EIO issued to obtain banking information (see Article 23 to 25). Article 18(4) commits the Member States take the necessary measures to ensure that banks will not disclose to the bank customer or to other third persons the fact that an investigation is carried out.

Chapter IV: Specific provisions for certain investigative measures

22.39 Although the proposal provides a single regime for obtaining evidence, additional rules are necessary for certain types of investigative measure. Most are already regulated by the 2000 EU MLA Convention and the 2001 EU MLA Protocol and are repeated here. In some case they include additional grounds for refusal to those set out in Article 10.

Articles 19 and 20: Temporary transfer to the issuing or executing State of persons held in custody for purpose of investigation

22.40 Article 19 relates to the situation where the issuing authority requests the presence in the issuing State of a person held in custody in the executing State “in order to have an investigative measure carried out for which his presence [...] is required”. Article 19(2) provides for additional grounds for non-recognition, based on Article 11 of the 1959 MLA
Convention: the person in custody does not consent, or his presence is necessary at criminal proceedings pending in the territory of the requested Party or the transfer is liable to prolong his detention. Article 19(9) provides that costs arising from the transfer shall be paid by the issuing State as it is already the case under Article 20 of the 1959 MLA Convention).

22.41 Article 20, based on Article 9 of the 2000 EU MLA Convention, covers the temporary transfer of a person held in custody in the issuing State in order to have an investigative measure carried out for which his presence on the territory of the executing State is required. Article 20(2) provides for additional grounds for non-recognition.

Article 21: Hearing by videoconference

22.42 Article 21, based on Article 10 of the 2000 EU MLA Convention, generally applies to hearings of experts and witnesses, but may, under the particular conditions contained in Article 21(9), also be applied to hearings of defendants.

22.43 Article 21(1) makes it clear that an EIO may be issued in the issuing State to use videoconference to hear the evidence of a person who is in the executing State. The circumstances in which such EIO may be issued are that the issuing authority requires the person in question to be heard as a witness or expert and that it is “not desirable” or “not possible” for him or her to travel to that State for a hearing. In explaining “not desirable,” the explanatory memorandum says that it could for example apply in cases where the witness is very young, very old, or in bad health; “not possible” could for instance cover cases where the witness would be exposed to serious danger by appearing in the issuing State.

22.44 As with the 2000 EU MLA Convention, a request for a hearing by videoconference may be refused if it would be contrary to the fundamental principles of the law of the executing State or the executing State does not have the technical means for videoconference. The explanatory memorandum explains that the reference to “fundamental principles of law” implies that execution of the EIO may not be refused for the sole reason that hearing of witnesses and experts by videoconference is not provided under the law of the executing State, or that one or more detailed conditions for a hearing by videoconference would not be met under national law. Article 21(3) makes it clear that the technical means for videoconference may be made available by the issuing State.

22.45 The rules to be observed where a hearing takes place by way of videoconference are set out in Article 21(6).

22.46 Article 21(10) allows Member States to extend the application of this Article to videoconference hearings involving accused persons. However, there are additional grounds for refusal based on the absence of consent of the accused person to be heard by videoconference or that the execution of the EIO is contrary to the law of the executing State.

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92 See explanatory report to the 2000 EU MLA Convention.
**Article 22: Hearing by telephone conference**

22.47 Article 22, based on Article 11 of the 2000 EU MLA Convention, sets out the arrangements to apply between the Member States in respect of requests relating to hearings by telephone conference. Article 22(2) provides two grounds for refusal in addition to those referred to in Article 10(1): if the use of the teleconference is contrary to fundamental principles of the law of the executing State or if the witness or expert does not agree that the hearing takes place by that method.

**Article 23: information on bank accounts**

22.48 Article 23 covers EIOs issued to obtain information on bank accounts held or controlled by a natural or legal person (an individual or company). It is based on Article 1 of the 2001 EU MLA Protocol. The obligation extends in Article 23(2) to being able to trace bank accounts throughout the territory of the executing State. This paragraph does not oblige Member States to set up a centralised register of bank accounts, but leaves it to each to decide how to comply with the provision. If the executing authority manages to trace a bank account in its territory it is under an obligation to provide the issuing State with the bank account numbers and all its details. Accounts that are controlled by the person under investigation include accounts of which that person is the beneficial owner. The concept of beneficial owner is defined in Article 3(6) of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. A special provision applies (Article 23(3)) to accounts for which the person that is the subject of the proceedings has powers of attorney. They are not automatically covered. Article 23(4) clarifies that the obligation to supply information only applies to the extent the information is available to the bank keeping the account. Accordingly, the Council’s explanatory memorandum says the proposal does not put any new obligations on Member States or banks to retain information relating to bank accounts. Article 23(5), based on the limitation found in Article 1 of the 2001 EU MLA Protocol, makes it possible to refuse the execution of the EIO if the offence does not carry a maximum sentence of at least four years in the issuing State and two years in the executing State.

22.49 Article 23(6) requires the issuing authority to consider carefully if the information “is likely to be of substantial value for the purpose of the investigation into the offence” and to state this expressly in the EIO, and also to consider carefully to which Member State or States it should send the EIO. The explanatory memorandum explains that this paragraph is intended to prevent “fishing expeditions.” However, the executing authority is not permitted to question whether the requested information is likely to be of substantial value for the purpose of the investigation concerned.

**Article 24: information on banking transactions in the past**

22.50 Article 24 relates to EIOs issued to obtain information on bank accounts or banking transactions carried out in the past. It is based on Article 2 of the 2001 EU MLA Protocol. There is a link between Article 23 and Article 24 in that the issuing authority may have obtained the details of the account by means of the measure provided for in Article 23 and subsequently may ask for information on banking operations that have taken place on the account. However, the measure is self-standing and may also be decided in respect of a
bank account that has become known to the investigating authorities of the issuing authority by any other means or channels.

22.51 Article 24(1) does not — as does Article 23 — make any references to accounts linked to a person that is the subject of a criminal investigation. This clarifies that the EIO may cover accounts held by third persons, persons who are not themselves subject of any criminal proceedings but whose accounts are, in one way or another, linked to a criminal investigation. Any such link must be accounted for by the issuing State in the EIO. A practical example is the situation where the bank account of an innocent, and totally unaware, person is used as a ‘means of transport’ between two accounts, which are held by the suspect, in order to confuse and hide the transaction. Article 24 allows the issuing authority to get information on any transactions to or from such an account.

22.52 The transactions on which information has to be provided are those carried out during a specified period through one or more accounts specified in the EIO. The information to be transmitted in the execution of such EIO also includes “the particulars of any sending or recipient account” (Article 23(1)). The remaining provisions largely mirror those in Article 23.

**Article 25: monitoring banking transactions**

22.53 Monitoring banking transactions that will take place in the future is a measure already covered by Article 3 of the 2001 EU MLA Protocol. However, as explained in the explanatory report of this Protocol, “this Article (…) only obliges Member States to set up the mechanism — Member States shall be able to provide the assistance upon request — but leaves to each Member State to decide if and under what conditions the assistance may be given in a specific case”.

22.54 The Council’s explanatory memorandum says that “such wide margin of manoeuvre is not in line with current developments of judicial cooperation in the EU, especially under the mutual recognition principle”. So the procedures contained in Article 25 are more specific, although by dint of Article 27, which concerns gathering evidence in real time, there is some flexibility on refusing a request to monitor bank accounts. Article 25(1) provides for the possibility to issue an EIO in order to monitor banking transactions taking place in the future. Article 25(2) corresponds to the first sentence of Article 23(2). Article 25(3) corresponds to Article 24(4). Article 25(4) states that the practical details regarding the monitoring shall be agreed between the competent authorities of the issuing and the executing State.

**Article 26: Controlled deliveries**

22.55 Controlled deliveries are mainly used in investigations of offences of illicit trafficking. Article 73 of the 1990 Schengen Convention already deals with controlled deliveries but only for drug trafficking. It was extended to other forms of crime by Article 12 of the 2000 EU MLA Convention. The explanatory report to the 2000 EU MLA Convention states under Article 12 that: “The expression ‘controlled delivery’ has not been specifically defined in the Convention and it should be interpreted in accordance with national law and practice. The provision applies if, for example, the illicit consignment, with the consent
of the Member States concerned, has been intercepted and allowed to continue with the initial contents intact or removed or replaced in whole or in part”.

22.56 Article 26 allows an EIO to be used to execute a controlled delivery. General rules on the EIO are applicable so that it is not necessary to repeat the contents of Article 12 of the 2000 EU MLA Convention. The only specified rule is that the operation is always directed and controlled by the competent authorities of the executing State.

Article 27: Investigative measures implying gathering of evidence in real time, continuously and over a certain period of time

22.57 Article 27 encompasses several investigative measures which require gathering of evidence in real time, continuously and over a certain period of time. This includes for example the interception of telecommunications, the observation of a place or a person or an undercover operation. It also includes measures which are regulated by this proposal, such as controlled deliveries or the monitoring of banking transactions.

22.58 The use of these measures is necessary in many investigations, especially in organised crime or terrorism. The explanatory memorandum says it is therefore essential to cover them in this proposal: failing to do so would mean that judicial authorities would not be able to insert in a single document all investigative measures they want to see executed in another Member State. However, it goes on to say that these measures are also characterised by significant differences in the legislation of the Member States, and are often sensitive because they involve a limitation of fundamental rights, in particular privacy. This is why such measures have been subject to more flexible procedures in mutual legal assistance instruments. Article 27 follows a similar approach: it provides that an EIO may be issued for the purpose of carrying out these types of measures but that the execution may be refused if the use of this measure would not be authorised in a similar national case.

Chapter V: Final provisions

Article 29: Relations to other agreements and arrangements

22.59 Article 29 provides for the replacement of all existing instruments on obtaining evidence in the EU in so far as they deal with measures covered in the draft Directive, including the MLA Conventions and the Framework Decisions on freezing orders and the EEW.

The Government’s view

The Minister’s Explanatory Memorandum of 25 May

22.60 The Minister of State at the Home Office (Baroness Neville-Jones) submitted an Explanatory Memorandum on this proposal on 25 May; this replaced a previous factual Explanatory Memorandum submitted on 5 May, during purdah.
The need for legislation

22.61 The Minister says that the Government will not commit to participating in this initiative unless it believes that there is a clear need for, and benefit to the UK in, such legislation. She comments that the Stockholm Programme had called for the establishment of comprehensive MLA regime and so a proposal for EU legislation is not unexpected and is in line with the EU’s own work programme.

22.62 The EU Commission recently published a Green Paper on obtaining evidence in criminal matters from one Member State to another securing its admissibility. This was a consultation document soliciting the views of Member States on any future changes to the MLA system. The Commission is currently analysing the replies it has received and the Minister reports that it is continuing its work on a legislative proposal in spite of the introduction of this draft Directive.

Impact on UK law

22.63 The United Kingdom would need to bring forward secondary legislation under the European Communities Act 1972 in order to transpose and implement this Directive. At present where an incoming request for MLA asks for evidence to be obtained by the use of coercive powers such requests fall to be considered in accordance with the provisions of Part 1 of the Crime (International Cooperation) Act 2003 (‘CICA’). If the United Kingdom opted in to this Directive amendments would need to be made to CICA so as to require requests from EU Member States for the use of such coercive powers to be considered in accordance with the terms of the Directive. As the Directive also touches on the transfer of prisoners for the purpose of assisting in a criminal investigation it may also be necessary to amend the provisions of UK domestic law which currently provide for the transfer of prisoners for this purpose. These provisions are found in CICA and in sections 5 and 6 of the Criminal Justice (International) Co-operation Act 1990.

Subsidiarity

22.64 The EIO concerns cross border judicial cooperation, and in particular MLA, between EU Member States which the Minister says is a matter appropriate for action at the Union Level. It would be difficult to achieve the same level of co-operation and common understanding through Member States acting unilaterally or concluding a range of bilateral instruments. So she concludes that the proposal is compliant with the principle of subsidiarity.

Fundamental Rights Analysis

22.65 The Government believes that the proposed Directive is fully compliant with the ECHR. A full analysis is provided at Annex A of the Explanatory Memorandum.

The need for legislation

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consultation document soliciting the views of Member States on any future changes to the MLA system. The Minister reports that the Commission is currently analysing the replies it has received and is continuing its work on a legislative proposal in spite of the introduction of this draft Directive.

**Legal base**

22.67 While Article 82(1)(a) is the current legal base on which the Directive is based, the Government’s view is that Article 82(1)(d) is the more appropriate legal base. Article 82(1)(a) provides for the European Parliament and the Council to ‘lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions’ whereas Article 82(1)(d) provides for them to ‘facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions’. Given the nature of MLA the Government would contend that Article 82(1)(d) is the more appropriate legal basis.

**The role of central authorities**

22.68 If the Article 82(1)(d) legal base were relied upon there is, however, a further issue as to the interpretation of the phrase ‘equivalent authorities’. The Government’s view is that the better argument is that this phrase should be construed to extend more widely than simply to cover organisations competent to issue binding judicial decisions otherwise the Article 82(1)(d) legal base would seem to add nothing to the Article 82(1)(a) legal base; however the issue is not free from doubt. If the phrase were construed narrowly this would potentially create policy difficulties for the UK.

22.69 The UK draws a very clear distinction between the recognition of a MLA request and its actual execution. This is why it is the role of the relevant central authority in the UK (acting on behalf of the Secretary of State) to make a decision to accede to an MLA request (in the EIO this would amount to recognition). The actual execution of the request (i.e. carrying out the required investigative measure) would then fall to the police (in most cases) or another law enforcement body. This is to ensure the independence of law enforcement bodies to as great an extent as possible and to ensure that issues such as national security are considered by the Secretary of State.

22.70 Article 2(b) as it is currently worded would require a change to the operation of MLA in the UK. The second sentence of this subparagraph provides that an executing authority must be able to actually execute the investigative measure requested. Article 8 subsequently provides that only an executing authority can recognise an EIO. Such a definition would not allow the central authority to recognise an EIO, as it could not carry out the investigative measure requested. However, the police would also be unable, according to the fundamental principles concerning the division of powers in the UK criminal justice system, to give proper consideration as to Article 10 and would thus also be unable to recognise the EIO. The Minister says that, clearly, this could be a problem. However, the Government believes that a number of countries are willing to reconsider the current draft relating to central and executing authorities.
22.71 An alternative solution could be for the central authority to continue to receive the requests and to then forward them to a judge for a decision on whether to recognise or refuse the EIO. This is the system currently provided for in sections 20 — 25 of the Crime (International Co-operation) Act 2003 to implement parts of the Framework Decision on the execution in the European Union of orders freezing property or evidence. Another potential alternative may be to move the central authority to a law enforcement agency, similar to what has been planned in relation to Framework Decision on the EEW. Any issues related to national security would then be referred back to the Secretary of State.

Scope

22.72 The Minister comments that the scope of the EIO is very broad. It currently includes controlled deliveries and certain forms of intercept evidence and it is questionable whether these should form part of any proposal. For example, controlled deliveries are often organised at an operational level rather than through the formal MLA route. There is no clear reason given for why it is included in the EIO but cross border investigations, for example, are not. Both forms of assistance could be seen to raise public policy issues and a mutual recognition instrument may not be considered the most appropriate instrument for them.

Deadlines

22.73 The Minister reports that the Government holds no reliable data in this field but Metropolitan Police Service data suggest that the UK currently completes execution of MLA requests within this deadline in approximately 50% of cases. Respect of MLA deadlines is dependent on how the executing authority (police in most cases) prioritises cases and how much resource is allocated to handling incoming requests. The likely scenario is that EIO requests would be accorded a higher priority than MLA requests from other non EU Member States.

22.74 From the available data, the Government estimates that approximately 70 — 75% of outgoing UK MLA requests for evidence are sent to EU Member States. This amounts to approximately one thousand requests a year (this figure does not include requests sent supplementary to the original). The Minister therefore thinks that formal deadlines will be beneficial for investigators and prosecutors in ensuring that the evidence they request is received in a timely fashion. This is not always the case under the current system. She also reports that investigators and prosecutors expect that this would allow them to better manage their cases. This should enhance the quality of prosecutions. It is also likely that prosecutors will be more likely to issue requests given a standardised, user-friendly form.

Grounds for refusal

22.75 The Government will also need to consider whether the EIO allows States sufficient discretion to refuse requests — it would not wish to be compelled to act in a manner inconsistent with the national interest. In operating the 1959 and 2000 Conventions (through which the UK currently receives virtually all MLA requests from EU Member

States) the Secretary of State maintains a general discretion as to whether or not to accede to a MLA request. In mutual recognition instruments there is no such general discretion to refuse to recognise and consequently the grounds on which an EIO could be refused are substantially reduced. The Minister notes that double jeopardy is not included as a ground for refusal; nor are incorrectly completed or plainly inaccurate EIOs, although in practice, although such a request would not be refused, its execution would be frustrated. She also comments that there is also no basis for refusing a request on the grounds of proportionality.

22.76 Human rights are not specifically included as a ground for refusal but Article 1(3) of the Directive makes it clear that nothing in the Directive shall have the effect of modifying the obligations on Member States to respect the fundamental rights and fundamental legal principles enshrined in Article 6 of the TEU. Article 6 makes it clear that rights as guaranteed by the ECHR are to be regarded as general principles of EU law. On this basis the Minister reports that the Government’s view is that it is clear that neither the UK nor other EU Member States could act in a manner contrary to the ECHR and that any request to do so would have to be refused.

Financial implications

22.77 The Minister says it is clear that costs in relation to bringing forward secondary legislation to transpose and implement the Directive would be incurred. However, these would be met from the existing Home Office budget. However, the other financial implications in relation to this proposal vary greatly depending on the outcome of negotiations in relation to the role of central authorities and deadlines. Annex B to the Explanatory Memorandum contains detailed costs in relation to incoming requests. Although not an impact assessment this has been prepared mostly using the standard forms for ease of reference and to provide as much detail as is possible at this stage.

22.78 The Minister tells us that it is not possible to quantify the effects of formal deadlines and the introduction of a standardised form to outgoing requests and its impact on investigations and prosecutions. However, receiving evidence from other EU Member States in a timely fashion is likely to be beneficial to those investigations and prosecutions and result in cases being disposed of quicker. The introduction of standardised forms is likely to increase both the numbers of MLA requests received from EU countries and those that are made by the UK which will inevitably have cost implications.

22.79 She then outlines a series of possible costs, all of which assume that the deadlines currently envisaged by the draft EIO remain as they are and which are based on average annual costs over a ten year period. The Home Office would only expect to meet costs that fall to the Home Office, not those of other agencies and departments. The figures relate to the UK receiving and executing MLA requests from other EU countries and although as accurate as the Government believes they can be at this stage it accepts that eventual figures may not match these exactly.

- Not opting in to the EIO: £3.1 million — £4.6 million.
- Opting in to the EIO and maintaining the current role of central authorities: £3.8 million — £5.7 million.
Opting in to the EIO and requiring judges to make decisions on recognition and refusal of an EIO: £3.9 million — £5.9 million.

Opting in to the EIO and transferring the role of a central authority to a law enforcement agency: £3.9 million — £5.8 million.

These costs are currently an unfunded pressure but will be factored into the 2012/13 spending review, which is the first year any changes resulting from the EIO would be likely.

**Statement to the House**

On 27 July the Secretary of State for the Home Department (Mrs Theresa May) made a statement to the House confirming that the UK would be opting into the Directive:94

“The Government have decided to opt into the EIO because it offers practical help for the British police and prosecutors, and we are determined to do everything we can to help them cut crime and deliver justice. That is what the police say the EIO will do. We wrote to every Association of Chief Police Officers force about the EIO, and not one said that we should not opt in. ACPO itself replied that

‘the EIO is a simpler instrument than those already in existence and, provided it is used sensibly and for appropriate offences, we welcome attempts to simplify and expedite mutual legal assistance’

However, I know that some hon. Members have concerns about the EIO, and I should like to address them in turn. The first is on the question of sovereignty. In justice and home affairs, there are many ideas coming out of Brussels, such as a common asylum policy, that would involve an unacceptable loss of sovereignty. I want to make it absolutely clear to the House that I will not sign up to those proposals, and I have made that clear to my European counterparts. However, the EIO directive does not incur a shift in sovereignty. It is a practical measure that will make it easier to see justice-British justice-done in this country.

“The second concern is about burdens on the police. At a time when we are reducing domestic regulatory burdens on the police, I agree that it would be unacceptable to have them re-imposed by foreign forces. That is why we will seek to ensure that there is a proportionality test, so that police forces are not obliged to do work in relation to trivial offences, and that forces will be able to extend deadlines when it is not possible to meet them. I want to be clear that the EIO will not allow foreign authorities to instruct UK police officers on what operations to conduct, and it will not allow foreign officers to operate in the UK with law enforcement powers.

“The third concern is about legal safeguards. We will seek to maintain the draft directive’s requirement that evidence should be obtained by coercive means, for example through searching premises, only where the dual criminality requirement is satisfied. Requests for evidence from foreign authorities will still require completion

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94 HC Deb, 27 July 2010, cols. 881–90.
of the same processes as in similar domestic cases. In order to search a house, for
example, police officers will still need to obtain a warrant.

“"The execution of the EIO must be compatible with the European convention on
human rights. That means that there must be a clear link between the alleged
criminality and the assistance requested, otherwise complying with the request
would be in breach of article 8 of the ECHR, on private and family life.

“"By opting in to the EIO at this stage, we have the opportunity to influence its precise
content. We know that the existing draft is not perfect, and we are confident that we
will be able to change it in negotiations. My noble Friend Baroness Neville-Jones has
already had discussions with her German counterpart, and we are confident that we
will shape the draft directive so that it helps us to fight crime and deliver justice while
protecting civil liberties and avoiding unduly burdening the police. That is why the
civil liberties group, Justice, says that

“"on balance it is better for the UK to engage in this area than be ousted onto the
periphery of evidence in cross border cases.'

“"I ask hon. Members to remember this: the EIO will apply to both prosecutors and
defence lawyers, which means that it can be used to prove British subjects innocent
abroad, as well as to prosecute the guilty at home.

“"The EIO will allow us to fight crime and deliver justice more effectively. It does not
amount to a loss of sovereignty. It will not unduly burden the police. It will not incur
a loss of civil liberties. It is in the national interest to sign up to it, and I commend
this statement to the House.”

Consultation

Minister’s letter of 21 July

22.82 The Minister wrote on 21 July enclosing responses to the Government’s ongoing
consultations.95 The Child Exploitation and Online Protection Centre welcomes the
proposal because child exploitation is very often trans-national and this proposal will speed
up cooperation between EU enforcement agencies. It supports in particular a standardised
form for issuing requests and the imposition of deadlines. It thinks the Government should
opt into the proposal because not to do so would mean that UK requests would not be
priorities in the other EU Member States, and this would impede UK investigations.
Finally, it says that obtaining electronic evidence can be complex; where an offender resides
in one Member State and the server is held in another, clarity over which Member State
should receive the EIO is necessary.

22.83 The Metropolitan Police Service (MPS) comments that many investigations are
transnational and much of the evidence is held overseas. Current systems used to gather
such evidence, for example International Letters of Request, are cumbersome, slow and

95 The Minister’s letter and responses are available on the Committee’s web site; the responses of the Law Society,
Justice and Fair trials International are also available on their own web sites.
often result in evidence not being obtained in time for trial. The EIO seeks to address this issue by setting time limits around such requests which will allow police officers and prosecutors to plan their evidence gathering, ensuring that all parties including, crucially, the courts are apprised of how long it will take to gather such evidence. The EIO is a simpler instrument than those already in existence. Because of this, it anticipates that the use of the EIO by the MPS and all UK police forces will increase as officers become aware of how simple the process is likely to become. Equally, requests into the UK are certain to increase.

22.84 In the MPS’s view the UK should seek to negotiate a position whereby proportionality is considered, and that only matters of certain gravity be subject to the EIO. The gravity factors could be negotiated EU wide or it could be left to the receiving country to make the assessment subject to agreed guidelines and include factors such as severity of the offence, threat to life issues or impending court appearance. The EU has found that use of the European Arrest Warrant has been complicated by requests for fugitives suspected of low level offences. Police and CPS / HMCS resources are stretched in dealing with the amount of EAWs received where no proportionality filter is considered. The EIO is likely to become an inefficient instrument should it go ahead without a proportionality clause and, on projected volumes, we are likely to miss the deadline in a significant proportion of lower level requests.

22.85 The Law Society of England and Wales does not believe that the new proposal clearly demonstrates a need for change or an “added-value” in comparison with the current regime. It has been argued that the greatest problems experienced in the current system relate to a lack of resources and prioritisation, which are issues that should be addressed by Member States themselves rather than through legislation. Some legal practitioners have however commented that the broad scope of the EIO could be preferable to the current system with a variety of different mutual legal assistance (“MLA”) and mutual recognition instruments currently in force. Some have also argued that the drafting in the EIO could be preferable to that in the EEW, especially taking into account that, in contrast to the EIO, the EIO contains a general provision for legal remedies.

22.86 The Law Society believes that the principle of proportionality should be expressly incorporated. Article 9(1)(c) provides for an executing Member State to carry out an investigative measure by “less coercive means”. It believes that instead there should be a positive test that enables the executing Member State to choose the most appropriate measure taking account of this principle. It also believes that a de minimis rule should also be included which:

- takes account of the seriousness of the offence in the issuing Member State to avoid the issuance of EIOs for disproportionately minor offences; and

- aims to avoid attempts at evidence-gathering by excluding cases where there is virtually no chance of conviction.

22.87 It reports that practitioners particularly drew on their experiences in regard to the European Arrest Warrant (EAW). Many felt that there was no means of limiting when an EAW could be issued. This has led to a large number of EAWs being issued for minor offences, with Poland being cited as a country where there was an obligation to prosecute
even insignificant cases. Practitioners are concerned that there could be further legal principles in other Member States that do not exist in the legal system of England and Wales that could impact on the usage of the new EIO. The Society therefore calls for a full impact assessment of the effects of the proposal on Member States.

22.88 The Society believes that the EIO should be available both to the prosecution and defence teams in criminal cases. This relates to a general need to ensure equality of arms between prosecution and defence. An application could be made by the defence to the competent judicial authority for an EIO.

22.89 On compatibility with fundamental rights, the Society is concerned that there does not appear to be sufficient clarity about whether practitioners representing defendants would be able to challenge an EIO. Article 13 provides that “legal remedies” shall be available for the interested parties in accordance with national law of the issuing Member State and appears to apply to the whole proposal. Whilst the Society welcomes the provision for legal remedies, it notes that there is a lack of detail. The Society is also concerned that the new deadlines for recognition and execution provided for in Article 11 could in reality be problematic in ensuring adequate representation of defendants. The Society would like to see safeguards to ensure that time limits could be extended to ensure sufficient time for notification of defendants, for applications to be made for legal aid and for evidence gathering by defence teams.

22.90 The Society notes that Article 8(2) concerning recognition and execution refers directly to the need for compliance with the principles of fundamental rights in the executing Member State. Although it is a general requirement of European law that fundamental rights be respected, the Society would support widening the reference to apply to Article 10 concerning grounds of non-recognition and non-execution.

22.91 The Society believes that the grounds provided for non-recognition or non-execution of the EIO by executing authorities are too narrow. The Society believes strongly that the following categories should be added: exclusion of evidence requests that could lead to the identification of informants; exclusion of information covered by legal professional privilege; and exclusion of evidence requests contrary to fundamental rights.

22.92 A summary of the views expressed by Justice, a human rights and law reform organisation, are:

- the submissions to the Commission’s consultation process should not be ignored in the negotiations on the member state initiative;

- the legal basis should be grounded in Article 82(1)(a) TFEU;

- to ensure requests are adhered to in accordance with the ECHR, EU Charter on Fundamental Rights (EU Charter) and in particular the fundamental rights of a fair trial, it is necessary for all requests to be granted by a judicial authority, akin to prior framework decisions and the European arrest warrant in particular. An independent and impartial judge can verify that a request complies with national law and ECHR obligations. The appropriate test is already required at the issuing stage pursuant to article 7 EEW;
• a necessity and proportionality test is required, as in the framework Decision on the EEW;

• grounds for non-recognition should encompass those set out in the EEW and fundamental rights;

• legal remedies cannot be effective unless a structure is provided in which representations can be made, as in the EEW;

• additional safeguards are required for particular special provisions;

• data protection requires careful consideration of Article 8 ECHR considerations and should be recognised in the directive; and

• the UK should opt in to the instrument but in doing so should engage its negotiating position to ensure that the omission of these vital safeguards is rectified.

22.93 **Fair Trials International** does not support the proposal as it stands. It believes the UK should use its influence to persuade the Member States who initiated the EIO proposal to withdraw it and insist on a thorough impact assessment exercise. This would allow the Commission to continue its work in line with the timetable it originally proposed. Only in this way can the substantial implications and likely costs be understood and an informed debate take place, at EU and national level, on any resulting legislative proposal.

22.94 It questions the appropriateness of replacing all existing evidence-gathering measures with a new instrument based on mutual recognition. This is questionable given:

- the absence of a coherent EU-wide data protection regime in the criminal context
- the wide variance in standards of evidence-gathering and evidence-handling in Europe;

- the lack of any basic common standards in evidence-gathering and evidence handling in Europe;

- the fact that there has as yet been no implementation of basic minimum procedural defence safeguards, with only one measure having been passed (at the time of writing), which is not due for implementation until July 2013.

22.95 Lessons must be learned from the European Arrest Warrant about the risks of over-rigid mutual recognition based instruments without the necessary accompanying protection of, and respect for, fundamental rights across all Member States. Fair trials International is concerned that an instrument in the form proposed would risk a substantial increase in the number of evidence requests received and a consequent increase in the costs and resources needed to deal with them. It is far from clear that there would be a net benefit to the UK and the risk of fundamental rights infringements will also increase.

22.96 Additional safeguards are needed to protect fundamental rights in the evidence gathering process. These include the implementation of common basic standards on evidence-gathering across the EU; the consideration of the proportionality and necessity of any request for evidence; the allocation of sufficient time and facilities to deal with all necessary evidence requests (including those for evidence reasonably requested by the
defence); the need to safeguard evidence and keep a detailed audit trail throughout the process, and to ensure that where interviews take place by telephone or videoconference, all original recordings are kept until the case has been finally disposed of.

22.97 It has specific concerns about the EIO proposal including:

- the lack of express refusal grounds in key areas, such as
  - breach of fundamental rights;
  - proportionality (the offence is trivial and/or the request would involve disproportionate use of resources or unnecessary infringement of privacy or other fundamental rights);
  - double jeopardy (the person being investigated has already been tried for the same offence);
  - territoriality (the alleged offence was not committed in the issuing but in the executing State);
  - territoriality (the alleged offence was not committed in the issuing but in the executing State);

- the absence of a dual criminality requirement, meaning one State could be required to investigate conduct it does not itself treat as criminal;

- the lack of protection for individuals in custody who are transferred to other States for questioning;

- the absence of necessary safeguards relating to evidence given via telephone and videoconferencing; and

- the absence of provisions enabling the defence to request an EIO to be issued where necessary in the interests of justice.

**Conclusion**

22.98 We thank the Minister for her Explanatory Memorandum and letter.

22.99 There does not appear to have been a full impact assessment on the necessity for this draft legislative act. We note that Article 5 of the Protocol on subsidiarity and proportionality states that:

> “any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal’s financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments,
To date we have only seen an explanatory memorandum from the Council, and would be grateful if the Minister could confirm that the obligations in Article 5 above will be complied with and when we can expect to see the detailed statement.

22.100 We note that the Commission was in the process of undertaking an impact assessment on mutual legal assistance following the publication of its Green Paper last year, as instructed by the Council in the Stockholm Programme. But this appears to have been superseded by this Member State initiative. The Minister says at paragraph 26 of her Explanatory Memorandum of 25 May that, nonetheless, “the Commission is currently analysing the replies it has received and is continuing their work on a legislative proposal in spite of the introduction of this draft Directive”. This strikes us as a deeply unfortunate situation: firstly because the Council and Commission should not be wasting resources issuing rival proposals on the same subject — we had thought the Treaty of Lisbon was supposed to put paid to turf warfare between the institutions in Brussels; secondly, the assessment being undertaken by the Commission is a prerequisite to knowing whether and what type of legislation is necessary in this field, so unarguably it should form the basis of any legislative proposal, be it from a group of Member States or the Commission. We ask the Minister to update us urgently on this state of affairs.

22.101 We would be grateful for an update on discussions on the question of legal base and the role of central authorities.

22.102 We thank the Minister for sending us the comments of the Child On-line Exploitation Centre, the Metropolitan Police Service, the Law Society of England and Wales, Justice and Faire Trials International. We note that they have several concerns in common; we share many of them and have additional ones of our own. In sum we think that:

- the grounds for refusing a request in Article 10 are too narrow. In our view they should include:
  - breach of fundamental rights in the executing State;
  - double jeopardy (the person being investigated has already been tried for the same offence);
  - a requirement of territoriality (so if the alleged offence was not committed in the issuing but in the executing State it could refused);
  - a requirement of dual criminality — for all EIOs, not just those requiring coercive measures (so preventing a Member State from being required to investigate conduct it does not itself treat as criminal);
- the legal remedies should be spelt out in greater detail, as per Article 18 of the Framework Decision on the EEW;
the proposal should not give a right to the issuing authority to be present in the executing State when the investigative measure is carried out. If this happens informally already (as we are told in the Council’s explanatory memorandum), we do not see a need for legislation. The fact that the drafters thought that the requesting authority should be present may also be a good indication of the lack of basic common standards in evidence-gathering and evidence-handling in Europe.

22.103 We would be grateful if the Minister would tell us whether she shares the concerns we have outlined in the bullet points above.

22.104 We would also be grateful to know the Minister’s views on the comments of Justice that, in order to respect the right of a suspect to a fair trial, it is necessary for all EIO requests to be granted by a judicial authority, akin to prior Framework Decisions and the European Arrest Warrant in particular.

22.105 We note that the Law Society and Fair Trials International have said that an EIO should be available both to the prosecution and defence teams in criminal cases. This comment is prompted by their perceived need to ensure better equality of arms between prosecution and defence. We understand from the Home Secretary’s statement to the House on 27 July that this is the case. We would be grateful if the Minister could explain how the EIO will in practice be available to defence lawyers.

22.106 We strongly support a proportionality test being incorporated in the proposal, and welcome the Home Secretary’s confirmation that this will be the case. We think it should be clearly listed as a ground for refusal in Article 10.

22.107 We ask the Minister to submit the response of Association of Chief Police Officers, to which the Home Secretary referred, the Crown Prosecution Service, and any other organisations which have responded to the Government’s consultation.

22.108 Finally, we ask the Minister to provide us with a timeframe for the conclusion of negotiations.

22.109 The proposal remains under scrutiny pending the Minister’s replies, which we would be grateful to receive as soon as possible.

22.110 We clear document a), which was superceded by the current proposal, document b), from scrutiny.
23 Sexual abuse and exploitation of children and child pornography

| (31448) 8155/10 COM(10) 94 | Draft Directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA |

Legal base

Articles 82(2) and 83(1)TFEU; QMV; co-decision

Document originated

29 March 2010

Deposited in Parliament

30 March 2010

Department

Justice

Basis of consideration

EMs of 13 April, 25 May and 19 July 2010; Minister’s letter of 30 June 2010

Previous Committee Report

None; but see (30519) 8150/09 HC 19–xvii (2008–09), chapter 4 (13 May 2009) and (30519) 8150/09 HC 19–xxiii (2008–09), chapter 4 (8 July 2009)

To be discussed in Council

No date set

Committee’s assessment

Legally important

Committee’s decision

Not cleared; further information awaited

Background: existing regional and international instruments in this field

23.1 At EU level, Council Framework Decision on “combating the sexual exploitation of children and child pornography”\(^{96}\) (the 2004 Framework Decision) requires approximation of Member State legislation to criminalise the most serious forms of child sexual exploitation and pornography; to extend domestic jurisdiction extra-territorially for the prosecution of these crimes when committed abroad by an offender who is a national of an EU Member State; and to provide for a minimum of assistance to victims. The Framework Decision came into force in 2006. The proposed draft Directive would repeal and replace the current Framework Decision.

23.2 At Council of Europe level,\(^{97}\) a Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the CoE Convention) was opened for signature in October 2007. It has been ratified by two CoE Member States but has not yet entered into force. It will do so once five States, including three CoE Member States, have ratified it.

23.3 At UN level, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography of 2000 sets the international standard. Seven EU Member States have not ratified the Protocol.

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\(^{96}\) 2004/68/JHA.

\(^{97}\) The Council of Europe comprises 47 Member States, including the 27 Member States of the European Union.
Previous scrutiny

23.4 The draft Directive is based in part on the 2004 Framework Decision, in part on the Commission’s 2009 proposal for a Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography.\textsuperscript{98} The proposal was not adopted by the Council before entry into force of the Lisbon Treaty and so lapsed.

23.5 Our predecessors first reported on the Commission proposal on 13 May 2009,\textsuperscript{99} when they recognised that the “importance of reinforcing legislation for preventing this type of crime and for prosecuting those who perpetrate it” and “that legislation combating this type of crime must keep up with changing patterns of offending, particularly in view of the increased scope for offending offered by the Internet”. But they asked why an EU proposal was necessary when the CoE Convention had only recently been opened for signature; whether provisions on investigative procedure and the needs of child victims would endanger the independence of the police and prosecution service; whether the then Government would agree to the provision on extra-territorial jurisdiction based not only on the nationality of the offender but also of the victim; and whether the minimum periods of imprisonment for maximum penalties set out in the proposal would not have the effect of fettering the role of the judiciary in deciding sentences.

23.6 The then Parliamentary Under-Secretary of State at the Ministry of Justice (Lord Bach) wrote on 1 June in response to the previous Committee’s Report.\textsuperscript{100} On the co-existence of this proposal for an EU Framework Decision on combating the sexual abuse of children with the Council of Europe Convention on the same subject, the Minister stated:

“The main difference of course with regard to the Convention is that all EU Member States are obliged to give effect to the Framework Decision. In respect of the particular area of the sexual exploitation of children, and the growing misuse of the Internet, which enables transnational sexual abuse of children, we consider that the changes proposed in the Framework Decision reinforce the drive to combat the sexual exploitation of children. We would therefore expect the Framework Decision to further strengthen the international legal framework against the sexual exploitation of children but not detract from the CoE Convention.”

23.7 Regarding the investigative independence of the police and prosecution service the then Minister stated that the Government shared the previous Committee’s concerns that some of the provisions were wide-ranging and prescriptive and believed it was vital that EU legislation took account of different national systems. The Government’s concerns lay chiefly in relation to Articles 14 and 15. For example, it thought that the right of a child victim to legal aid was only appropriate where the child victim was a party to legal proceedings; it was not appropriate in the UK where the victim’s interests were represented by the prosecution. The Government intended to press for that provision to be amended accordingly. The Minister said that the Government would also seek to amend Article 15(3) so that the child’s right to give evidence without being present in court was subject to judicial discretion.

\textsuperscript{98} COM (2009) 135 final/2.
\textsuperscript{100} Reported at: (30519) 8150/09 HC 19–xxiii (2008–09), chapter 4 (8 July 2009).
23.8 The then Minister commented that the provisions on extra-territorial jurisdiction were significantly different to the 2004 Framework Decision, and the Council of Europe Convention, both of which included greater flexibility for Member States in respect of requirements to establish jurisdiction over offences taking place outside their territory. The Minister said that he wanted the flexibility of the existing instruments to be maintained.

23.9 Turning to maximum penalties, the Minister stated that he shared our predecessor’s view of the importance of preserving the judiciary’s discretion in deciding sentences based on the particular circumstances of each case. But because the proposal only prescribed “minimum maximum” sentences, (i.e. “at least 6/10/twelve years”), the UK could have a higher maximum for the individual offence but not a lower one. As with any other offence in the UK judges have discretion to impose any sentence they think appropriate up to the maximum prescribed by legislation. This provision, the Minister concluded, was therefore no different from any other offence which carries a maximum sentence.

The current proposal

Legal base

23.10 The proposed legal base is Articles 82(2) and 83(1) of the Treaty on the Functioning of the European Union (TFEU).

23.11 Title V of the Treaty on the Functioning of the European Union (TFEU) concerns the EU’s area of “freedom, security and justice”. Within it Article 82(2) TFEU provides that “to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension” the EU can establish “minimum rules” which must “take into account the differences between the legal traditions and systems of the Member States. But these minimum rules can only apply to “(a) mutual admissibility of evidence between Member States; (b) the rights of individuals in criminal procedure; (c) the rights of victims of crime” and (d) any other aspects of criminal procedure which the Council has identified in advance by a decision”.

23.12 Within Title V, Article 83(1) TFEU allows the EU to establish minimum rules concerning “the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis”. The areas of crime covered by Article 83(1) are: “terrorism; trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.”

Article 1 — subject matter

23.13 This Article explains that the Directive seeks to establish minimum rules on the definition of offences and sanctions in respect of the sexual exploitation of children, and that it also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims.
Article 2 — definitions

23.14 Article 2 sets out the definitions for the purposes of the Directive. These repeat those in the existing Framework Decision but also incorporate additional definitions of “child pornography” and “child prostitution” from the CoE Convention, and a new definition of “pornographic performance”. A “child” is any person below the age of 18 years.

23.15 Child pornography is defined as:

- “any material that visually depicts a child engaged in real or simulated sexually explicit conduct; or
- “Any depiction of the sexual organs of a child for primarily sexual purposes; or
- “any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or
- “realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, regardless of the actual existence of such child, for primarily sexual purposes”.

23.16 Child prostitution is defined as the “use of a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether this payment, promise or consideration is made to the child or to a third person”.

23.17 Pornographic performance is defined as “the live exhibition, including by means of information and communication technology:

- of a child engaged in real or simulated sexually explicit conduct; or
- of the sexual organs of a child for primarily sexual purposes”.

Articles 3–6 — offences concerning sexual abuse, sexual exploitation, child pornography and solicitation of children for sexual purposes

23.18 Articles 3 to 6 lay down minimum rules on conduct which would constitute a criminal offence; they also set the minimum level for maximum penalties for each offence (minimum maximum penalties). The sphere of conduct covered by the proposed Directive is wider than that of the current Framework Decision, to take account of new forms of offences, particularly in relation to information technology, and the proposed minimum maximum penalties are generally significantly higher in order to make them “effective, proportionate and persuasive”, according to the Commission’s explanatory memorandum.
Sexual abuse

23.19 The proposed rules on conduct and minimum maximum penalties for the sexual abuse of children are as follows:

- “Causing, for sexual purposes, a child who has not reached the age of sexual consent under national law to witness sexual abuse or sexual activities, even without having to participate, shall be punishable by a maximum term of imprisonment of at least two years.

- “Engaging in sexual activities with a child who has not reached the age of sexual consent under national law shall be punishable by a maximum term of imprisonment of at least five years.

- “Engaging in sexual activities with a child, where:
  - (i) abuse is made of a recognised position of trust, authority or influence over the child shall be punishable by a maximum term of imprisonment of at least eight years; or
  - (ii) abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence shall be punishable by a maximum term of imprisonment of at least eight years; or
  - (iii) use is made of coercion, force or threats shall be punishable by a maximum term of imprisonment of at least ten years.

- “Coercing a child into sexual activities with a third party shall be punishable by a maximum term of imprisonment of at least ten years”.

Sexual exploitation

23.20 The proposed rules on conduct and minimum maximum penalties for the sexual exploitation of children are as follows:

- “Causing a child to participate in pornographic performances shall be punishable by a maximum term of imprisonment of at least two years.

- “Profiting from or otherwise exploiting a child participating in pornographic performances shall be punishable by a maximum term of imprisonment of at least two years.

- “Knowingly attending pornographic performances involving the participation of children shall be punishable by a maximum term of imprisonment of at least two years.

- “Recruiting a child to participate in pornographic performances shall be punishable by a maximum term of imprisonment of at least five years.

- “Causing a child to participate in child prostitution shall be punishable by a maximum term of imprisonment of at least five years.”
• “Profiting from or otherwise exploiting a child participating in child prostitution shall be punishable by a maximum term of imprisonment of at least five years.

• “Engaging in sexual activities with a child, where recourse is made to child prostitution shall be punishable by a maximum term of imprisonment of at least five years.

• “Coercing a child to participate in pornographic performances shall be punishable by a maximum term of imprisonment of at least eight years.

• “Recruiting a child to participate in child prostitution shall be punishable by a maximum term of imprisonment of at least eight years.

• “Coercing a child into child prostitution shall be punishable by a maximum term of imprisonment of at least ten years”.

**Child pornography**

23.21 The proposed rules on conduct and minimum maximum penalties for child pornography are as follows:

• “Acquisition or possession of child pornography shall be punishable by a maximum term of imprisonment of at least one year.

• “Knowingly obtaining access, by means of information and communication technology, to child pornography shall be punishable by a maximum term of imprisonment of at least one year.

• “Distribution, dissemination or transmission of child pornography shall be punishable by a maximum term of imprisonment of at least two years.

• “Offering, supplying or making available child pornography shall be punishable by a maximum term of imprisonment of at least two years.

• “Production of child pornography shall be punishable by a maximum term of imprisonment of at least five years”.

**Solicitation of children**

23.22 The proposed rules on conduct and minimum maximum penalties for the solicitation of children for sexual purposes are as follows:

• “The proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent under national law, for the purpose of committing any of the offences referred to in Articles 3 (3) and Article 5 (6), where this proposal has been followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least two years”.


**Article 7 — instigation, aiding and abetting, attempt and preparatory offences**

23.23 As with the 2004 Framework Decision, the proposed Directive includes provisions in respect of instigation, aiding and abetting and attempting the offences contained in Articles 3 to 6. Article 7 also includes new provisions specifically covering dissemination of materials advertising the opportunity to commit such offences and organising travel arrangements with the purpose of committing such offences.

**Article 8 — consensual sexual activities between peers**

23.24 Article 8 expressly provides that certain specified offences do not govern consensual sexual activities between children or between children and young adults who are close in age and degree of development or maturity insofar as no abuse is involved. Recital 7 also makes clear that the Directive is not intended to govern Member State’s policies on consensual sexual activity in which children may be involved and can be regarded as normal discovery of sexuality in the course of human development.

**Article 9 — aggravating circumstances**

23.25 Article 9 sets out a range of circumstances which should be considered as aggravating circumstances for the offences in Articles 3–6, if they do not already form part of the elements of the original offences. An aggravating circumstance is any of the following: the child has not reached the age of sexual consent under national law; the offence was committed against a child in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence; the offence was committed by a member of the family, a person cohabiting with the child or a person having abused their authority; the offence was committed by several people acting together; the offences are committed within the framework of a criminal organisation within the meaning of Framework Decision on the fight against organised crime;\(^\text{101}\) the perpetrator has previously been convicted of offences of the same nature; the offence endangered the life of the child; the offence involved serious violence or caused serious harm to the child.

23.26 Article 9(2) provides that if an aggravating circumstance is present “Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 6 are punishable by effective, proportionate and dissuasive penalties which are more severe penalties than those foreseen in Articles 3 to 6 for the basic offence”.

**Article 10 — disqualification arising from convictions and exchange of information**

23.27 Article 10 provides for Member States temporarily or permanently to exclude people convicted of the offences in Articles 3 to Article 6 from situations which involve regular contact with children, after a risk assessment has established that the person represents a danger and there is a risk of repetition. Article 10(3) facilitates the exchange of information between Member States about disqualification from activities

\(^{101}\) 2008/841/JHA
with children. Article 10(4) requires measures to ensure recognition of the disqualification measures by each Member State.

**Articles 11 and 12 — legal persons**

23.28 These articles outline liability of companies ("legal persons") for the commission of these crimes. Similar articles are contained in the existing Framework Decision (Articles 6 and Article 7).

**Articles 13, 17, 18 and 19 — victims**

23.29 Articles 13 and 17, 18 and 19 represent a much greater focus than in the existing Framework Decision on the needs of child victims. Article 13 states that Member States shall provide for the possibility of not prosecuting or imposing penalties on child victims even where such victims were involved in the offences in Articles 4 and 5(4) and (6) (sexual exploitation offences and the distribution, dissemination, transmission and production of child pornography). Articles 17 and 18 require that Member States provide a range of support and assistance to address the need of child victims during and after criminal proceedings. Article 19 sets out a list of procedures Members States should follow when child victims are involved in police investigations or court proceedings. It stipulates that a special representative for the child must be appointed when a parent cannot be present; that child victims have immediate access to free legal counselling and free legal representation; that videotaped interviews may be used as evidence in a criminal court, that a judge may order court hearings to be in camera, and that the child victim may be heard in the court room without being physically present (for example by video-link).

**Articles 14 and 15 — Investigation and prosecution, reporting of suspicion**

23.30 Articles 14 and 15 require Member States to enable investigations and prosecutions to take place, irrespective of whether the victim has made a complaint, and also to ensure that suitable covert techniques and technology to help identify victims is available. Member States are to ensure that confidentiality obligations do not prevent professionals, such as doctors and teachers, from reporting suspected offences. Member States must also encourage such reporting under Article 15.

**Article 16 — Jurisdiction**

23.31 Article 16 sets out requirements for States to establish jurisdiction over prosecutions for offences covered by Articles 3 to 7. As with the 2004 Framework Decision, it extends the extra-territorial jurisdiction to prosecute these crimes to the nationality or habitual residence of the offender or where the offence is committed for the benefit of a company established in the territory of a Member State. In addition, under this proposal Member States may also extend extra-territorial jurisdiction to the nationality or habitual residence of the victim. For internet offences, the Article stipulates that an offence is committed in the territory of a Member State where the information or communication technology is accessed.
**Article 20 — Intervention programmes or measures**

23.32 Article 20 mandates Member States to ensure that persons convicted of the offences set out in Articles 3 to 6 are made subject to an assessment process to establish what danger they present, their risk of reoffending and the subsequent need for an intervention (treatment) programme. The Article seeks to ensure that all Member States have intervention programmes available for people charged or convicted of sexual offences against children, with a view to preventing and minimising the risks of repeated offences of a sexual nature against children. Intervention programmes must also be adapted to meet the specific developmental needs of child offenders. Offenders and suspected offenders must, where appropriate and in the light of the assessment made, be fully informed of the reasons for the intervention programme, consent to participate in it, and have the right to refuse it in full knowledge of the consequences. The Article further stipulates when both offenders and potential offenders should have access to the programme, and that this should be achieved without prejudice to a fair trial and the presumption of innocence.

**Article 21 — Blocking of websites containing child pornography**

23.33 Article 21 is a new Article which requires Member States to take the necessary measures to enable judicial or police authorities to block access by internet users to internet pages containing or disseminating child pornography. The Article also states that blocking should be subject to safeguards, notably users being informed of the reason for blocking and an appeal process for content providers where possible.

**Miscellaneous**

23.34 Articles 22 and 24 are procedural, repealing the existing Framework Decision and requiring implementation of the new Framework Decision within two years of its adoption.

**The Government’s view**

*Explanatory Memorandum of 13 April*

23.35 During purdah, the then Parliamentary Under-Secretary at the Ministry of Justice (Lord Bach) deposited a factual Explanatory Memorandum outlining the details of the Commission’s proposal, which was dated 13 April.

*The Minister’s letter of 30 June*

23.36 The Lord Chancellor and Secretary of State for Justice (Mr Kenneth Clarke) wrote on 30 June to say that the Government had opted into the proposed Directive on 28 June, for the reasons set out in the Explanatory Memorandum.
Explanatory Memorandums of 25 May and 19 July

23.37 On 25 May the Minister deposited an Explanatory Memorandum outlining the new Government’s policy on the proposal; this was supplemented by an Explanatory Memorandum dated 19 July.

23.38 In sum, the Minister is broadly supportive of the proposal subject to certain concerns being met in the Council working group negotiations.

23.39 As to whether the proposal complies with the principle of subsidiarity the Minister comments:

“The exploitation and abuse of children is an international issue. This is evident in the transnational nature of ‘child pornography’ (images of child sexual abuse, particularly on the internet) and ‘sex tourism’ (sex offenders who travel). The EU acted in 2004 to set common minimum standards for many offences in this area, in part to avoid forum shopping by offenders. The Commission do not consider that unilateral action on the part of Member States can effectively tackle the new issues that are addressed by this Directive.

The Government agrees that a coordinated response and consistency throughout the EU in combating child sexual exploitation and abuse is a clear benefit of the proposal”.

23.40 The Government considers that the proposal complies with fundamental rights except in relation to the following Articles:

• Article 8 of the draft Directive inadvertently criminalises lawful sexual activity between people over the age of consent. Were it to remain in the text, this would be contrary to right to private life under Article 8 ECHR. However there are exceptions for children over the age of sexual consent in the existing Framework Decision on child sexual exploitation and abuse and the Government will seek to ensure that this approach is incorporated within the final text;

• the rules on sex offender treatment programmes in Article 20 require that they be available not only to convicted offenders, but also before a person is convicted, and that this should be achieved without prejudice to a fair trial and the presumption of innocence. The Government will seek clarification to understand how this will be possible in practice; and

• the rules on blocking websites in Article 21 raise issues about the right to freedom of expression under Article 10 ECHR, which applies both to people providing content and (with some limitations) to people seeking to access it. The Government is considering whether the appeal mechanism for providers of internet material, in cases where their websites are put on a blocking list, is sufficient to deal with, for example, cases where the legality of the content may be in dispute.

23.41 As for overall policy implications, the Minister says that the Government supports the initiative, and welcomes the inclusion of wider policy aims within the instrument. He tells us that current domestic legislation in this area goes beyond “the majority” of the
requirements in the proposal. In particular legislative changes to the Sexual Offences Act 2003 create similar sex offences (for England and Wales) and there is similar legislation in Scotland and Northern Ireland. The UK’s sex offender notification requirements, offender management programmes and special measures for witnesses at trial are all part of UK law. But depending on the outcome of negotiations, it is possible that some legislative amendments will be required. He explains that many of the provisions on supporting victims and witnesses, whilst not set out in primary legislation, are also part of current practice and guidance issued by the relevant law enforcement and criminal justice agencies. The current view of the Government is that victim care and support requirements should not be mandated by legislation and as such a more flexible approach should be considered within the proposal. The Minister then comments on each Article in turn.

23.42 Definitions (Article 2): The Minister states that UK legislation is “generally compliant” with these definitions.

23.43 Offences (Articles 3 — 7): The Minister comments as an overview that the conduct covered in Articles 3 to 7 is wider than in the existing Framework Decision. For example, the provisions on aiding and abetting have been expanded to include preparatory offences so that organising travel arrangements with the purpose of sexual tourism are covered. On penalties the Minister notes that the Articles also set out minimum maximum penalties for each of the offences. He comments that this approach differs from the current Framework Decision which allows for a range of minimum maximum sentences for particular types of offences, whereas the proposed Directive specifies a required minimum maximum sentence for each offence.

23.44 Turning to the detail he tells us that the Government will seek amendments to some of the sexual abuse offences in Article 3 to ensure that they are compatible with domestic legislation; on Article 4 that the UK is compliant with the child prostitution offences but may not comply with the pornographic performance offences; the Government will seek further clarification of the conduct to be captured; and on Article 5 on child pornography that the UK is “largely compliant”. Article 6, solicitation of children for sexual purposes, the Minister says is comparable to the offence (in the law of England and Wales) of ‘arranging or facilitating the commission of a child sex offence’ and ‘meeting a child following sexual grooming’, although the Minister tells us that the offence in Article 6 is narrower because it has been restricted to conduct involving the use of information and communication technology, and wider in that Article 6 only requires a single communication prior to the meeting whereas the grooming offence in the Sexual Offences Act 2003 requires the offender to have met or communicated with the victim on at least two occasions. The Government will seek clarification on the limited use of information and communication technology.

23.45 Consensual sexual activities between peers (Article 8): The Minister repeats the concerns set out in paragraph 40 above.

23.46 Disqualification arising from convictions (Article 10): The Minister states that the Government supports these requirements, and wants to be able to request this information about foreign offenders, to protect children in the UK if offenders come to the UK. The Government does not, however, support Article 10(4), which requires the automatic recognition and enforcement of the disqualification measures by each Member State. The
UK has a sophisticated ‘Vetting and Barring’ scheme for individuals who work with children (which is currently being reviewed) and already makes its own assessment of the risk to children posed by individuals who have been convicted of sex offences in other countries, however it does not hold barring information on the criminal record. The Government will seek a more flexible approach to the holding of disqualification information and the mutual recognition rules for disqualifications.

23.47 **Victims (Articles 13, 17 and 18):** The Minister says that the UK is compliant with Articles 13, 17 and 18 although in Article 18 it intends to seek clarification of the duty to provide support for child victims for “an appropriate time after criminal proceedings.”

23.48 **Protection of child victims in criminal investigations and proceedings (Article 19):** The Minister says that some of the procedures set out in this Article are at the discretion of the police or the judiciary; others the UK complies with already. But two raise concerns: the use, in narrow circumstances, of a special representative (where the parents are absent or have a conflict of interest) and access to free legal representation, including for the purpose of claiming compensation, for child victims. He explains that victims do not receive legal aid in the UK because they are not party to proceedings, and compensation is provided either by offenders (and is requested by the CPS during the trial) or by the Criminal Injuries Compensation Authority, which provides assistance to applicants. Special representatives are appointed at the discretion of the police and the judiciary (it is not mandatory as currently envisaged in the Article) which assists in enabling the support to be tailored to the needs of individual victims. The Government will push strongly for an amendment which takes account of the fact that victims are not party to criminal proceedings in all legal systems. It is also of the view that special representatives should not be mandated by legislation as the needs and wishes of the victim should be respected; it will seek a more flexible approach in the text but will explore the implications of primary legislation on a permissive basis and report back to the Committee.

23.49 **Investigation and prosecution, reporting of suspicions (Articles 14 and 15):** The Minister reports that the UK already complies with these provisions.

23.50 **Jurisdiction (Article 16):** The Minister reports that the UK can already take extra-territorial jurisdiction for UK nationals who commit sexual offences against children abroad, and also for British residents but only where dual criminality applies. The Government will seek to have the approach from the 2004 Framework Decision inserted within the text, which limits extra-territorial jurisdiction to the nationality of the offender or to offences committed for the benefit of a company in the Member State asserting jurisdiction.

23.51 **Intervention programmes or measures (Article 20):** The Minister says the Government will seek clarification on the scope of this Article and seek to limit it to those cases where it necessary and appropriate.

23.52 **Blocking of websites containing child pornography (Article 21):** The Minister explains that the UK internet industry operates a notice and take down service for child sexual abuse websites hosted in the UK. It also operates a blocking system which restricts access to such websites hosted outside the UK for users in the UK. The Government supports blocking of websites which hosts this type of illegal content but will seek a more
flexible approach that recognises the limits on the Government’s powers to achieve this result. The Directive should not require something of Member States that is not technically feasible.

**Our assessment**

23.53 We recognise the importance of having effective legislation in place to ensure that those who commit such serious crimes against children can be prosecuted and punished in every Member State of the EU. And we see the deterrent effect this would have. But we think that in laying down additional detailed common rules on the prevention of these crimes and the protection of their victims, both of which are matters currently dealt with at national level in the UK and no doubt other Member States, the Commission has lost sight of the original purpose of legislating in this field *at the level of the EU*, and in so doing over interpreted the EU’s powers under title V TFEU.

23.54 So we agree with the Minister when he says that some of the additional rules contained in the proposed Directive, particularly on victim care and support, should be discretionary rather than obligatory. We also agree with him that proper account must be taken in Brussels of the characteristics of the common law system, as Article 82(2) TFEU requires. But we have additional concerns, none of which are addressed by the Minister, and these are set out below.

**Legal base**

23.55 We doubt the adequacy of the legal base of Article 82(2) TFEU as cited in the proposal. In our opinion it should specify which of sub-paragraphs (a)-(c) is applicable. As it stands, the legal base could cover all three, and we do not see how 82(2)(a) and (b) — “mutual admissibility of evidence” and “the rights of individual in criminal procedure” — could provide a legal base for this proposal. We would be grateful to know if the Minister shares our views.

23.56 We note that Article 10 of the proposal asks Member States to take the measures necessary to disqualify those convicted of sexual offences against children from being allowed to work with children. And Article 10(4) in particular asks Member States to ensure that similar disqualifications in another Member State are “recognised and enforced”. We share the Minister’s reticence about agreeing to be bound by these rules, but also ask him to say whether he thinks this mutual recognition (as opposed to approximation) provision should be supported by the citation of Article 82(1)(a) as a legal base.

23.57 We ask the Minister to point us to the legal bases in the TFEU which give the EU power to pass legally binding rules on treatment programmes for offenders or suspected offenders (Article 20) and blocking access to websites which contain child pornography (Article 21).

**Minimum penalties**

23.58 In Article 9 the proposal sets minimum levels for maximum sentences for sexual offences against children consistently with Article 83(1) TFEU, which permits the EU to
“establish minimum rules [...] concerning sanctions”. Where we have a concern, however, is Article 9(2), which requires Member States to punish aggravated offences “by effective, proportionate and dissuasive penalties which are more severe penalties than those foreseen in Articles 3 to 6 for the basic offence.” Whilst we share the Minister’s concerns that this will fetter judicial discretion in the passing of criminal sentences, we would also like to know whether he thinks the EU has the power under Article 83(1) TFEU and in the light of the case law of the Court of Justice on criminal penalties to oblige national courts to punish aggravated offences with “more severe penalties”. If he does think the EU has this power, we ask him to explain how Article 9(2) would be implemented in domestic legislation (in view of the fact that the Commission now has infringement powers in the JHA field).

**Jurisdiction**

23.59 The Minister says at paragraph 44 of his Explanatory Memorandum of 19 July that Article 16 of the proposal “requires Member States to take extra-territorial jurisdiction where the victim of the offence is one of its own habitual residents or nationals.” We note, however, that Article 16(3) of the proposal deposited in Parliament says that a Member State “may decide that it will not apply” jurisdiction on the basis of the residence or nationality of the victim. We would be grateful if the Minister could confirm that he was mistaken in his Explanatory Memorandum and that Member States do indeed have a discretion whether to exercise jurisdiction on the basis of the residence or nationality of the victim under the current proposal. We would also be grateful if he could say whether there are any circumstances in which the Government would consider extending jurisdiction on this basis when implementing the Directive, and whether there is a precedent for doing so in existing domestic criminal legislation.

**Conclusion**

23.60 For ease of reference, we have summarised our views on this complex proposal above, under the heading “our assessment”, rather than in the “conclusion.” We would be grateful if the Minister would answer the questions we have raised above.

23.61 In addition, we note that for several of the Articles, the Minister says that the UK is already “largely compliant”. It is difficult to know exactly what this means, and we look forward to sight of the full regulatory impact assessment when it is completed.

23.62 Pending the Minister’s replies, we shall keep the proposal under scrutiny.
24 European Protection Order

(a) (31237) Draft Directive on the European Protection Order
17513/09
+ ADDs 1–2
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(b) (31634) Draft Directive on the European Protection Order
—
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Legal base Article 82(1)(d) TFEU; QMV; co-decision
Department Justice
Basis of consideration Ministers’ letters of 30 March and 10 June; EM of 10 June
Previous Committee Reports (a) HC 5–x (2009–10), chapter 5 (9 February 2010) and HC 5–xi (2009–10), chapter 4 (24 February 2010); HC 5–xviii (2009–10), chapter 5 (7 April 2010)
(b) None
To be discussed in Council October
Committee’s assessment Legally important
Committee’s decision (a) Cleared (b) Not cleared; further information requested

Background

24.1 The European Protection Order (EPO) is intended to assist victims who have obtained a protection order in one Member State and who subsequently move to another Member State. The victim would apply (the EPO cannot be issued other than on the wishes of the victim) for an EPO from the Member State which issued the original protection order, and this EPO would then be transmitted to and recognised by the executing Member State to which the victim has moved. In the United Kingdom protection orders are often used in domestic violence cases, although not exclusively so. Other examples include non-molestation orders, occupation orders (regulating who can occupy a property), restraining orders and injunctions.

Previous scrutiny

24.2 The previous Committee reported on this proposal on three occasions.102 On the last it noted that the Government shared its own reservations about whether the legal base could

102 See headnote.
cover protection orders made in civil proceedings; thanked the previous Under-Secretary of State at the Ministry of Justice (Lord Bach) for the indication that the UK would opt into the proposal; asked for an update on developments in the negotiations; and asked for confirmation of whether the EPO would only apply to interim as well as final judicial decisions, whether the “person causing the danger” would enjoy full procedural safeguards, and how the Government intended to implement the duty imposed in Article 5(3) to inform all those who benefit from a protection order in the UK of the existence of an EPO.

**Minister’s letter of 2 March**

24.3 The previous Minister wrote again on 30 March informing our predecessors that, despite continuing disagreement among Member States on the legal base, the UK had opted into the proposal as it supported the legislative aim and thought it could better influence the negotiations once it had opted in.

**Minister’s Explanatory Memorandum of 10 June**

24.4 This Explanatory Memorandum from the Lord Chancellor and Secretary of State for Justice (Kenneth Clarke) relates to the latest draft of the Directive (document (b)), deposited in Parliament on 25 May.

**Impact on United Kingdom Law**

24.5 The Minister states the intention of the EPO is to bridge two domestic protection systems as opposed to requiring Member States to make significant changes to their existing systems. Article 8 states that once a Member State has received an EPO, it shall recognise that order and take a decision to adopt any similar protection measure under its own national law. Article 9 enables Member States to refuse to recognise an EPO in specified circumstances including where the protection measure relates to an act that does not constitute a criminal offence in the executing State. England, Wales and Northern Ireland would need to pass legislation to enable Magistrates’ courts to convert domestic protection measures into EPOs and to issue domestic protection measures in respect of EPOs received from other Member States. It is likely that a similar provision would be required with regards to Scottish procedures.

**Fundamental Rights Analysis**

24.6 Recital 12 states that the draft Directive conforms with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and with Article 47, paragraph 2, of the Charter on Fundamental Rights of the European Union because it provides the person causing danger with adequate opportunities to challenge the protection measure. Article 5(3bis) ensures that before the EPO is issued the person causing danger shall be given the right to be heard and the right to challenge the protection measure, if he has not had these rights in the procedure leading to the adoption of the protection measure.
Subsidiarity

24.7 The EPO deals with continuous protection of vulnerable people who cross borders. The Minister states that the recognition of protection orders in different Member States can only be achieved at EU level and that there is currently no other instrument which deals with the recognition of protection orders between Member States from the perspective of the protected person.

Policy implications

24.8 The aim of the draft Directive is to provide continuous protection to vulnerable people who move from one Member State to another. The Minister says that the Government fully supports that principle. However, due to its concerns about the scope and legal base of the proposal, as currently drafted, it is unable to vote in favour of the current text. He explains that this Explanatory Memorandum therefore outlines the Government’s position on Article 1 which deals with the scope of the instrument and some of the consequent issues with legal base. It also sets out the main changes that have been made to the text since the original text and accompanying EM were sent to Parliament in January.

Position on Article 1

24.9 Article 1 defines the objective of the Directive. It states that the draft Directive covers measures issued with a view to protecting a person against a criminal act of another person which may endanger his life, physical or psychological integrity, personal liberty or sexual integrity. There are differing views as to whether this objective is too wide given that the legal base the instrument has been brought under only deals with proceedings in criminal matters. There is one school of thought that because the aim is protection from a criminal act, then this is enough to include protection measures issued in civil proceedings. However others, including the Commission, believe that a Directive brought under a criminal legal base can only deal with measures made in criminal proceedings.

24.10 The uncertainty surrounding this issue means that the Government cannot support the current text of the EPO. It believes that the draft Directive should be confined to orders made in criminal proceedings. It is only the Commission who could bring forward legislation on civil orders, or a Directive with a joint civil/criminal legal base.

Remaining Articles

24.11 Article 4 relating to issuing of an EPO (which was Article 2 in the original text). Previously this Article referred only to orders that “prohibit” contact between the protected person and person causing danger. This has been amended (at the request of the UK) to cover the “regulation” of contact in addition to prohibition of contact as many of the UK’s orders permit or even require some contact (e.g. around shared custody of children), but prohibit vexatious contact.

24.12 Articles 8, 9bis and 10 define the roles of issuing and executing States. There has been a significant rebalancing of the roles since the original version of the text. Article 8 sets out what is required in the executing State upon receipt of an EPO. Article 9bis sets out the
rights of executing State and their competence to adopt and enforce measures after recognising an EPO and also to deal with the breach of any measures they put in place. Article 10 clarifies the competence of the issuing State still to renew, review, modify or revoke the original protection measure, and then the EPO. The amendments to these Articles provide some clarification regarding the mechanics of the EPO. There would be a three-stage process: the original domestic protection measure in the issuing State, the EPO which would be a form certifying the original protection measure and finally the new protection measure provided by the executing State after recognising the EPO.

24.13 Article 9 sets out grounds for non-recognition of an EPO. Additional grounds for non-recognition have been added since the original text. The additional grounds for non-recognition are: that the protection measure relates to an act that does not constitute a criminal offence under the law of the executing State; a criminal prosecution is statute-barred under the law of the executing State; the recognition of the protection order would contravene the ne bis in idem principle; the person causing danger cannot be held criminally responsible under the law of the executing State because of his age; and also that the protection measure relates to a criminal offence that is regarded as having been committed wholly or for a major or essential part within the territory of the executing State.

24.14 Article 11 now provides more detailed grounds for discontinuation of measures taken on the basis of an EPO. These include a sufficient indication that the protected person does not reside or stay in the executing State and also when, according to national law, the maximum term of duration of the measures adopted in execution of the EPO has expired.

24.15 Articles 12, 13 and 14 have been deleted.

**Financial implications**

24.16 As currently drafted the EPO would require Member States to issue equivalent domestic protection orders, and so no dramatic change would be required to the UK’s system of protection measures. Additional costs would arise when issuing an EPO in terms of translating the form and dealing with the application. There will also be costs in relation to bringing forward secondary legislation to transpose and implement the Directive, and a process set up for issuing and receiving EPOs. Initial indications are that volumes will be low, and the Government is continuing to conduct analysis surrounding costs.

**Consultation**

24.17 The Government has consulted a number of groups who represent victims and those people who are likely to make use of protection orders, groups who are involved in family justice and those who perform advocacy on behalf of defendants and have an interest in the criminal law. All of these groups support the initiative in principle and have suggested that there is anecdotal evidence of the need for such a measure.
Timetable

24.18 The lead Committees in the European Parliament are FEMM (women’s rights and gender equality) and LIBE (civil liberties justice and home affairs). The co-rapporteurs published draft amendments to the proposal on 18 May. Both Committees have indicated that they share the Presidency’s wide interpretation of the scope of legal base.

Minister’s letter of 10 June

24.19 The Minister also wrote to the Committee on 10 June (his officials having regularly kept the Committee’s staff informed of developments during Dissolution) to explain that the proposal was presented at the Justice and Home Affairs Council on 4 June in order to obtain a “general approach”. The Minister says that he was unable to support the revised text on that occasion because of concerns over the legal base (as described in the Explanatory Memorandum). A number of other Member States expressed similar concerns. The Spanish Presidency required consensus in order to continue discussions with the European Parliament, and the Minister reports that, given the number of Member States who objected, it was less than clear that it had the consensus. Surprisingly, however, the Presidency insisted that it had the majority support needed for a general approach so that the text could be taken to the European Parliament. Unfortunately, it linked this assertion with an interpretation of the UK’s opt-in Protocol. Article 3(2) of that Protocol states that “if after a reasonable period of time” a measure cannot be adopted with the UK or Ireland taking part, the Council may adopt that measure without the participation of the UK or Ireland. The Presidency suggested that the UK could be asked again what its view is at the Council in October, in the expectation that a “reasonable time” would then have passed. The Minister reports that he intervened to make it clear that he did not agree with this interpretation of the Protocol.

24.20 The Minister continues that he has indicated to the Spanish Presidency that the UK would support a narrow interpretation of the legal basis, restricting the Directive to measures taken in the context of criminal proceedings and related to a criminal offence. The Commission is exploring the option of bringing forward a mirror civil instrument to ensure that those countries that use civil protection measures will also be covered.

24.21 The Minister then turns to the questions posed by our predecessors when they last reported on this proposal:

“In your report of 7 April you ask for confirmation as to whether the EPO will only apply to final judicial decisions rather than interim decisions. In theory the EPO could cover both. Based on the current draft, it would be the responsibility of the designated competent authorities to recognise an existing protection order and issue an EPO. They will make the decisions on the appropriateness of issuing an EPO on a case by case basis.

“I note the concerns you have raised about procedural safeguards for the person causing danger. You will note that 5(3bis) in the most recent text that was deposited

103 Protocol 21 attached to the EU Treaties.
with Parliament on 25 May refers to the rights of the person causing danger. This is a new addition to the text and ensures that the person causing danger has the right to be heard and to challenge the protection measure, if he has not had these rights in the procedure leading to the adoption of the protection measure.

“Finally you ask how the Government intends to implement the duty to inform those who benefit from a protection measure of the existence of the EPO. This is at Article 5(4) in the current text. My officials are working with colleagues from other Departments to look at how the EPO will work in practice and the implications for the UK if we have to implement this draft Directive. These discussions are ongoing but implementation could entail the provision of a leaflet by the competent authority to the protected person explaining the mechanisms for obtaining an EPO.”

Conclusion

24.22 We thank the Minister for his letter and Explanatory Memorandum, and his officials for keeping our officials informed of developments in the negotiations during Dissolution and the post-election period.

24.23 We fully support the Government in the stance that it has taken on the scope of the legal base. As our predecessors said before us, we do not agree with the argument that Article 82 TFEU is an appropriate legal base because the purpose of protection orders, whether issued in criminal or civil proceedings, is ultimately to protect the victim from crime. We think “proceedings in criminal matters” in Article 82(1)(d) means exactly that, and cannot be interpreted to cover civil proceedings in which the protection of a victim from crime is the objective.

24.24 We are concerned by the Minister’s reports that a general approach was pushed through the JHA Council on 4 June in the face of opposition from some Member States; and by the last Presidency’s interpretation of Article 3(2) of the opt-in Protocol. We would be grateful to the Minister for clarification as soon as possible of whether the Council considers that a general approach on this proposal has been agreed. We would also be grateful for clarification of whether the Spanish Presidency’s interpretation of Article 3(2) of the opt-in Protocol is shared by other Member States. The Minister’s letter indicates that other Member States objected to the general approach, in which case Article 3(2), which can be applied only to the UK and/or Ireland, would appear to be inapplicable.

24.25 We thank the Minister for answering the questions posed by our predecessors. We think the latest draft of the Directive is an improvement in terms of clarity in how an EPO will operate, of the grounds on which an EPO can be refused, and of the safeguards provided to the person causing danger.

24.26 We clear document (a) from scrutiny because it has been superseded by document (b), which remains under scrutiny pending the Minister’s replies.
25 The single market: the spring 2010 consumer scoreboard

Commission staff working document: Consumers at home in the Internal Market. Monitoring the integration of the retail Internal market and benchmarking the consumer environment in Member States

Legal base

Document originated 29 March 2010
Deposited in Parliament 7 April 2010
Department Business, Innovation and Skills
Basis of consideration EM of 26 May 2010
Previous Committee Report None
To be discussed in Council No date set
Committee’s assessment Politically important
Committee’s decision Cleared

Background

25.1 In January 2008, the Commission issued a Communication announcing its intention to publish “consumer scoreboards” based on indicators which would help identify which parts of the internal market are not functioning well for consumers.104

25.2 The Commission’s first Consumer Markets Scoreboard was published in January 2008 and the second a year later.105 In future, the Commission will publish two scoreboards a year: one in spring and the other in the autumn.

The spring 2010 Scoreboard

25.3 The spring 2010 Scoreboard has three chapters:

- an introduction and executive summary;
- a chapter (and supporting statistics) on progress towards an EU-wide single retail market; and
- a chapter (and supporting statistics) on the extent to which consumers in each Member State are satisfied with their national arrangements for the handling of complaints; rights of redress; enforcement of consumer protection legislation; and product safety.

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104 (29422) 5942/08: see HC 16–xiv (2007–08), chapter 7 (5 March 2008).
105 (30420) 6066/09: see HC 19–viii (2008–09), chapter 10 (25 February 2009)
25.4 The Scoreboard shows that there has been little growth in the proportion of consumers and retailers conducting cross-border transactions. For example:

- in 2009, 29% of EU consumers made at least one cross-border purchase — the corresponding figure for 2008 was 25% and for 2006 it was 26%;
- 25% of EU retailers sold to at least one customer in another EU country in 2009, compared to 20% in 2008 and 29% in 2006;
- in 2009, 34% of EU consumers bought goods or services online from suppliers in their home Member States, but only 8% placed cross-border orders online; and
- many online suppliers are not prepared to sell to consumers in other Member States.

However, in the UK 32% of consumers made at least one cross-border online purchase in 2009 and 25% of UK retailers made at least one online sale to a customer in another EU country.

25.5 The Scoreboard’s statistics on consumer satisfaction in the UK indicate that, for example:

- 78% of consumers feel adequately protected by existing consumer protection measures (the highest proportion in the EU);
- 78% of consumers trust suppliers to respect their consumer rights (the highest proportion in the EU);
- 70% of consumers trust public authorities to protect their consumer rights (fourth highest in the EU);
- the UK has the highest switching rate in the EU (for example, 33% of consumers have changed their electricity service provider); and
- only 8.9% of UK consumers, and 5.1% of UK retailers, believe that a significant number of products are unsafe (the EU 27 average is 24.8% of consumers and 16.3% of retailers).

25.6 The Scoreboard’s main conclusions are that:

- most consumers in the EU still buy the goods and services they require from suppliers located in their home Member State;
- in order to gain the benefits of a true EU-wide internal retail market, sustained effort is required to break down the barriers to cross-border retail purchasing and, in particular, obstacles to the development of e-commerce across national borders; and
- there are substantial differences in customer satisfaction across the EU and Member States should do more to identify and remove the causes of dissatisfaction.
The Government’s view

25.7 In his Explanatory Memorandum of 26 May, the Parliamentary Under-Secretary of State at the Department of Business, Innovation and Skills (Mr Edward Davey) tells us that the spring 2010 Scoreboard has no direct policy implications for the UK.

25.8 The statistics in the Scoreboard show that the UK has been performing well in the retail market. In particular, the data on the proportion of consumers who feel adequately protected by existing measures and who trust in the ability of third parties to protect the rights of consumer are very encouraging. But there remains room for improvement. For example, UK retailers were less well informed than consumers about consumer rights and the procedures for complaints and redress. In autumn 2009, the previous Government made resources available to help retail businesses provide training for their staff to improve their understanding of consumer rights. It is too soon, however, to say to what extent this has improved retailers’ awareness of consumer protection legislation.

Conclusion

25.9 In our view, the spring 2010 Scoreboard contains useful indicators for the Commission and Member States about the further action needed to develop the internal market and improve consumer satisfaction. It makes no proposals and is for information and we see no need to keep it under scrutiny. We draw the document to the attention of the House because of the importance of the subject and the useful comparative data the scoreboard contains.

26 Strategy for clean and energy efficient vehicles

| 31520 | Commission Communication: A European strategy on clean and energy efficient vehicles |
| 9006/10 | |
| COM(10) 186 | |

Legal base

Document originated: 28 April 2010
Deposited in Parliament: 25 May 2010
Department: Business, Innovation and Skills
Basis of consideration: EM of 26 May 2010
Previous Committee Report: None, but see footnotes
Discussed in Council: 25 May 2010
Committee’s assessment: Politically important
Committee’s decision: Cleared
Background

26.1 According to the Commission, the European automotive industry is a world leader in developing clean and energy efficient technologies based on combustion engines, but it adds that transport is nevertheless responsible for about one quarter of EU emissions of carbon dioxide and contributes significantly to air pollution and related health problems, particularly in urban areas. It notes that the internal combustion engine is likely to remain dominant in road vehicles in the short and medium term, but that alternative fuel and propulsion technologies are likely to contribute significantly to the Europe 2020 priorities of developing smart and sustainable growth.

The current document

26.2 It has therefore put forward this strategy for encouraging the development and uptake of clean and energy efficient heavy\textsuperscript{106} and light\textsuperscript{107}-duty vehicles, as well as two and three-wheelers and quadricycles.\textsuperscript{108} It sees the strategy as a vital part of the Europe 2020 flagship initiative “Resource efficient Europe”, which seeks to promote new technologies to modernise and decarbonise the transport sector, and as building upon both the European green cars initiative which was launched as part of the European Economic Recovery Plan\textsuperscript{109} in November 2008, and the existing 2007 strategy\textsuperscript{110} for reducing carbon dioxide emissions from passenger cars and light-duty commercial vehicles. It also says that the approach set out will help to boost the competitiveness of the European industry at a time when its global competitors in both America and Asia are investing in research into low-carbon technologies and seeking to develop alternative technologies.

Action plan for green vehicles

26.3 The Commission suggests that, in order to achieve these aims, it is necessary to follow two tracks, namely promoting clean and efficient vehicles based upon conventional internal combustion engines and facilitating the deployment of breakthrough technologies in ultra low carbon vehicles. In particular, it notes that alternative fuels for internal combustion engines include liquid biofuels and gaseous fuels, which offer the potential to reduce the environmental impact of road transport, but which (with the exception of biofuels) require engines to be modified, a dedicated on-board fuel storage system, and a sufficiently widespread refuelling network; that electric vehicles, which it says have significant potential to address a number of challenges such as global warming and fossil fuel dependency, are likely to remain a niche market in the near future, but that sales are expected to expand as battery technologies improve, provided significant cost reductions can be achieved through technological improvements and economies of scale; and that hydrogen fuel cell vehicles, which generate electricity on board, can deliver similar environmental benefits, with their deployment alongside battery vehicles being mutually complementary as they share many similar components.

\textsuperscript{106} Buses and trucks (vehicles of categories M2, M3, N2 and N3 as defined in Directive 2007/46/EC).
\textsuperscript{107} Cars and vans (vehicles of categories M1 and N1 as defined in Directive 2007/46/EC).
\textsuperscript{108} Vehicles of category L as defined in Directive 2002/24/EC.
\textsuperscript{109} (30213) 16097/08: see HC 19–i (2008–09), chapter 4 (10 December 2008).
\textsuperscript{110} (28366) 6204/07: see HC 41–xvi (2006–07), chapter 10 (28 March 2007).
The regulatory framework

26.4 The Commission notes that the EU’s strategy to reduce carbon dioxide emissions from road vehicles has already achieved much, with Regulation (EC) No 443/2009 setting performance standards for new passenger cars, a Commission proposal\(^{111}\) to reduce such emissions for light commercial vehicles being currently under discussion, and stricter emission standards for particulate matter and nitrous oxides having been introduced for cars, vans and heavy-duty vehicles.

26.5 It adds that, even though petrol and diesel internal combustion engines will become less dominant, every available means must be used to reduce their environmental impact, and it says that it will:

- propose a Regulation on type-approval requirements for two-and three-wheelers and quadricycles in 2010 which will set emission standards, and will adapt or develop measures to take account of new technologies;
- prepare measures to implement Regulation (EC) No 443/2009 by 2011, including detailed rules on the monitoring and reporting of data, on the application of a derogation for small volume and niche manufacturers, on the procedure for approving innovative technologies, and on the methods for collecting excess emissions premiums;
- propose detailed rules on the marketing of the ‘green additionality’ of vehicles to avoid misleading environmental claims;
- present a proposal by 2011 to reduce fuel consumption impacts of mobile air conditioning systems;
- propose an amendment of Directive 70/157/EEC by the end of 2011 to reduce the noise emitted by vehicles;
- ensure that emissions are reduced by proposing at the latest by 2013 a revised test cycle, including a methodology for taking into account innovative technologies: and develop a robust procedure by 2012 to measure emissions, considering the use of portable emissions measurable systems;
- propose a strategy targeting fuel consumption and carbon dioxide emissions from heavy-duty vehicles;
- promote additional steps which may help to decrease emissions from road transport, including Intelligent Transport Systems (ITS), infrastructure measures, and urban transport management; and
- ensure implementation of the Community’s sustainability criteria for biofuels, as well as promoting the development of advanced low carbon fuels and sustainable biofuels and engine technology capable of using these fuels.

Supporting research and innovation in green technologies

26.6 The Commission observes that, despite recent technological advances, electrical and hydrogen fuel cell vehicles are still expensive, and that further research is needed to bring down costs and improve their range and driveability, including the development of alternative charging and energy storage technologies. It also notes that the European Green Cars Initiative is funding research into electrifying transport, whilst the Fuel Cells and Hydrogen Joint Undertaking supports research into hydrogen fuel cell vehicles and infrastructure.

26.7 The Commission says that it will:

- ensure that European research continues to target low carbon fuels and clean and energy efficient transport, including the improvement of conventional engines, alternative battery technologies and hydrogen technologies, with grants focusing on topics with clear added value at EU level;
- simplify and streamline the administrative rules for obtaining EU research grants;
- propose a long term research strategy in 2011 in the Strategic Transport Technology Plan and in the Communication on Clean Transport Systems; and
- explore with the European Investment Bank the continuation of support for research and innovation projects to promote clean and energy efficient automotive products.

Market uptake and consumer information

26.8 The Commission notes that green vehicles are still significantly more expensive, and that appropriate incentives are needed to improve market uptake, particularly in densely populated urban areas where pollution is heaviest, but where the greatest potential exists for the application of new technologies. It points out, although most Member States have introduced carbon dioxide based vehicle taxation schemes or other financial incentives, these vary considerably, and it expresses concern that any benefits may be outweighed by a detrimental effect on the internal market.

26.9 The Commission says that, if consumers are to accept green vehicles as real alternatives, they need to be sufficiently well informed to make the necessary comparisons, and that it will:

- present guidelines on financial incentives to consumers to buy green vehicles in 2010, and encourage coordination of demand-side measures adopted in Member States, ensuring that any benefit accruing to industry is in line with existing State Aid rules;
- work on a revision of the energy taxation Directive, to provide better incentives for the efficient use of conventional fuels and the gradual uptake of alternative low-carbon emitting fuels;
• take action to ensure more coordination and improve the overall effectiveness of vehicle taxation measures taken by Member States to promote green vehicles;

• monitor the implementation of Directive 2009/33/EC;

• launch a research project on consumer expectations and buying behaviour, and test ways of comparing clean and energy efficient cars with conventional vehicles;

• propose an amendment to Directive 1999/94/EC on car labelling; and

• launch an EU-wide electromobility demonstration project in 2011 to assess consumer behaviour and usage patterns, to foster user awareness of all types of electric technology, and to test new developments in the area of standardisation for electric vehicles, with future initiatives being targeted on those urban areas which have sustained air quality problems.

Global issues

26.10 The Commission notes that the EU industry is competing globally, and that, if the benefits of open world markets are to be secured, this requires a reduction in tariffs and the removal of unnecessarily restrictive technical regulations. It also says that regulatory convergence with the EU’s main commercial partners should be sought wherever possible, and that fair and open access to the new (and rare) raw materials needed for electric and hydrogen fuel cell vehicles is important. It says that it will:

• engage in international standardisation activities and regulatory dialogues with the EU’s main commercial partners, and provide technical assistance to non-EU countries to promote trade and prevent market-distorting rules on green vehicles;

• continue to take regulatory cooperation initiatives to promote harmonised regulations at global level with countries which are not contracting parties at United Nations Economic Commission for Europe (UNECE); and

• support access to materials in short supply through the raw materials initiative.

Employment

26.11 The Commission says that, if manufacturers are to have a suitably skilled workforce, it is essential to manage restructuring and anticipate the (currently rare) skills needed to design and produce innovative vehicles. It says that it will:

• establish a European Sectoral Skills Council, aiming at creating a network of Member States’ national observatories; and

• target use of the European Social Fund starting in 2011 to encourage retraining and upskilling.
**Mid-term review of carbon dioxide emissions legislation**

26.12 The Commission suggests that an objective of the review will be to provide the automotive industry with the planning certainty as to the long-term target, suggesting that any new carbon dioxide standards should be based on the full potential of different technological options in order to drive innovations. It also says that an overriding objective will be to ensure that any support mechanisms for ultra-low emission vehicles do not weaken the incentive for emission-reduction from the existing fleet of conventional combustion engine vehicles.

26.13 It says that it will:

- review Regulation (EC) No 443/2009 by 2013, looking at the modalities of reaching the 2020 target for passenger cars and the long-term perspective for 2030, whilst building on the experience gained from implementing the short term targets; and
- review the modalities of reaching the long-term target to reduce carbon dioxide emissions from light commercial vehicles (vans) by a date to be determined.

**Specific actions for electric vehicles**

**Placing on the market**

26.14 The Commission notes that common (type approval) rules have already been set out for hydrogen powered vehicles, gas fuelled vehicles and biofuels, and that these are needed for electric vehicles too, so as to provide legal certainty for industry and protect consumers. It says that, working together with its international partners, it will:

- propose electric safety requirements for vehicle type-approval in 2010;
- review other type-approval requirements covered by Directive 2007/46/EC by 2011; and
- review crash safety requirements, and consider whether the quietness of these vehicles is potentially dangerous to vulnerable road users by 2012.

**Standardisation**

26.15 The Commission says that common standards should allow all electric vehicles to be charged and have access to the electricity grid anywhere in the EU and to all types of chargers, with investment in electric charging points based on different standards being avoided as far as possible. It notes that slow vehicle charging from existing electric sockets is already possible, but that fast charging requires a dedicated plug and socket, which needs to be standardised at the EU level to ensure interoperability. It also believes that the quick adoption of a European standard would reinforce the global competitiveness of the European industry.

26.16 It says that it will:
• within the framework of Directive 98/34/EC, mandate the European standardisation bodies to develop by 2011 a standardised charging interface to ensure interoperability and connectivity, to address safety risks and electromagnetic compatibility, and to consider smart charging (enabling users to take advantage of electricity during “off peak hours”);

• identify a method to enable that standard to be adopted by all concerned, including manufacturers, electricity providers and electricity distribution network operators; and

• constantly monitor global technological and market developments to update European standards if necessary.

**Infrastructure**

26.17 The Commission says that, although the entry into the market of electric vehicles enables consumers to start charging them from existing power points, a publicly accessible network of charging points will have to be provided, requiring significant investment and the definition of standards on safety, interoperability and payment. It adds that an assessment needs to be made whether synergies exist between electric and hydrogen vehicles and their connection to low-carbon electricity sources.

26.18 It says that it will:

- provide a leading role in working with Member States on the build-up of charging and refuelling infrastructure in the EU; and

- explore with the European Investment Bank how to provide funding to stimulate investment in infrastructure and services build-up for green vehicles.

**Energy, power generation and distribution**

26.19 The Commission suggests that the impact of green vehicles with alternative technologies needs to be thoroughly assessed and compared with that of conventional vehicles using a life cycle approach, including emissions from electricity generation as well as the environmental impacts due to the production and disposal of the vehicle. It observes that electrifying transport is likely to lead to an increase in overall electricity demand over time, and that if charging occurred at peak times, this could require additional, potentially carbon-intensive generation capacity — a risk it says can be mitigated through smart metering and appropriate consumer incentives. It also believes that batteries in electric vehicles could serve as secondary storage capacity for excess renewable energy if charging was timed to coincide with off-peak or excess intermittent renewable electricity.

26.20 The Commission says that it will:

- determine and compare the environmental and carbon footprint of different types of vehicle based on a life cycle approach;

- evaluate whether the promotion of electric vehicles leads to the provision of low carbon energy sources in order to ensure that the electricity they consume is not
detrimental to the low carbon electricity already expected from meeting the requirements of the Renewable Energy Directive; and

- evaluate the impact of the increased requirement for low-carbon electricity on the supply system and on the grid.

**Recycling and transportation of batteries**

26.21 The Commission says that the intensive use of batteries by electric vehicles has its own environmental implications, whilst hydrogen fuel cells are likely to involve a high recycling of some raw materials, given their scarcity and prices. It says that, when they are no longer of use in vehicles because their energy storage capacity falls, batteries could be used for other purposes, such as stationary energy storage in homes, and that schemes for this ‘secondary use’ will be considered. It also points out that the quantity of operational batteries which can be transported is currently limited by the Directive on transport of dangerous goods, which contributes to their high cost.

26.22 The Commission will:

- consider what changes may need to be made to existing legislation in relation to the recycling of batteries and end of life vehicles;
- promote European research programmes on recycling and reusing of batteries; and
- review options for changing the rules on transporting batteries after carefully evaluating the costs and potential risks.

**Governance**

26.23 The Commission says that action in the areas identified in this strategy requires a high level of coordination across relevant policy areas, and for stakeholders to put in place what is needed to give the EU a sustainable transport system with a competitive industrial base. It adds that this requires discussion with those who have not necessarily cooperated before, and that, although it recognises that a number of Member States have launched national programmes to promote electric mobility, it points out that, if these are not coordinated, the internal market may be fragmented, with the risk that the EU could lose its competitive advantage in this technology.

26.24 The Commission says that it will:

- re-launch the CARS 21 High Level Group with a revised mandate and extended stakeholder involvement to address the barriers to the uptake of alternative technologies;
- implement the strategy to reduce carbon dioxide emissions from road vehicles under the European Climate Change Programme (ECCP);
- closely coordinate the workflows from ECCP and CARS 21;
- ensure the integration of this strategy into the overall EU transport policy; and
• ensure coordination with Member States in order to avoid fragmentation, to create sufficient critical mass for the industry, and to monitor national developments.

The Commission concludes by saying that the added value of an EU strategy is clear, in that it draws together multiple initiatives and actions and creates a platform to keep the internal market working properly. It adds that the initiative promotes better regulation by setting out long-term policy orientations and increasing certainty for business operators. However, in order to ensure its successful implementation, the strategy will be reviewed in 2014 to take stock of progress, to assess how the market and technologies have changed, and to recommend further action.

The Government’s view

26.25 In his Explanatory Memorandum of 26 May 2010, the Minister of state for Business and Enterprise at the Department for Business, Innovation and Skills (Mr Mark Prisk) says that the UK recognises the benefits that will arise from the Communication’s plan. In particular, the framework for regulatory activity and standardisation would promote better regulation by setting out long term policy objectives and should increase certainty for business, and it would also create a platform to coordinate efforts within the principles of the Single Market.

26.26 He also points out that new regulatory and legislative activity would be subject to agreement by Member States as and when proposals are brought forward by the Commission, and says that it is important the strategy should provide an appropriate and technology neutral framework for a range of technologies in order to achieve environmental and competitiveness goals. However, he notes that the internal combustion engine will continue to be predominant for many years to come both in Europe and internationally, and that continued efficiency improvements to conventional engines will be essential if the EU is to meet its climate change obligations to 2020 and beyond. He adds that the UK is committed to European level research and development, but that this must remain technology neutral, keeping a range of options open and continuing to look at supporting projects based on their merits, rather their technology choices.

26.27 The Minister says that the Communication was discussed and approved at the Competitiveness Council on 25 May, but points out that new and amended legislation indicated in it will be subject to individual scrutiny.

Conclusion

26.28 As will be evident, this is a wide-ranging Communication on a subject of considerable, social, economic and environmental significance, and we have therefore thought it right to report it to the House at some length. Having said that, we do not think any further consideration of the strategy as such is needed, given that it has already been agreed by the Competitiveness Council, and that its very wide-ranging nature would inevitably give rise to a somewhat unfocussed debate. Instead, we consider that it would be more sensible that any further scrutiny should be directed as necessary to the various strands in the strategy, as and when they are the subject of further proposals or Communications. We are therefore clearing the document.
27 International Thermonuclear Experimental Reactor (ITER)

### Background

27.1 The International Thermonuclear Experimental Reactor (ITER) is a new experimental fusion facility, located in France, and involving Euratom, China, India, Japan, Korea, Russia and the United States, which aims to demonstrate the feasibility of nuclear fusion energy for peaceful purposes, and to establish whether this can become a major sustainable energy source, providing safe and clean energy with no carbon dioxide emissions. The relevant International Agreement came into force in 2007, and has an initial duration of 35 years, covering three phases — construction (10 years), operation (20 years) and deactivation (5 years). During the construction phase, the EU will contribute five-elevenths (about 45%)\(^\text{112}\) of the cost (80% of which will be met by Euratom and 20% by France), whilst each of the other six parties will contribute one-eleventh (about 9%). The Euratom contribution is managed through the European Joint Undertaking for ITER — “Fusion for Energy (F4E)”, with Euratom, the 27 Member States and Switzerland all being involved in its governance.

27.2 Although the total construction cost of ITER was estimated in 2001 as €5.9 billion, it is now clear that this will be significantly exceeded, but the Council nevertheless recently confirmed its unanimous support for the project, to which the EU is legally committed. This was, however, subject to certain “boundary conditions” laid down by the Commission (notably the inclusion of credible cost assessment and containment policies, a realistic timetable, and sound project management at all levels) being met, and the Council also asked the Commission to explore the options for providing the increased funding needed during the current Financial Perspectives, including the possibility of securing a loan from

\(^{112}\) During the subsequent operation and deactivation phases, this figure will fall to 34%.
the European Investment Bank (EIB) and re-prioritising expenditure within the existing EU budget. The Council also agreed that no new financial contribution from Member States towards ITER construction costs will be possible during the current Financial Perspectives.

The current document

27.3 The Commission has now sought in this Communication to meet the Council’s request. It notes that, whilst the 2001 cost estimate implied a EU contribution of €2.7 billion, the latest estimate for the period 2007–20 has risen to €6.6 billion (plus a further €650 million for F4E running costs and other activities), with Euratom meeting €5.9 billion of the total €7.2 billion, and France the remaining €1.3 billion. It also points out that this would involve commitment appropriations of €2.1 billion for the two years 2012–13, as against programmed appropriations of €890 million, leaving a gap of €1.4 billion (€550 million in 2012, and €850 million in 2013).

27.4 In seeking to consider how this situation might be addressed, the Commission first stresses the need for sound governance, and in particular for the operation of F4E to be overhauled in order to deliver the necessary boundary conditions. It then examines various ways in which the required additional funding might be found. As regards a loan from the EIB, it notes that, should the Bank require an explicit guarantee from Euratom, this would involve unanimous agreement on the necessary change in the legal act establishing F4E, but that the main problem would be repayment of the loan in the absence of any identifiable income stream. It therefore concludes that such a loan would not be an appropriate solution. Likewise, it suggest that the size of the funding gap is such that to meet it by transferring funds from other headings within the EU budget would have a significantly adverse impact on a range of other policies at the heart of the Europe 2020 agenda, adding that neither this, nor a loan from the EIB, would provide a structural solution.

27.5 The Commission accordingly suggests that there are only two ways in which the EU’s commitment to the ITER project can be met:

Complementary funding from Member States

The Commission says that the 27 Member States and Switzerland would need to make additional contributions of €1.4 billion for 2012–13, and to undertake to finance any cost over-runs beyond those foreseen for the whole life of the project.

Adjustment to the Financial Perspectives ceilings

The Commission suggests that, provided a solution to the funding of the whole life of the project is found, a net increase in the overall ceiling of the 2007–13 financial perspective could be envisaged for 2012–13. However, it notes that the Council has so far insisted that the seven-year global ceilings of the financial framework in terms of commitments and payments should not be changed, and that future Multiannual Financial Framework ceilings would need to be set at a level which enabled the EU to meet its commitments to the ITER project.
In calling for the necessary funds to be made available in order to secure the future of a project which it describes as “emblematic of the EU’s capacity to take a leading role at global level in science and technology”, the Commission stresses the need for this to be agreed as soon as possible, in order to enable a decision to be transmitted to its international partners who it says are expecting a decision at the next meeting of the ITER Council in mid-June.

The Government’s view

27.6 In his Explanatory Memorandum of 7 June 2010, the Minister of State for Universities and Science at the Department for Business, Innovation and Skills (Mr David Willetts) says that the UK has long supported ITER as the next step to practical fusion energy supply, and recognises that more money will inevitably be needed in order to meet the increased costs of the European contribution because collapse of the project would be likely to cost many billions of Euros in compensation. He adds that, whilst it is important for there to be a proper assessment of the funding options, the Government opposes a revision of the 2007–13 financial framework and increasing the present EU budget to fund ITER cost increases. In particular, it does not believe that, in a period of fiscal restraint, there is scope for additional money at the Member State level or for increased contributions to the EU budget, and it has consistently argued that the redeployment of funds from projects and programmes of lesser importance should be explored in much more depth, with firm options, including the possibility of a loan from the EIB, being put to the Council on which a solution can be found.

27.7 The Minister says that other Member States have shared the UK’s reservations, and that the Spanish Presidency submitted draft conclusions to ensure that the burden of additional funding was not placed on Member States, but from within the EU budget heading dedicated to the Seventh Research Framework Programme, transport policy, nuclear decommissioning, the trans-European transport and energy networks, the competitiveness and innovation programme, lifelong learning and Galileo, with the main reprioritisation likely in practice to fall on the first of these. He adds that the Commission has argued that the draft conclusions did not provide a clear enough financial commitment to ITER, and that no agreement was reached at the Competitiveness Council on 26 May. However, a task force with representatives from the Commission and Member States had been established to try and find a solution, and the Presidency would be advising on the timetable for its meetings.

27.8 We have since received from the Minister a letter of 4 August 2010, indicating that the Council had agreed on 12 July that the additional resources of up to €1.4 billion needed for 2012–13 would come from the existing EU budget, and that the overall EU contribution for the period 2007–20 should be reduced from €7.2 billion to €6.6 billion, with a plan to this effect to be presented to the Competitiveness Council on 26 November. He says that this would now form the basis of the EU’s position at the meeting of ITER Council to be held on 27–28 July, and that, in the meantime, the Commission had proposed that €460 million of the €1.4 billion required in 2012–13 should come from the Seventh Research Framework Programme, €400 million from other unused funds, and the balance from a further transfer to be specified later on.
Conclusion

27.9 The ITER project is clearly of some considerable technical, economic and political significance, and, whilst we recognise the legal commitments which the EU has entered into, and the compensation costs it would incur if the project were to collapse, it is disturbing that such a major cost over-run should have occurred. In view of this, and the scale of the sums involved, we think it right to draw these developments to the attention of the House.

27.10 We also note the continuing discussion over both the level of the EU’s contribution to ITER, and the extent to which this should be found from within the existing budgetary ceilings. Since this last point has now been resolved as regards 2012 and 2013 in a way satisfactory to the UK, we are clearing the current document, but we would be glad if the Minister would keep us informed of any developments over the attempt being made to reduce the remaining EU liability for the period 2007–2020 and the way in which this will be funded after 2013.

28 A Digital Agenda for Europe

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To be discussed in Council 31 May 2010 Telecoms Council
Committee’s assessment Politically important
Committee’s decision Cleared

Background

28.1 On the relevant part of its website, the Commission notes that telecoms are more than ever central to our lives and work and that, in economic terms, the telecoms sector is one of Europe’s most important, with annual turnover of around €290 billion, and around 4% of the jobs in the Union. It also notes that, more widely, the prices charged by the telecoms sector represent a direct cost of doing business in Europe. It sees the liberalisation launched in the mid 1980s as having brought significant benefits for consumers. But “there is still work to be done to create an effective internal market in telecoms, which would bring even
greater benefits to consumers and businesses alike”. Only a few operators provide pan-European services. One of the reasons is the different ways in which national regulators have implemented the EU framework. The internal market is fragmented, with the result that operators have to package their services in different ways in different Member States, and satisfy different regulatory requirements each time. That fragmentation is hindering effective cross-border consolidation, and often blocking or delaying the entry of new competitors to the market.113

The Commission Communication

28.2 Against this background, the Commission Communication sets out the Commission’s Digital Agenda for Europe (which will replace the earlier i2010 Strategy). It is the first of seven flagship initiatives under the “Europe 2020” strategy.114 The “Europe 2020” strategy, which was launched by the Commission in March 2010, is a ten year strategy for smart, sustainable and inclusive growth, designed to prepare the EU for the challenges that it will face over the next 10 years. It was endorsed by the 25–26 March 2010 European Council.

28.3 In unveiling its Digital Agenda for Europe115 on 19 May 2010, the Commission said that implementing its ambitious agenda would contribute significantly to the EU’s economic growth and spread the benefits of the digital era to all sections of society. The Commission notes that half of European productivity growth over the past 15 years was already driven by information and communications technologies and this trend is likely to accelerate. At that time, Commission Vice-President for the Digital Agenda Neelie Kroes said:

“We must put the interests of Europe’s citizens and businesses at the forefront of the digital revolution and so maximise the potential of Information and Communications Technologies (ICTs) to advance job creation, sustainability and social inclusion. The ambitious strategy set out today shows clearly where we need to focus our efforts in the years to come. To fully realise the potential of Europe’s digital future we need the full commitment of Member States, the ICT sector and other vital economic players.”

28.4 The Digital Agenda focuses on seven priority areas, and foresees some 100 follow-up actions, of which 31 would be legislative. The seven areas are:

— creating a digital Single Market;
— greater inter-operability;
— boosting internet trust and security;
— much faster internet access;
— more investment in research and development;

— enhancing digital literacy skills and inclusion; and
— applying information and communications technologies to address challenges facing society like climate change and the ageing population.

28.5 At her press conference to introduce the Communication, the Commissioner said that progress towards achieving the Communication’s objectives would be measured against a number of specific targets, for example:

- by 2013, broadband coverage for all EU citizens and, by 2020, fast broadband coverage at 30 Megabits per second for all EU citizens, with at least half European households subscribing to broadband access at 100 Megabits per second;
- by 2015, 50 per cent of the EU population should be shopping online, with 20 per cent of the population using cross-border online services;
- by 2015, regular internet use increased from 60 per cent to 75 per cent, and in the case of disadvantaged people from 41 per cent to 60 per cent;
- by 2015, halve the proportion of people who have never used the internet (from 30 per cent to 15 per cent);
- by 2015, 50 per cent of EU citizens should be using online public services, with more than half of them returning filled in forms via the internet; and
- by 2020, doubling EU Member States’ total annual public spending on ICT Research and Development to €11 billion.

28.6 In his Explanatory Memorandum of 22 June 2010, the Minister for Culture, Communications and Creative Industries Department for Business, Innovation and Skills/Department for Culture, Media and Sport (Ed Vaizey) summarises each of them as follows:

**A vibrant digital Market**

“The EDA suggests that though the Internet is ‘borderless’, a true European single online digital market is still some way off. As a result, this is stifling Europe’s competitiveness in the digital economy: as evidenced by the fact that many of the most successful internet businesses such as Amazon, Google and eBay originate outside of Europe. The Commission propose that various actions should be taken to address this, in order that European businesses can provide online services to all European citizens, wherever they are in Europe. Actions include Commission proposals to:

- make it easier to access online content by simplifying copyright clearance and cross border licensing, by 2010;
- make online and cross-border transactions more straightforward, by 2010;
• introduce a directive on orphan works by 2010 (orphan works are a piece of copyrighted work where it is difficult or impossible to contact the copyright holder);

• initiate measures that will increase the confidence of consumers and businesses to carry out online transactions, including clarifying existing online rights and boosting the role of online trustmarks for retail websites, by 2012. (Trustmarks are seals, logos or icons that are displayed on a Web site that provide information about what steps an online merchant is taking to protect its customers);

• evaluate the impact of the eCommerce Directive on online markets by the end of 2010;

• measures to increase the harmonisation of numbering resources for provision of business services across Europe, by 2011;

• reduce mobile roaming and national tariffs to zero, by 2015; and

• ensure that an EU single market for telecommunications services is expedited, including swift implementation of the amended Electronic Communications framework by May 2011.”

Interoperability and Standards

“The aim of this priority is to ensure that ICT products and services are as far as possible interoperable with each other. Actions include:-

• The Commission proposing legal measures to reform the rules on implementation of ICT standards in Europe by 2010;

• The Commission promoting interoperability by adopting a European Interoperability Strategy and framework in 2010; and

• Member States implementing the commitments on interoperability and standards, as set out in the Malmo and Granada Declarations, by 2013.”

Trust and Security

“The aim of this priority is for a series of actions to foster trust and confidence amongst online users; in particular, the threats to both IT networks and individual users from cyber crime and cyber attacks, the right to privacy and the protection of personal online data. This section also considers the protection of critical information infrastructure from cybercrime and cyber-attacks such as the recent attack on Estonian networks. Actions include Commission proposals:

• for a series of measures that will reinforce a high level network and information security policy. These include legislative measures that modernise the European Network and Information Security Agency (ENISA), by 2010;

• a Directive on attacks on information systems, in 2010; and
• for the creation and support of reporting points for illegal content online, (eg hotlines) as typified by the existing EU Commissions EU Safer Internet Programme and also enhance cooperation between these hotlines by 2013.”

**Fast Internet Access**

“Broadband was a key theme in the ‘Europe 2020’ strategy. The EDA’s overall priority is to increase both the rollout of fast broadband, of up to 30mbps to all EU citizens and over time, to rollout super fast broadband (above 100Mbps) to 50% of the EU population. It is intended that this will allow EU economies to create jobs and ensure that citizens can access the content and services when they wish. The EDA also calls for an ambitious EU radio spectrum policy that will enable the rollout of mobile broadband especially in rural areas. Actions include:

• The Commission adopting a Broadband Communication in 2010 that will include proposals to fund the rollout of high speed broadband networks using EU funding mechanisms such as European Regional Development Fund (ERDF) and to consider how to attract capital for broadband backed by European Investment Bank and other EU Funds by 2014;

• Ensuring that this Broadband Communication will also include a European Spectrum Policy Programme, that will propose a more joined up spectrum policy at EU Level; and

• Member States should develop national broadband plans by 2010, implement any European Spectrum Policy Programme and utilise EU Structural and Rural Development Funds for ICT investment.”

**Research and Innovation**

“The objective of this priority is to increase European investment in ICT Research and Development (R&D), and to ensure that the best ideas reach the market. The document states Europe is currently under-investing in ICT R&D, when compared to its major trading partners such as the US. To try to ensure that this gap is closed, the Commission in 2010 will also present a separate research and innovation strategy which will be one of the seven flagship initiatives under Europe 2020 strategy. Proposals include:-

• increased use of private investment;

• better coordination and pooling of resources between Member States;

• ideas for “light and fast” access to EU Research funds, especially by SME’s by 2011; and

• a doubling of public spending on ICT R&D by Member States, by 2010.”
Enhancing Digital Literacy, Skills and Inclusion

“This priority considers how all of society should benefit from the potential advantages that ICT can bring. It also indicates that there should be no barriers to gaining access to these critical online services. The Commission also notes that many daily tasks are now carried out online including applying for a job, paying taxes or booking travel. However the Commission also notes that 150 million European citizens, or 30%, have never used the Internet.

“This section also indicates that without a skilled ICT workforce, ICT cannot be one of the ‘engines’ of European growth, as well as a skills gap affecting at least 700,000 people.

“Actions to address this situation include:

• the Commission to develop tools to identify and recognise the competencies of ICT workers and users, linked to the European Qualifications Framework;

• a Commission proposal that Digital Literacy is a priority for the European Social Fund Regulation for the period 2014–2020 and the Commission to make digital literacy a priority for the ‘New Skills for new jobs’ (another of the seven flagship ‘EU 2020’ strategies) by 2010;

• promoting the participation of young women in the ICT workforce;

• developing an online education tool on new media technologies (in areas such as such as eCommerce, data protection and social networks) by 2011; and

• Member States implementing the provisions on disability in the telecoms framework and the Audio Visual Media Services Directive, by 2011.”

ICT benefits to address societal challenges

“This priority covers several policy areas, including:-

• ICT and the environment;

• ensuring that eHealth fulfils its potential to improve citizens’ quality of life;

• the promotion of online cultural diversity and European-produced online content;

• eGovernment services; and

• Intelligent Transport Systems.”

28.7 Annex 1 of the Communication consists of a table of the legislative actions and proposals — 31 in all —that the Commission believes will be necessary to achieve the overall aims of the EDA.

28.8 On the question of Subsidiarity, the Minister says that “this Agenda is a mixture of Commission and Member State actions”.
28.9 The Minister concludes his analysis by noting that:

— some of the policies covered in the document are devolved matters under the UK’s devolution settlements and the devolved administrations have been consulted in the preparation of this Explanatory Memorandum;

— the Scottish Government have specifically expressed an interest in this EM and have requested to be kept up to date on this Agenda as it progresses; and

— the Scottish Government have also indicated their interest in two specific areas, “the first in regard to the development and making of any operational national broadband plans by 2012 and any measures that the UK Government may propose; and the second is to facilitate broadband investment.”

The Government’s view

28.10 The Minister welcomes “this comprehensive Communication and the forward looking strategy it outlines”, professes himself to be “particularly pleased about its focus on how to derive economic benefit from the use of ICT”, which was “something we pressed the Commission on during its formation” and agrees that the priority for the new EDA should be “a focus on initiatives that derive maximum leverage from ICT for economic growth and productivity.”

28.11 He also supports actions that seek to resolve both access to, and increased take-up of the internet by EU citizens and businesses, but says:

“We do, though, have concerns that there are a large number of actions, which could cause a lack of focus and dissipate effort. We believe that the Commission should have applied a more rigorous regime of prioritisation, which would have ended up with a more simpler [sic], easier to achieve set of actions.”

28.12 The Minister also says that to ensure effective implementation of this agenda, he suggested at the recent Telecommunications Council that the Commission, in conjunction with Member States, should set out a route map for major items for example, and also regularly report to Council on progress.

28.13 The Minister then says that “it is worth noting that HMG is not in a position at this stage to comment on all the proposals outlined in this Communication; this reflecting work still being taken forward on policy development but also the lack of details in some of the proposals from the Commission.”

28.14 The Minister goes on to comment on major aspects of the Communication as follows:

A Digital Single Market

“HMG notes the Commission’s commitment to reform the governance of collecting societies, and to initiate a new look at cross-border licensing. We agree that it is important to consider carefully the potential for greater transparency and competition between collecting societies to benefit Europe’s economy. We also agree
that there should be a full exploration of the extent to which facilitating cross-border licensing would make it easier for businesses to offer legal download services.

“HMG welcomes the commitment to orphan works legislation, and to consider issues relating to out-of-print works, which could help facilitate the digitisation and access to cultural materials throughout Europe.

“HMG also welcomes the commitment to evaluate but not revise the e-commerce directive this year.

“HMG agrees with the need to make online and cross-border shopping more straightforward, with the aim of providing consumers with access to greater choice and better prices, as well as to make it easier and less costly for business to sell to consumers in other Member States. We support exploring many of the issues set out in the Commission’s document but will need to consider the details of any proposals before being able to analyse the policy implications for the UK.

“HMG welcomes the commitment to strengthening Europeana, the European digital library project. The European Digital Libraries project provides a single point of access to material from numerous national digital collections.

“There is no mention of the INSPIRE directive (on the provision of geo-spatial information on public sector infrastructures) which we have indicated would have expected to have been referred to in this section. Under the UK, we have now implemented this Directive and would therefore hope that any further initiatives under the Digital Agenda are fully cognisant of the MS obligations under INSPIRE, and do not overlap and / or conflict with it.

“HMG welcomes harmonisation of telephone numbering wherever possible. However we note that there have been previous discussions and initiatives around a single Europe-wide numbering scheme that have had minimal market take-up. We do not believe that such schemes are needed at present, and that any needs in this area can be met by existing international schemes.”

**Interoperability and Standards**

“HMG agrees that we need open and interoperable standards, but are mindful that they are largely created on a voluntary basis in a commercial marketplace. We note that open standards includes the availability of reasonable remuneration for intellectual property and that interoperability is best driven by the existence of transparent mechanisms, processes and organisations that allow market parties to work together. It is only in rare instances, such as for specific societal needs that we have historically mandated interoperability features on products and services. The UK suggests that this approach is continued in future.

“The licensing and costing of intellectual property and interoperability information in the standards process is an emotive issue, and we welcome the Commission’s wish to provide further clarification. We suggest that any guidance should be just that, and that the Commission should be sensitive to the needs of all parties.”
“We welcome the inclusion of the recognition of specific products from fora and consortia. These should be recognised as necessary to enable access to standards not produced by formal European and national standards bodies. We are mindful of the concerns expressed by formal bodies and see a need to use this necessary provision sensitively.”

**Online Trust and Security**

“HMG welcomes the recognition in the Digital Agenda of the need to develop trust in online services, as well as the need for Member States to have adequate legislation in place to combat cyber attacks. We welcome the focus on increasing the EU’s ability to improve the resilience of networks and the ability of the Member States to work collaboratively to deal with attacks with cross-border dimensions. We note the objective to extend the coverage of emergency response through Computer Emergency Response Teams (CERT) and to continue to promote real-time networking in this community and, importantly to provide the same functionality to the European Institutions.

“Many of the European policy ideas in this area have been explored by the House of Lords Inquiry into cyber attacks arising from the Commission’s 2009 Communication on Critical Information Infrastructure Protection. We remain convinced, in keeping with the views of the House of Lords Select Committee, that the EU has a role to play but we will need to see the detail of the forthcoming proposals on Network and Information Security and the future of ENISA. These proposals will be the subject of a separate Explanatory Memorandum.

“HMG are interested by the intimation that the review of the Data Protection Directive will lead to compulsory data breach notification. Although it shows some of the Commission initial thinking, we will have to review the proposals when they emerge and submit a separate Explanatory Memorandum. The actions for Member States in this section seem reasonable and would not, on the face of it, present significant problems for the UK.”

**Fast Internet Access**

“Broadband: The Communication contains three targets which are broadly in line with the Government’s policy. These are:

- basic broadband for all Europeans by 2013. This is clearly consistent with the UK Universal Service Commitment to provide access to a 2 MBps service for all by 2012;
- by 2020, all Europeans to have access to speeds of greater than 30MBps. This implies some involvement of fibre in the access network (mobile and satellite are not at this point capable of speeds over 30MBps). While the new Government has not announced an explicit target for superfast broadband, this level of ambition is consistent with the Coalition Agreement and subsequent policy statements; and
by 2020, 50% or more of European households subscribe to internet connections above 100 MBps. This is the most ambitious of the targets. It implies a fibre to the home connection (FTTH). The average level of FTTH penetration in Europe according to the Communication is 1% (compared with 2% in the USA, 12% in Japan and 15% in South Korea). In addition to removing investment barriers to allow coverage to grow, this would require demand-side action.

“There are also specific actions for the Commission and Member States. These are also broadly in line with current policy. The Communication suggests taking measures including possible legal measures to facilitate broadband investment. The suggested measures are precisely the ones being considered by the Government; for example passive infrastructure sharing, co-ordination of civil engineering works etc. The Communication also says that Member States should use fully EU Structural and Rural Development Funds — also in line with current policy.

“UK agrees that effective and efficient use of spectrum is desirable and that technical harmonisation and co-ordination of spectrum use at EU level are useful tools to achieve this. However, any forthcoming proposals that mandates harmonisation of use needs very careful examination and should be based on rigorous analysis and evidence, taking into account the circumstances of individual Member States. The European Radio Spectrum Policy Programme (RSPP) will provide an excellent vehicle to discuss the above issues. (The RSPP, outlines at a strategic level how the use of spectrum can contribute to the most important political objectives of the European Union from 2011 to 2015.)

“While we share the Commission’s overall objective of improving the functioning of the Single Market by promoting lower mobile voice and data roaming charges, we are of the view that the proposal that differences between national and roaming charges should all but disappear by 2015 is an aspirational goal. We will need to consider any further proposals on the regulation of roaming charges on their merits and take into account not only consumer benefit but also the impact on the mobile network operators to ensure a sustainable and competitive market.”

Research and Innovation

“HMG welcomes the proposal to make the Framework Programme 7 ICT Work Programme (FP7) more industry-oriented/industry-led. This will hopefully encourage increased use of the funds available by industry.

“In April 2010, the Commission released a communication setting out its proposals for further simplifying the Framework Programme, with options for the current programme (FP7) and more radical options for future programmes (requiring changes to the Financial Regulations). Many of the proposals, including a reduction in auditing requirements and more use of lump sum payments, could impact positively on business experience with FP, particularly with respect of SMEs.

“As to the Commission’s request that Member States should double public spending on ICT R&D by 2020. The UK public-sector spend on ICT will be determined by a
process of stakeholder consultation on priorities for publicly-funded ICT R&D which has not yet taken place.

**Enhancing digital literacy and Skills and inclusion**

"HMG suggests that with regards to the proposals to increase digital participation, there does not appear to be anything that runs counter to UK plans. However, we would not want the EU to develop ‘an online education tool on new media technologies’ and then mandate its use, as this could conflict with the UK’s myguide or similar tools. (myguide is a government funded website that helps people take their first steps with computers and the internet).

"HMG welcomes the emphasis on the ICT skills agenda and look forward to receiving Commission proposals in this area.

"We noted that the EDA proposes that Member States implement the provisions on disability in the Audio Visual Media Services Directive by 2011 and that the Commission will ensure implementation of the AudioVisual Media Services Directive provisions concerning cultural diversity and by the end of 2011 request information from Member States on their application. This seems at odds with the deadline for transposition of all the provisions of the Directive, which was December 2009 and that the deadline for providing information is already in the Directive.

**ICT benefits to address societal challenges**

"With regard to the Smart Grid proposals, HMG notes that the Communication gives the Commission a key action of assessing by 2011 the potential contribution of smart grids to the decarbonisation of energy supply in Europe and define a set of minimum functionalities to promote the interoperability of smart grids at European level by the end of 2010. While defining a set of minimum functionalities to promote interoperability, it is important to ensure these are broad enough to account for different challenges Member States have. The European Electricity Grids Initiative has already identified a broad set of minimum functionalities for a Smart Grid which should act as a basis for any future discussions.

"The Communication further proposes that Member States agree by end-2011 common additional functionalities for smart meters. This objective is inconsistent with an existing EU process established by DG Enterprise to develop non-mandatory standards for the functionality of smart meters and the telecommunications that support them. This process is intended to be completed by 2012. It is important that any process to establish smart meter functionalities at the EU level be flexible enough to meet all Member States’ differing energy and environmental policy objectives.

"Many Member States, including the UK, are already developing smart meter programmes. Member States are also required to implement the 3rd Energy Package Directives, which require installation of smart electricity meters to 80% of consumers by 2020 where there is a positive impact assessment for doing so. Whilst there are some benefits in establishing common high-level functionalities for smart meters, for the UK and for other Member States, meeting the 3rd Package timetable is likely to
require decisions on meter functionality before any EU processes have run their course.

“HMG have strong doubts about the feasibility and acceptability of equipping European citizens with access to their clinical data by 2015 and would welcome more information about how the Commission intends to achieve this. We would also welcome more clarity on the aim for widespread deployment of telemedicine and its definition by 2020.

“On the proposal for a minimum set of patient data, HMG believes that this proposal for a Recommendation will be premature. A proper evaluation of the Smart Open Services for Patients pilots (epSOS) (phase 1 of which finishes in February 2012) is necessary before such a Recommendation is proposed.

“HMG in principle welcomes an approach to greater standardisation and ease of interoperability across borders but we have concerns about the practicalities of implementing the actions proposed for this draft Digital Agenda. Also between the four devolved health administrations in the UK there are differences in eHealth strategies and priorities plus financial constraints which should be acknowledged in wider policy and strategy goals.

“Therefore with EU-wide information standards, care should be taken not to impose new standards on all countries without assessing the cost and other impacts.

“The UK Government supports the EU proposals to improve child internet safety and they are consistent with the approach the UK has been following.

“We welcome the proposal for greater pan-European co-operation between hotlines.”

28.15 Turning to the Financial Implications, the Minister says that, although the Communication as such does not have any financial implications, the Commission proposes to leverage more private investment by maintaining a pace of 20% yearly increase in the ICT R&D budget, for at least the duration of 7th Framework Programme, 2007–2013, and comments as follows:

“While the UK sees R&D as a driver for growth, the EU budget decisions must be seen in the context of fiscal consolidation and good financial management. Any increase in funding must be made through reprioritisation away from areas with low EU value added.

“The Commission proposes by 2020 to double annual total public spending on ICT research and development spending from €5.5bn to €11bn (£4.6bn-£9bn and including EU programmes), to leverage more private spending. Negotiations on the framework for the EU budget from 2014–2020 will begin in early 2011, and agreement is expected in 2012. The Commission cannot enter into financial commitments for this period until the negotiations have been concluded. The UK, along with other Member States, will seek to ensure that discussions on policy areas in advance of those negotiations cannot prejudice the outcome of the negotiations.”
28.16 The Minister concludes by noting that:

— Council Conclusions were adopted at the Telecoms Council on 31 May, the contents of which he says are:

“a set of ‘bland endorsements’ at a very high level that did not sign the UK up to any particular part of the Digital Agenda, before the negotiations on each of the proposals that form the EDA have taken place.” 116

— The Commission will now begin to publish the various proposals according to the timetable; the first being the Broadband Recommendation, due out this month.

**Conclusion**

28.17 As the Commissioner also said at her press conference: “The digital world affects us all — there is no choice about that. But we can take the decision to use these changes to boost European growth, jobs and the well-being of our citizens. That is the decision the Commission is taking today, and we call on all those with a stake in this digital future for Europe to join us in moving forward.” The extent of this challenge is plainly set out in an associated Communication, on the development thus far of EU communications markets, which we consider elsewhere in this Report, and which demonstrates just how far the EU is from a single market in this area.

28.18 In the short-term, we look forward to considering the upcoming Broadband Recommendation, and those other proposals that are put forward.

28.19 We now clear the document.

116 The conclusions are available at http://www.eu2010.es/export/sites/presidencia/comun/descargas/may31_pressreleaseEN.pdf
29 European Electronic Communications Markets

Legal base
Document originated  25 May 2010
Document deposited   2 June 2010
Department             Business, Innovation and Skills
Basis of consideration EM of 16 June 2010
Previous Committee Report None; but see (30523) 8169/09: HC 5–ii (2009–10), chapter 7 (25 November 2009) and HC 19–xvi (2008–09), chapter 1 (6 May 2009)
To be discussed in Council To be determined
Committee’s assessment      Politically important
Committee’s decision       Cleared

Background

29.1 The EU regulatory framework agreed in 2002 consists of the:

— Framework Directive setting out the main principles, objectives and procedures for an EU regulatory policy regarding the provision of electronic communications services and networks;

— Access and Interconnection Directive stipulating procedures and principles for imposing pro-competitive obligations regarding access to and interconnection of networks on operators with significant market power;

— Authorisation Directive introducing a system of general authorisation, instead of individual or class licences, to facilitate entry in the market and reduce administrative burdens on operators;

— Universal Service Directive requiring a minimum level of availability and affordability of basic electronic communications services and guaranteeing a set of basic rights for users and consumers of electronic communications services;


29.2 In addition, the Radio Spectrum Decision established principles and procedures for the development and implementation of an internal and external EU radio spectrum policy.
29.3 The Framework also established a number of committees and policy groups to manage and implement the new system:

— **Communications Committee**: which advises on implementation issues;

— **European Regulators Group**: to facilitate consistent application of the regime;

— **Radio Spectrum Policy Group**: to enable Member States, the Commission and stakeholders to coordinate the use of radio spectrum;

— **Radio Spectrum Committee**: to deal with technical issues around harmonisation of radio frequency allocation across Europe.

29.4 In this fast-developing sector, it was decided in 2007 that the regulatory framework needed to be revised, with a view to ensuring that it continued to serve the best interests of consumers and industry in today’s marketplace. An agreement on the EU Telecoms Reform was reached by the European Parliament and Council of Ministers on 4 November 2009, after two years of discussion during the legislative process. It consists of:

— the “Better Regulation” Directive;\(^\text{117}\)

— the “Citizens’ Rights Directive”;\(^\text{118}\) and

— the Regulation establishing the BEREC and the Office.\(^\text{119}\)

29.5 The Commission says that BEREC (Body of European Regulators of Electronic Communications) will replace “the loose cooperation between national regulators that exists today in the European Regulators Group with a better structured, more efficient approach”. It explains that BEREC decisions “will be taken, as a rule, by majority of heads of the 27 national telecoms regulators”. A decision on the seat of BEREC still needs to be taken by the Governments of the 27 Member States.\(^\text{120}\)

29.6 The new rules now need to be transposed into national laws of the 27 Member States by May 2011. The main elements of the reform package are at Annex 1 of this chapter of our Report.

**The Commission Communication**

29.7 This Report sets out the Commission’s annual research on communications markets across the EU and its assessment of how well each Member State has implemented the regulatory framework in 2009. Commission officials visit each Member State to interview

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\(^{120}\) See http://berec.europa.eu/ for full information on BEREC.
Government officials, national regulatory authorities (NRA — Ofcom in the UK), and industry and consumer representatives. It includes a detailed annex on national markets and the regulatory performance of each Member State. Substantial Commission Staff Working Papers accompany the Communication.121

29.8 In his Explanatory Memorandum of 16 June 2010, the Minister for Culture, Communications and Creative Industries Department for Business, Innovation and Skills/Department for Culture, Media and Sport (Ed Vaizey) says that the Commission has undertaken a lower key launch of the report this year because of the simultaneous publication of the new “Digital Agenda for Europe.”122 The Minister observes that the report acknowledges the benefits the European consumer has derived from the existing EU Framework (including increasingly affordable electronic communications) but raises some concerns over the independence of NRAs and the range of diverse regulatory approaches in national markets, “which deliver some significant differences in wholesale and retail prices in the sector”. He notes that Member States are currently implementing the changes to the existing Framework ahead of an implementation deadline of 25 May 2011, and the report’s conclusion “that consumers and retailers are still faced with 27 different markets and are not able to take advantage of the economic potential of a single market”

29.9 The Minister then helpfully summarises the extensive documentation as follows:

**Market breakdown**

“The communication reports zero growth in the EU telecoms market in 2009, in the context of a 4.2% contraction in the overall EU economy. This is attributed to the economic climate, cost cutting plans and reduced investment across the EU (other than on maintaining fixed networks). It also notes that investment in next generation access (NGA) is still limited. In 2008 (latest figures) revenues from electronic communications amounted to € 351 billion123 (£298 bn — about half of the ICT sector overall).

“Fixed voice telephony and broadband accounted for 43% of the market revenues, mobile voice and data communications for 47%, while the remaining 10% came from pay TV services. Mobile voice services experienced close to 2% decline, fixed voice telephony services fell by 6.3%. Fixed and mobile broadband services continued to show strong growth. Fixed broadband grew by 5.6% and mobile data by 9.3% in 2009. The growth in fixed broadband, however, is not yet sufficient to compensate for decline in fixed voice revenues.

“For the UK the report estimates the value of the market in 2009 at ‘about €50 billion’; down from €56.7 billion (or £42.4 bn down from £50.1bn, last year). It estimates the total value of tangible assets in the sector in the UK at about €8.1 bn (£6.7bn) where it had been put at €8.93 bn (£7.4 bn ) previously — noting, according to
to operators, the value of their assets were declining in 2009. Both the uncertainty and the fall can be attributed to economic circumstances. By contrast, last year the Commission reported on the resilience of the telecoms sector.”

EU comparisons

29.10 The Report focuses on 7 areas of comparison:
—— broadband penetration;
—— mobile broadband penetration;
—— mobile termination rates;
—— fixed termination rates;
—— mobile price per minute of voice;
—— time taken for mobile number portability; and
—— time taken for fixed number portability.

29.11 The Minister says:

“The UK rates above average in all of these except for mobile voice price per minute, where we are mid-table.

“Specifically in the UK the report observes that;

• prices fell for consumers but households also reduced spend on communications services,

• the use of mobile services rose, including the use of mobile Internet,

• fixed broadband penetration also still grew in 2009, although at a slower rate than previously,

• BT remained the largest retail operator, although its market share continued to decrease as a consequence of the growth in Local Loop Unbundling (LLU) and Wholesale Line Rental (WLR) uptake by alternative operators. In particular, the incumbent’s share of retail fixed voice calls by volume of calls fell to under 50% for the first time at the end of 2008.”

Fixed broadband

“The report takes a specific look at broadband developments and notes that the EU fixed broadband market continued to show positive growth in 2009, although at lower rates than in previous years. In January 2010 the total number of fixed broadband lines in the EU reached 123.7 million, growing by 9.3% over one year. Nevertheless, with 10.2 million new fixed broadband lines, representing 28,199 net additions per day, the growth rate was 24.5% lower than a year earlier and the lowest in the last five years.
“The EU average fixed broadband penetration rate was 24.8%, growing by two percentage points since January 2009. Broadband penetration in the UK is at 29.8% — 7th highest and above the EU average. This figure may seem low compared to those quoted domestically as Ofcom uses a different methodology for market penetration — connections per household, rather than per head which show a penetration rate at 65% for January 2009. The rate of growth in take up in the UK is slowing though.

“As of January 2010, the UK had one of the largest shares in the EU (78.4%) of fixed broadband lines offering speeds in the 2 to 10 Mbps range, which is currently the most common bandwidth in the EU representing 60.6% of all fixed broadband lines. The share of low-speed lines below 2Mbps was just 1.8%, one of the lowest shares.

“The report concludes that the EU is falling behind globally when it comes to NGA with lines based in fibre to premises representing only 1.8% to 5%of all fixed broadband lines. Two thirds of fixed broadband lines in the EU offered download speeds between 2 and 10 Mbps and the relative share of high speed lines has been increasing. As a consequence of speed upgrades and flat rate bundled offers, retail broadband prices declined, although less than in the previous year.

“The Commission notes on mobile broadband that while voice communication still accounts for more than 80% of overall mobile revenues in Europe, its share in terms of traffic has been declining in comparison to data traffic, which puts great pressure on network capacity. In the UK 6.7% of mobile revenue comes from mobile internet use (above average for the EU and 8th highest ratio in Europe) At the time all five UK Mobile Network Operators (MNOs) reported progress in mobile broadband. However, with higher usage there is also increasing customer dissatisfaction with the quality of service due to capacity problems.

“In the UK mobile market more generally penetration rates continued to rise in 2009 to reach 126.2%, higher than the EU average of 121.9%. Mobile users took advantage of the tariffs on offer, resulting in an increase in volumes of calls made as consumers replaced calls from fixed lines with their inclusive mobile calls. Revenue per subscriber decreased at the same time retail prices per unit fell — annual average revenue per mobile user went from €317 (£269) in 2007 to €307 (£260.5) in 2008, which is below EU average of €323 (£274.1) in 2008. According to Ofcom, for the first time in 2009 personal use of mobile phones was more prevalent than use of fixed lines.

“The Commission also reports a major consolidation of alternative providers in the broadband sector (Carphone Warehouse’s purchase of Tiscali now sees three fixed broadband providers in the UK market with a market share above 20%). More significantly it also reports the start of merger proceedings in September 2009 when the overseas owners Deutsche Telekom and France Telecom announced their intention to combine T-Mobile UK and Orange UK in a 50:50 joint venture. The new entity’s market share will be well ahead of that of the two current mobile market leaders. This joint venture has now been cleared for merger by the Commission.
“There were some 30 mobile virtual network operators (MVNOs) in the UK with a total 10 — 15% market share.

“More generally the Commission notes the ambitious UK Government involvement in the telecoms area through provisions of what has since become the Digital Economy Act (2010) with far-reaching proposals concerning modernisation of spectrum, a commitment to ensure universal broadband availability and promotion of next generation networks (NGN).”

**EU Regulatory environment**

29.12 The Minister notes that, as reported last year, the Commission remains concerned about the independence of NRAs:

“Several infringement proceedings initiated last year have been successfully halted, but action has been taken when the Commission has identified a perceived lack of effective structural separation of regulatory functions from ownership and control of telecom operators or the lack of clear and transparent criteria for dismissals of the National Regulatory Authority (NRA) chairpersons.

“The Commission again raises concerns over the limited resources of some NRAs and, in particular, the potential impact that ineffective appeals procedures can have. The Commission references the revised Framework which requires that NRAs must have financial and human resources to carry out the tasks assigned to them. Implementation of new articles 13a and 13b (FWD) which cover security and resilience in relation to electronic communications networks and services are likely to place additional burdens on NRAs.

“In relation to Ofcom, the Commission comments on the significant increase in both the number of dispute resolution procedures and appeals against Ofcom’s decisions in the Competition Appeal Tribunal (CAT). The latter, in particular, put a strain on resources. The Commission notes that delays in decisions were reported in the case of market analysis of leased lines, which created uncertainty for operators using the regulated wholesale products as a consequence.

“Lengthy and resource consuming appeal proceedings were reported to present a challenge to legal certainty in Belgium, Greece, Luxembourg, Poland, Portugal, Sweden and the UK.

“The Commission observes differences between MS in terms of progress on periodic market analysis and remedies. Some NRAs have been particularly advanced in

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124 The general idea behind Next Generation Networks (NGN) is that one network transports all information and services (voice, data, and media such as video) by encapsulating these into packets, as on the Internet. The International Telecommunications Union thus defines NGN as “a packet-based network able to provide Telecommunication Services to users and able to make use of multiple broadband, QoS-enabled transport technologies and in which service-related functions are independent of the underlying transport-related technologies. It enables unfettered access for users to networks and to competing service providers and services of their choice. It supports generalised mobility which will allow consistent and ubiquitous provision of services to users.” See http://www.itu.int/en/pages/default.aspx for further information.

125 In this footnote, the Minister notes that these findings are further developed in the latest Commission Report on market analysis and remedies, which we consider elsewhere in this Report [CROSS REF TO 31679].
their market reviews and were able to impose regulatory obligations tailored to next generation networks (NGN). Almost all NRAs have imposed regulatory measures following their analyses of broadband markets covering wholesale (physical) network infrastructure access at a fixed location (market 4/2007);\(^{126}\) and wholesale broadband access (market 5/2007). In the UK the Commission acknowledges that deregulation has occurred within identified geographic areas.

“Separately, the report also notes that the UK regulator, Ofcom, took a large number of decisions regarding, in particular, market reviews, spectrum management and consumer issues but also had to cope with a strong surge in the numbers of disputes and appeals against its decisions. Market players continued to look to Ofcom to set out the details of the approach to regulation of next generation access (NGA) networks, building on the NGA statement published in March 2009.

“In order to foster a consistent approach by NRAs to the imposition of regulatory obligations after analyses of broadband markets, and to provide legal certainty to operators investing in NGA, the Commission intends to adopt a recommendation on ‘Regulated access to NGA’. The recommendation, expected in September 2010, will come at a time when many NRAs have set out their regulatory approach in their most recent market analyses.

“Ofcom’s approach to market analysis has been to conduct the national and Community consultations in parallel. This means that, in cases where Ofcom re-consults on a modified proposal, it also launches a new Community consultation. The Commission therefore continues to urge Ofcom to systematically carry out the national consultation before the Community consultation in order to avoid unnecessary double notifications.

“As a result of its thorough consultations Ofcom may sometimes need to change its final decisions from those set out in draft measures. While such flexibility was appreciated by some operators, it was also challenged by others (in particular, in the CAT in 2009). This occurred in relation to the range of price controls it consulted on local loop unbundling, and the appeal was based on the inability to respond a fixed price proposal.

“The report comments positively on a number of developments in relation to the BT”s Undertakings in the context of its functional separation. These include Ofcom reviewing the deadlines for completing BT”s systems separation and making several amendments to those Undertakings concerned with the roll-out of NGA networks. It also noted that the details of regulation in this area are yet to come with the expected new analysis of the wholesale broadband and physical access markets. The UK strongly argued for the introduction of functional separation in the revised Framework.

“Mobile termination rates (MTRs) on average fell by 18.4% in 2009 but remain high in comparison to fixed interconnection rate terminal rates across Europe. UK Mobile termination rates are the 6th lowest in Europe and remain below the EU average. On the UK specifically, the report describes the final Ofcom decisions regarding current MTR which should deliver a target average charge in 2010/2011 of 4p per minute (down from 5.1ppm) and 4.3ppm for new entrants (down from 5.9ppm).

“In the UK chapter within the Commission working documents the reports references Ofcom’s consultation in May 2009 which assessed six possible options for the future regulation of mobile call termination in the UK after 2011. These range from deregulation to ‘bill and keep’ and including also the currently applied cost accounting methodology as well as the methodology proposed in the Commission Recommendation on termination rates. Ofcom are currently undertaking a market review, the closing date for which is 23 June 2010.”

“On spectrum management, the Commission notes the need for coordinated action to open up the digital dividend spectrum to different services across Europe, creating an opportunity particularly for wireless broadband network operators to gain valuable radio spectrum.

“The report notes proposals in the Digital Britain White Paper proposing that the 900 MHz band will stay with the two MNOs currently holding rights of use for this frequency band and set out measures for rebalancing spectrum holdings. Following consultation and on the basis of recommendations from the independent spectrum broker, it is proposed to direct Ofcom to conduct a combined auction of the 800MHz digital dividend spectrum and the 2.6GHz spectrum to be completed before end 2010.


“The Commission working documents provide further detailed analysis of Ofcom’s work on persistent “not spots”; the Court of Appeal upholding Ofcom’s appeal against the CAT on GSM gateway licensing (rather than have any specific meaning the abbreviation “GSM gateway” is now commonly used for equipment which enables the routing of voice calls to mobile subscribers by establishing a mobile to mobile call from fixed apparatus); and Ofcom’s remedy imposed on BT in relation to call origination and call termination services.”

Consumer Interests

“The report notes most broadband speeds are above 2 Mbps in Europe and prices have continued to fall, though not as fast as previously. Users have increasingly been receiving faster internet services for the same prices.

“The roaming regulation has significantly lowered roaming charges and improved tariff transparency for mobile phone users within the EU. The average price per minute of mobile communications declined from €0.14 (£0.12) in 2007 to €0.13 (£0.11) in 2008. The mobile price per minute of voice in the UK is the 12th highest and same as the EU average at €0.13 but falling faster than average. The Commission feels strongly though that these Europe-wide differences cannot be explained by market characteristics alone thereby indicating that there is, as yet, no single market.

“On fixed lines, the Commission notes an increase in charges against a downward trend over the past decade. The UK has the lowest fixed termination rates in Europe. The Commission also reports positively on price transparency in the UK.

“In the UK there was a decline in fixed voice volumes, partly explained by fixed to mobile substitution. According to the Office of the Telecoms Adjudicator (OTA), at the end of 2009 there were 6.03 million Wholesale Line Rental (WLR) lines and 3.73 m Carrier pre-Selection CPS telephone numbers (compared to 5.32 m WLR lines and 4.16 m telephone numbers using CPS a year ago).

“BT’s market share in the fixed telephony market continued to decline (54.7% in December 2008 by retail call revenue compared to 57.5% in December 2007) and 47.1% by volume of calls (compared to 51.4% a year ago). By both indicators, this is the lowest market share for an incumbent in the EU.

“On universal service, the Commission notes two trends. First, several MS carried out new designation procedures for some or all elements of existing universal service obligations (USO). Second, MS increasingly considered including broadband services under universal service obligations. Several MS have relaxed obligations relating to services delivered by the market or considered to be of declining significance.

“On universal service matters in the UK the Commission points to Court of Appeal decision overturning the CAT on Universal Service Condition (USC) 7. USC7 currently obliges the fixed incumbent to make available its comprehensive telephone subscriber database to alternative directory service providers on fair, reasonable and cost-oriented terms. Although the Court of Appeal concluded that USC7 was prohibited by the Universal Service Directive (USD) and other directives, it considered it necessary to obtain a preliminary ruling from the European Court of Justice.

“The Commission addresses a new issue raised through re-drafting of text in Art 8.4(g) (FWD), whereby NRA’s must promote ‘the ability of end-users to access and distribute information or run applications and services of their choice’ and Art 21.3(d) (Universal Service Directive, USD) ‘Transparency of information’ obliges communications providers (CPs) to provide information to end users ‘on any
procedures put in place by the provider to measure and shape traffic’. Although not directly referenced in texts this can relate to net neutrality. The Commission notes that net neutrality does not seem to be an issue in the UK but does observe that net neutrality has become an issue in some MS through mobile operators either preventing access or applying differentiated pricing strategies to ’Voice over Internet Protocol’ (VoIP) services. In other MS, legislative initiatives to protect intellectual property (IP) rights sparked a debate on how to strike a balance between end-users’ rights and the need to safeguard the legitimate interests of IP rights owners. The Commission will, in line with its Declaration to the European Parliament, keep developments under close scrutiny.

“Additionally the report mentions provisions taken forward in the Digital Economy Act (2010) providing for copyright owners to notify internet operators of suspected copyright infringements. The Commission advises that sanctions must remain consistent with new rights for users provided in the revised framework.

“The Commission reports that number porting is now available in all MS. Timing and the level of charges are important factors affecting the porting of numbers. Significant reductions in time limits were introduced in some MS or were planned. The average porting times for mobile and fixed numbers in October 2009 was 4.1 days and 6.5 days compared with 8.5 and 7.5 days in October 2008, respectively.

“In the UK the time taken in days for mobile number portability is 2 days (against a Framework target of 2 days). For fixed porting the time taken, against the same target was 4 days. The Commission observes that improvement is needed as the revised framework requires that porting be carried out within one day. This raises potential issues in the UK where for historical reasons we operate a donor-led number porting trigger (for mobile) rather than the recipient-led number porting regime that most other MS use.

“The report mentions the CAT judgement of 2008 which overturned Ofcom’s attempt to implement a recipient-led and near-instant process for porting mobile numbers as well as direct call routing supported by a central database to all ported numbers (fixed or mobile). Within the period of this report Ofcom issued two new consultation documents on number portability. The first document proposed four options for changing the mobile porting process, including donor-led and recipient-led options and either a one-day or two-hour process. The second consultation sets out proposals for introducing direct routing for mobile voice calls to ported mobile numbers.

“The Commission also points to the European-wide emergency number, 112, noting the inaugural European 112 Day (11th February 2009) announced in a tri-partite declaration by the Commission, the European Parliament and the Council, but also noting the decline in rates of improvement of 112 awareness. Currently, only one in four EU citizens is aware that they can call 112 across the EU — and in the UK only 8% of the public are aware of the number.

“The Commission has previously criticised the UK with regard to the European emergency service number 112, but on this occasion the Commission reports two
noteworthy developments. In October 2009 it became possible for the UK mobile users to call the emergency service numbers 112 and 999 from another network if their own network is unavailable and an alternative provider has coverage. In September 2009, an emergency SMS trial was started. Since publication of the Commission’s report, the Government’s 999/112 Liaison Committee has reported the SMS trial as a resounding success and we are moving to full implementation.

“The final paragraph on EU market developments contains the most critical references to the UK. The Commission states that national rules on e-privacy should be fit for purpose in the new digital economy. The Commission launched an infringement proceeding against the UK on transposing EU rules on confidentiality of communications provided in the e-Privacy Directive 2002/58/EC and the Data Protection Directive 95/46/EC. That action related to user consent, lack of sanctions in the case of infringements and absence of an independent authority to supervise interception activities.

“The Commission reports that a recent study on actions to deal with spam, spyware and malicious software confirms the need for the legislative changes contained in the revised framework. These changes include clearer and more consistent enforcement rules and dissuasive sanctions, better cross-border cooperation, and adequate resources for the NRA in charge of protecting citizens’ online privacy.

“On harmonised numbers for services of social value (116 numbers) the Commission reports the good progress that the UK has made in relation to the first three identified numbers.”

29.13 The Commission concludes that to move closer to a true single market, it is vital to step up efforts to address the issues identified in the Report, and says that, in line with the Digital Agenda and the measures it outlines on spectrum, universal service, the regulatory treatment of NGAs and privacy, the Commission will also take a number of targeted measures, to:

— address the divergences in regulatory approaches and the lack of timely and effective enforcement of remedies;

— lay solid foundations for a correct and timely implementation of the revised regulatory framework; and

— ensure an effectively functioning Body of European Regulators for Electronic Communications (BEREC)\(^{128}\)

\(^{128}\) The European Regulators Group for electronic communications networks and services was set up by the Commission to provide a suitable mechanism for encouraging cooperation and coordination between national regulatory authorities and the Commission, in order to promote the development of the internal market for electronic communications networks and services. Building on this experience, the Body of European Regulators for Electronic Communications (BEREC) and its support Office were created within the recently approved reform of the EU Telecom rules to improve the consistency of implementation of the EU regulatory framework. The first meetings of the Board of Regulators of BEREC and the Management Committee of the Office were held in Brussels on 28 January 2010. See http://berec.europa.eu/Default.htm for further information on BEREC.
The Government’s view

29.14 The Minister goes on to welcome the Report and the “recognition of UK progress and successes.” He considers it “a useful comparative tool for understanding the market and regulatory developments across the EU in the field of electronic communications”, noting that both his department and Ofcom support this annual process by providing data and input.

29.15 The Minister also notes that, while the Report has no immediate legislative implications, it is generally seen as significant in determining possible future policy and legislation in the field of telecoms. He says that the latest round of policy negotiations were concluded in November 2009, and that the NGA Recommendation, which sets out the overall policy and regulatory approach that NRAs should adopt when considering the roll out of new high speed broadband networks, is to be adopted in September 2010.129

29.16 He further notes that “HMG has responded to the second stage of reasoned opinion on the infringement proceedings on e-Privacy and the proceedings have not been progressed further.”130

29.17 The Minister concludes by noting that the Report was presented at the 31 May 2010 Telecoms Council.

Conclusion

29.18 Two aspects of this extensive analysis are particularly eye-catching. First, the Commission’s previous initiative — i2010131 — notwithstanding, the degree to which a single internal market for this product is lacking illustrates the extent of the challenge at the outset for its successor, “A Digital Agenda for Europe”.

29.19 Secondly, it is notable that, the number of actual and virtual operators notwithstanding, the mobile price per minute of voice in the UK is 12th highest and no better than the EU average.

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129 A Next-Generation Network (NGN) is the term given to describe a telecommunications packet-based network that handles multiple types of traffic (such as voice, data and multimedia). It is the convergence of service provider networks that includes the public switched telephone network (PSTN), the data network (the Internet), and, in some instances, the wireless network also. Optical fibre backbones are considered the future of telecommunications infrastructure because they allow a faster and wider transmission of data in comparison to current largely copper-based networks. Fibres are at the core of NGNs. Fibre networks have been deployed slowly across the EU so far, covering a marginal share of national markets. NGNs today only account for around one million subscribers in the EU, in comparison to three million in the US and 11 million in the most-developed Asian countries, mainly Japan and South Korea. Investment in Europe is currently low. To upgrade EU networks, at least €300 billion of investment will be necessary, according to estimates by McKinsey, a consulting company. See http://www.euractiv.com/en/infosociety/commission-shelves-ngn-recommendation/article-182347 for further information.

130 For the previous Committee’s consideration of this matter, see (30523) 8169/09: HC 5–ii (2009–10), chapter 7 (25 November 2009).

131 “i2010 — A European Information Society for growth and employment” was the EU policy framework for the information society and media. It promoted the positive contribution that information and communication technologies (ICT) can make to the economy, society and personal quality of life. The strategy is now coming to an end and is to be followed by a new initiative — the Digital Agenda — in 2010. See http://ec.europa.eu/information_society/eeurope/2010/index_en.htm for full information.
29.20 There is also much in the Report about Next Generation Networks and access thereto, and particularly the prospective NGA Recommendation. When it emerges, we ask that the Minister deposits it with his views thereon.

29.21 In the meantime, we clear the Communication, which (like our predecessors) we are reporting to the House because of the widespread interest in both the domestic and European telecoms market.

Annex 1: Main elements of telecoms reform

“The 12 most prominent reforms in the new package of rules for Europe’s telecoms networks and services, as proposed by the European Commission in November 2007, and agreed between the negotiators of the European Parliament, the Council of Telecoms Ministers and the Commission on 5 November 2009 are:

1. A right of European consumers to change, in 1 working day, fixed or mobile operator while keeping their old phone number. Currently in the EU it takes on average 8.5 days for a mobile number and 7.5 days for a fixed number to be changed, with some customers facing a two to three week wait. In the future, consumers will be able to do this in 1 working day. In addition, under the new rules, the maximum initial duration of a contract signed by a consumer with an operator will be no longer than 24 months. Operators must also offer consumers the possibility of agreeing to a contract with a maximum duration of 12 months.

2. Better consumer information: Under the new telecoms rules, consumers will receive better information ensuring they understand what services they subscribe to and, in particular, what they can or cannot do with those communications services. Consumer contracts must specify, among other things, information on the minimum service quality levels, as well as on compensation and refunds if these levels are not met, subscriber’s options to be listed in telephone directories and clear information on the qualifying criteria for promotional offers.

3. Protecting citizens’ rights relating to internet access by a new internet freedom provision: Following the strong request of the European Parliament, and after long negotiations on this point, the new telecoms rules, in a new Internet freedom provision, now explicitly state that any measures taken by Member States regarding access to or use of services and applications through telecoms networks must respect the fundamental rights and freedoms of citizens, as they are guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and in general principles of EU law. Such measures must also be appropriate, proportionate and necessary within a democratic society. In particular, they must respect the presumption of innocence and the right to privacy. With regard to any measures of Member States taken on their Internet access (e.g. to

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fight child pornography or other illegal activities), citizens in the EU are entitled to a prior fair and impartial procedure, including the right to be heard, and they have a right to an effective and timely judicial review.

4. **New guarantees for an open and more “neutral” net**: The new telecoms rules will ensure that European consumers have an ever greater choice of competing broadband service providers. Internet service providers have powerful tools at their disposal that allow them to differentiate between the various data transmissions on the internet, such as voice or ‘peer-to-peer’ communication. Even though traffic management may allow premium high-quality services (such as IPTV) to develop and can help ensure secure communications, the same techniques may also be used to degrade the quality of other services to unacceptably low levels or to strengthen dominant positions on the market. That is why, under the new EU rules, national telecoms authorities will have the powers to set minimum quality levels for network transmission services so as to promote “net neutrality” and “net freedoms” for European citizens. In addition, thanks to new transparency requirements, consumers must be informed — before signing a contract — about the nature of the service to which they are subscribing, including traffic management techniques and their impact on service quality, as well as any other limitations (such as bandwidth caps or available connection speed).

The Commission also made a political commitment to keep the neutrality of the internet under close scrutiny and to use its existing powers as well as new instruments available under the reform package to report regularly on the state of play in net neutrality to the European Parliament and the Council of Ministers.

5. **Consumer protection against personal data breaches and spam**: European citizens’ privacy is a priority of the new telecoms rules. Names, email addresses and bank account information of the customers of telecoms and internet service providers, and especially the data about every phone call and internet session, need to be kept safe from accidentally or deliberately ending up in the wrong hands. Operators must respond to the responsibility that comes with processing and storing this information. Therefore, the new rules introduce mandatory notifications for personal data breaches — the first law of its kind in Europe. This means that communications providers will be obliged to inform the authorities and their customers about security breaches affecting their personal data. This will increase the incentives for better protection of personal data by providers of communications networks and services. In addition, the rules concerning privacy and data protection are strengthened, e.g. on the use of “cookies” and similar devices. Internet users will be better informed about cookies and about what happens to their personal data, and they will find it easier to exercise control over their personal information in practice. Furthermore, internet service providers will also gain the right to protect their business and their customers through legal action against spammers.

6. **Better access to emergency services, 112**: The new telecoms rules will ensure that European citizens gain better access to emergency services by extending the access requirements from traditional telephony to new technologies, strengthening
operators’ obligation to pass information about caller location to emergency authorities, and by improving general awareness of the European emergency number ‘112’. In addition, provisions on access to telecoms services for Europeans with disabilities have been strengthened so that they can benefit from the same usability of services as other citizens, but by different means. For the first time, the EU’s telecoms rules will include a provision on the availability of terminal equipment offering the requisite services and functions for users with disabilities.

7. **National telecoms regulators will gain greater independence:** The new telecoms rules reinforce national telecoms regulators’ independence by eliminating political interference in their day-to-day duties and by adding protection against arbitrary dismissal for the heads of national regulators.

8. **A new European Telecoms Authority that will help ensure fair competition and more consistency of regulation on the telecoms markets.** The reform creates a very important tool for making a single European telecoms market a reality: the new European Telecoms Authority “BEREC” (Body of European Regulators for Electronic Communications) that will replace the loose cooperation behind closed doors that exists today in the “European Regulators Group” with a more transparent and more efficient approach. BEREC decisions will be taken, as a rule, by majority of the heads of the 27 national telecoms regulators: by a simple majority when BEREC gives opinions in the context of the Commission’s analysis of remedies notified by national regulators, and by a two thirds majority in other cases. Such BEREC decisions will be prepared by an independent supranational Office with expert staff. BEREC will also advise, support and complement the independent work of national telecoms regulators, especially when it comes to regulatory decisions with a cross-border relevance. A decision on the seat of BEREC still needs to be taken by the Governments of the 27 Member States.

9. **A new Commission say on the competition remedies for the telecoms markets:** The new EU telecoms rules will give the European Commission the power to oversee regulatory remedies proposed by national regulators (e.g. on the conditions of access to the network of a dominant operator; or on fixed or mobile termination rates). The objective is to avoid inconsistent regulation that could distort competition in the single telecoms market. When the Commission, in close cooperation with BEREC, considers that a draft remedy notified by a national regulator would create a barrier to the single market, the Commission may issue a recommendation that requires the national regulator to amend or withdraw its planned remedy.

The new rules also enable the Commission to adopt further harmonisation measures in the form of recommendations or (binding) decisions if divergences in the regulatory approaches of national regulators, including to remedies, persist across the EU in the longer term, e.g. on broadband access conditions or on mobile termination rates.

10. **Functional separation as a means to overcome competition problems:** National telecoms regulators will gain the additional tool of being able to oblige telecoms operators to separate communication networks from their service branches, as a
last-resort remedy. This new remedy has been advocated since 2007 by the European Commission and by the 27 national regulators. Functional separation can rapidly improve competition in markets while maintaining incentives for investment in new networks. Functional separation has been implemented in the UK since January 2006 where it triggered a surge in broadband connections (from 100,000 unbundled lines in December 2005 to 5.5 million 3 years later). The new EU rules on functional separation will add legal certainty for countries currently moving towards different forms of separation (Poland, Italy), while ensuring overall consistency for the benefit of the single market, effective competition and consumer choice.

11. **Accelerating broadband access for all Europeans:** Currently, in rural areas of the EU only an average of 70% of the population can have access to a broadband network connection. The reform will help in overcoming this “digital divide” by better managing radio spectrum and by making it effectively available for wireless broadband services in regions where building a new fibre infrastructure is too costly; and by allowing Member States to expand universal service provisions beyond narrow-band internet access.

The reform in particular puts a much stronger emphasis on technology and service flexibility in spectrum use, making it easier for operators to introduce innovative technologies and services. This increased flexibility will bring important economic gains and has the potential to generate an estimated additional 0.1% of GDP per annum. In particular, it will allow the “digital dividend”, the radio spectrum freed as a result of the switchover from analogue to digital TV, to work for the economic recovery as also stressed in the Commission’s recent Communication on transforming the digital dividend into social benefits and economic growth.

12. **Encouraging competition and investment in next generation access networks:** The new rules bring legal certainty for investment in next generation access (NGA) networks. These networks, based on new optical fibre and wireless network technologies, are replacing less efficient traditional copper-wire networks and will allow high-speed internet connections. The reform of the telecoms rules reaffirms the importance of competition in this new sector while at the same time preserving incentives to invest by taking into account the risks involved in allowing access to NGA networks and allowing for various cooperative arrangements between investors and access-seeking operators. In this way, the new rules will also ensure telecoms operators receive a fair return on their investments. On the basis of the new rules, the Commission plans to issue a recommendation for the regulation of access to NGA networks in the first half of 2010, taking into account the results of public consultations in 2008 and 2009. The rules governing the sharing of network elements, such as ducts or in-building wiring, between operators are also updated by the reform. Besides improving competition and services for businesses and consumers, this will also help lower the overall financial costs for operators of deploying NGA networks.”
30 Annual Report on Competition Policy 2009

Legal base
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Department Business, Innovation and Skills
Basis of consideration EM of 29 June 2010
Previous Committee Report None
To be discussed in Council No date set
Committee’s assessment Politically important
Committee’s decision Cleared

Background

30.1 Each year, the Commission produces a report on competition policy, and the present document relates to 2009. As is customary, it is in various sections, dealing with how the policy instruments have been developed and applied; how they have been deployed in specific sectors; consumer related activities; cooperation within the European Competition Network and with national courts; international cooperation; and inter-institutional cooperation. It also includes for the second time a chapter on a topic considered to be of particular importance — in this case, the contribution of competition policy to the fight against the financial and economic crisis.

The current document

Policy instruments

State Aid Control

30.2 The Commission says that implementation of the State Aid Action Plan (SAAP) continued in 2009, with the adoption of guidance on aid for training and for disabled and disadvantaged workers, and on the in-depth assessment of regional aid to large investment projects. In addition, it approved a wide range of measures under existing guidelines, covering environmental aid, risk capital financing for small and medium sized enterprises, and regional aid, and the research and development and innovation framework. The Commission also adopted a Simplification Package, aimed at improving the effectiveness, transparency and predictability of its State aid procedures, as well as issuing clarification regarding services of general economic interest and on state aid enforcement by national courts.
30.3 The Commission also draws attention to the fact that, by the end of the year, some €10.4 billion of illegal and incompatible aid had been recovered, compared with €2.3 billion in December 2004.

**Anti-trust — Articles 101, 102 and 106 — Treaty on the Functioning of the European Union (TEFU)**

30.4 The Commission recalls that it adopted in April 2009 a Report on the functioning of Council Regulation 1/2003, which takes stock of how the Regulation has worked since it came into force on 1 May 2004, and highlights a number of aspects which merit further evaluation. It also notes that both the European Parliament and the European Economic and Social Committee adopted opinions supporting the approach in its 2008 White Paper on damages actions for breach of the EC anti-trust rules, and that its services have started work on the technical instruments needed to give effect to the objectives of the White Paper.

30.5 Other actions highlighted by the Commission include reviews for the renewal of Block Exemption Regulations (BERs) relating to motor vehicles, vertical and horizontal distribution agreements, and the insurance sector; publication in February 2009 of guidance on its enforcement priorities in applying Article 102 TFEU (formerly Article 82 EC) to abusive exclusionary conduct by dominant undertakings; and the adoption of final decisions in several exclusionary conduct cases, including in the energy and IT sectors.

30.6 The Commission says that in 2009 it continued to attach high priority to the detection, investigation and sanctioning of cartels, adopting six decisions and imposing fines amounting to €1.62 billion on 43 undertakings.

**Merger Control**

30.7 The Commission notes that, despite the financial and economic crisis, the European Community Merger Regulation and its procedures continued to be well suited to their task of regulating mergers under its jurisdiction, a key issue being whether nationalisation of a financial institution needed to be notified for the Commission’s clearance. This was finally determined on the basis of whether they were holding arrangements or a nationalised entity became a single economic entity alongside other State controlled undertakings. It noted that only one such nationalisation (in Germany) was notified.

30.8 The Commission reports that 259 mergers were notified to it. 243 were adopted, of which 225 were cleared outright (143 using the Commission’s simplified procedure) and 13 subject to conditions. It adds that a further five mergers were cleared after a more extensive examination, three of which were subject to conditions, but that it did not block any merger notified to it in 2009.

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134 These provide a “safe harbour” from competition rules for distribution agreements where it can be shown that there are efficiency benefits for business and consumers alike.
Sector Developments

30.9 The Commission reports on developments in key sectors including financial services, energy and environment, electronic communications, information technology, media, healthcare services, transport, postal services, the automotive industry and the food industry, giving in each instance details of its work in policy development and enforcement. It also summarises the findings from its inquiry into the pharmaceutical sector, outlining concerns with patents, market authorisations and pricing and reimbursement, and reaffirming the call for a Community patent.

Consumer Activities

30.10 The Commission notes that the Directorate General for Competition’s Consumer Liaison Unit has been in place for over a year, with the aim of deepening its engagement with consumer representatives and developing new ways of communicating directly with the broader public. The Commission also hosted in October 2009 a public event on “Competition and Consumers in the 21st Century”, and has updated the consumer pages of the competition website to include more user-friendly information.

The European Competition Network (ECN) and National Courts

30.11 The Commission confirms the importance of the ECN as an effective platform for national competition authorities to coordinate enforcement action, ensure consistency and discuss enforcement policy issues of common interest. It says that it was informed of 129 new investigations launched by national authorities in 2009, and of 69 decisions in competition cases being conducted by them (an increase of 15% as compared with 2008).

International Activities

30.12 The Commission notes the importance of competition policy adopting a global outlook in an increasingly globalised economy, and it says that in 2009 its Competition Directorate General reinforced its relations with partners from all over the world in both bilateral and multilateral fora, including in the International Competition Network (ICN) and the OECD Competition Committee. It also notes that it cooperated closely with the United States of America on several cases and on general competition issues; that a bilateral cooperation agreement with South Korea in the field of competition entered into force on 1 July 2009, and that a Memorandum of Understanding (MOU) was signed with Brazil on competition cooperation.

Inter-institutional Cooperation

30.13 The Commission says that it continued its cooperation with other EU institutions, including the Council, the European Economic and Social Committee and the Committee of the Regions. Also, in addition to the regular dialogue between the Competition Commissioner and the European Parliament’s Committee on Economic and Monetary Affairs (ECON), the Commission participated in discussions held in other Committees of the European Parliament on a wide range of subjects including state aid and the financial
crisis, the Motor Vehicle Block Exemption Regulation, and the White Paper on Damages Actions.

**Focus chapter: Competition Policy and the Financial and Economic Crisis**

30.14 The Commission says that during 2009 it continued to focus on addressing the financial and economic crisis, with approvals of schemes under the Banking Communications to address issues in the banking sector, and the Temporary Framework, to help Member States intervene in the real economy affected by the credit crunch. It comments on particular areas as follows:

Recapitalisation of banks

The Commission recalls that in October 2008 it adopted guidance on the application of State Aid rules to State support schemes and individual assistance for financial institutions (Banking Communication), and that in December 2008 it adopted the Recapitalisation Communication, which differentiates between fundamentally sound banks and those in distress, and lays down guidelines for evaluating the capital injections which constitute aid. It adds that both Communications have made it possible to preserve financial stability and to lessen restrictions on the availability of credit whilst keeping distortions of competition to a minimum.

Impaired assets

The Commission comments that, although recapitalisation schemes had been put in place in many Member States, investors in early 2009 were not showing signs of confidence, and that, confronted with this situation, some Member States had proposed “asset protection schemes”. It says that in February 2009 it adopted the Communication on the Treatment of Impaired Assets in the Community banking sector, based on the principles of transparency and disclosure, adequate burden sharing between the State and the beneficiary, and the prudent valuation of assets based on their real economic value.

Restructuring

The Commission says that in August it adopted a Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (“Restructuring Communication”). This sets out the principles applicable to beneficiaries which were not only in need of short-term rescue aid, but which required aid to implement structural changes to their business models. In doing so, it retains the main principles of the Community Guidelines on rescue and restructuring aid to companies in financial difficulties, but has been adapted to the circumstances of the financial crisis. The restructuring plans approved include the Royal Bank of Scotland (RBS) and Lloyds’ Banking Group in the UK, whilst many other such plans are currently being formally assessed.

The Temporary Framework for State Aid

The Commission notes that, in response to the financial crisis, it introduced the Temporary Framework on State Aid, covers all sectors apart from banking, and is
due to end on 31 December 2010. This gives some slight freedom in the usual rules with regard to small sums of notified aid, loans, loan guarantees, risk capital and export credit guarantees, but does not amount to a total withdrawal of the rules, as some had urged. By 31 December 2009, the Commission had approved 79 measures in 25 Member States aimed at stabilising companies and jobs.

The Government’s view

30.15 In his Explanatory Memorandum of 29 June 2010, the Minister for Employment Relations, Consumer and Postal Affairs at the Department for Business, Innovation and Skills (Mr Edward Davey) notes the emphasis on the Commission’s response to the economic crisis and, in particular, the lessons learnt from the need for flexibility and speedy responses. He also notes the general view that the competition regime proved flexible enough, and that the sheer pace of decision-making could only be sustained in the extraordinary circumstances of the crisis. Nevertheless, it has shown, and the Commission have fully acknowledged, that there is scope for further efficiencies in Commission processes in the field of competition.

30.16 This apart, the Minister says that:

- the Commission’s so-called proactive approach, in particular the focus on tackling hard core cartels and the review of the Block Exemption Regulations, has been broadly welcomed by stakeholders (including the CBI), and has set the tone for a more prioritised and open approach;

- the State Aid framework serves to protect the single market from distortions, and is central to avoiding wasteful subsidy races between Member States;

- the temporary flexibility which the Commission introduced through the Banking Communication allowed Member States (including the United Kingdom) to respond to the exceptional circumstances encountered in financial markets from late 2008;

- that the Commission’s focus is now on progressively reducing banks’ reliance on State support, and that its Temporary State Aid framework is due to expire at the end of 2010, with a reversion to a more permanent framework for both the financial sector and the real economy; he adds that the Government is actively engaged with the Commission regarding the lessons to be learned through the state aid interventions during the financial crisis, and how best the permanent State Aid framework can reflect and incorporate these; and

- the UK engaged actively in the reviews of the Block Exemptions in order to ensure that business and consumer views were properly reflected, making strong representations to the Commission on the right of access to information under the Motor Vehicle Block Exemption Regulation, particularly technical information for the independent aftermarket: it also participated constructively in discussions on the review of the Vertical Block Exemption and private damages work.
Conclusion

30.17 For the reasons set out in the Commission’s report, competition is an important area. Consequently, although we are clearing this document — which gives a useful summary of ongoing activity and of developments in 2009 — we think it right to draw it to the attention of the House.

31 EU-Republic of Korea Free Trade Agreement

| (31569) | Draft Council Decision concluding the Free Trade Agreement between the European Union and its Member States and the Republic of Korea |
| 8502/10 | COM(10) 137 |
| (31570) | Draft Council Decision authorising the signature and provisional conclusion of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea |
| 8523/10 | COM(10) 136 |

Legal base

Articles 91, 100(2), 167(3) and 207 TFEU; consensus

Document originated

9 April 2010

Deposited in Parliament

25 May 2010

Department

Business, Innovation and Skills

Basis of consideration

EM of 28 May 2010 and Minister’s letter of 20 July 2010

Previous Committee Report

None, but see footnote 135

To be discussed in Council

September 2010

Committee’s assessment

Legally and politically important

Committee’s decision

Cleared, but further information requested

Background

31.1 In April 2007, the Council authorised the Commission to open negotiations with the Republic of Korea, with a view to concluding a Free Trade Agreement (FTA). According to the Commission, those negotiations finished last summer, and the agreement, which was initialled on 15 October 2009, now needs to be signed by the Commission on behalf of the EU, by the Member States, and by the Republic of Korea.

31.2 In March 2010, the Commission said that it aimed to propose the signature of the Agreement to the Council the following month, and, although the then Government expected a consolidated version of the text to accompany the Commission’s formal proposal for a Council Decision to authorise signature, it decided in the absence of an official text to submit an Explanatory Memorandum, in order to enable scrutiny to take place before the Easter recess and the dissolution of Parliament prior to the General Election. That Memorandum was duly considered by the previous Committee, when it
decided to release the Agreement from scrutiny on the basis of a full Report to the House.\textsuperscript{135}

\section*{The current documents}

31.3 The first of these two documents (together with its Annexes) comprises a draft Council Decision authorising the conclusion of the Agreement, whilst the second would apply its provisions on a provisional basis pending ratification by all the relevant parties. Their terms are virtually identical to those set out fully by the previous Committee on 30 March (covering the liberalisation of industrial and agricultural tariffs, technical barriers to trade, sanitary and phytosanitary standards, trade in services, payments and capital movements, government procurement, intellectual property, competition and sustainable development), and, in the main, we see no need for them to be drawn further to the attention of the House. However, we do think it right to refer briefly to two aspects of the Agreement not previously addressed.

31.4 First, the Explanatory Memorandum of 28 May 2010 supplied by the Minister for Employment Relations, Consumer and Postal Affairs (Mr Edward Davey) has attached to it an Impact Assessment. After rehearsing the general benefits arising from increased trade, this points out that the Agreement with Korea is the most comprehensive such agreement ever negotiated by the EU, and it goes on to highlight both the strength of the Korean economy and its continuing rapid growth, as well as Korea’s importance as a trading partner for the EU (and the UK).\textsuperscript{136} It says that, although some sectors of the UK economy — notably electrical machinery, industrial machinery and automobiles — will face increased competition in the short term, the full impact of the various tariff changes will not be felt for five years, and that the Agreement is expected thereafter to produce a benefit of around £500 million a year to the UK.

31.5 Secondly, the Minister’s Explanatory Memorandum also drew attention to the inclusion in the Agreement of so-called Mode 4 provisions, which deal with the movement of personnel providing services, and which are essentially similar to commitments which have been made under the World Trade Organisation’s General Agreement of Trade in Services (GATS) and in a number of other Free Trade Agreements. However, the Minister tells us that these now fall within the scope of the UK’s Title V opt-in measures under the Lisbon Treaty in the field of Justice and Home Affairs, and he said that the Government would be considering over the next few weeks whether or not the UK should opt into the Mode 4 provisions.

31.6 We subsequently received from him a letter of 20 July 2010 confirming that the UK has now exercised its opt-in so far as these arrangements are concerned.

\section*{Conclusion}

31.7 \textit{It does not seem to us that the developments since our predecessors’ Report of 30 March 2010 raise any new or significant policy issues, and we are therefore clearing

\begin{footnotesize}
\footnote{135 (31430) — : see HC 5–xvi (2009–10), chapter 5 (30 March 2010).}
\footnote{136 In 2007, EU exported €25.6bn of goods and €7.2 bn of services to Korea, and imported €39.4 bn and €3.9 bn respectively.}
\end{footnotesize}
these two documents. However, there is a legal point on which we think it necessary to question the Minister.

31.8 The Council Decisions to sign and conclude the FTA with the Republic of Korea are founded on the EU’s common commercial, transport and cultural policies, not Freedom, Security and Justice polices under Title V TFEU, to which the opt-in procedure applies. Consistent with the legal bases, the recitals to the FTA do not foresee the possibility of the UK or Ireland opting into the part of the FTA which deals with Title V measures. Also, under Article 2, the opt-in Protocol (Protocol 21) applies only to international agreements concluded by the EU pursuant to Title V, which is not the case here.

31.9 It is therefore unclear to us on what legal basis the Government considers it necessary to opt into the Mode 4 provisions on the temporary movement of personnel. We would be grateful if the Minister could explain this, and in so doing indicate whether Ireland has followed the same approach as the UK in thinking that the opt-in Protocol applies.

### 32 Energy performance of buildings

| (30196) Draft Directive on the energy performance of buildings (recast) |
| 15929/08 + ADDs 1–7 COM(08) 780 |

**Legal base** Article 175(1)EC; co-decision; QMV

**Department** Communities and Local Government

**Basis of consideration** Minister’s letters of 14 December 2009 and 13 April 2010


**Discussed in Council** See para 32.9 below

**Committee’s assessment** Politically important

**Committee’s decision** Cleared

**Background**

32.1 Directive 2002/91/EC aims to improve the energy performance of buildings, and combines different regulatory and information-based measures. In particular, it requires Member States to set minimum energy performance requirements, and to ensure that these are met by new buildings, and by existing buildings with a floor area above 1000m$^2$ when these undergo major renovation. It also requires them to establish arrangements for
the issue and display of energy performance certificates, and for the inspection of boilers and air conditioning systems of a specified output.

32.2 Since the buildings sector is the largest user of energy and carbon dioxide emitter in the EU, and one which the Commission considers could produce cost-effective savings substantially reducing energy consumption by 2020, it put forward in November 2008 this proposal to re-cast Directive 2002/91/EC. The proposal would thus retain many of the Directive’s existing provisions, but it would also extend its scope, and clarify and strengthen a number of its provisions, notably:

- by extending to all existing buildings, irrespective of floor area, the need to meet specified minimum energy performance requirements when they undergo a major renovation;
- by requiring Member States to calculate energy performance requirements which take into account European standards;
- by introducing minimum energy performance requirements for systems, such as boilers, water heaters and air conditioning, installed in buildings;
- by requiring Member States to increase the number of new and refurbished buildings for which carbon dioxide emissions and primary energy consumption are low or equal to zero, setting targets for the minimum percentages to be achieved by 2020 for residential, non-residential and public buildings, and intermediate targets for 2015;
- by introducing more specific requirements on to the content of energy performance certificates, coupled with new requirements governing their issue when buildings are constructed, sold or rented, and where over 250m² is occupied by a public authority;
- by reducing from 1000m² to 250m² the area above which such a certificate has to be prominently displayed if a building is occupied by a public authority, and introducing a similar requirement for any building above 250m² which is frequently visited by the public; and
- by extending the requirement on Member States to establish regular inspections of boiler heating systems to include all boilers with an output greater than 20kW.

These changes would have to come into force by the end of 2010 for buildings occupied by public authorities, and by the end of January 2012 for all others.

32.3 The main change, however, would relate to the setting of minimum energy performance requirements by Member States, which the Commission proposed should be gradually aligned with cost-optimal levels calculated in accordance with a methodology it would develop by the end of 2010. Member States would be required to achieve those levels by 30 June 2017, and, as from 30 June 2014, they would no longer be able to provide incentives for the construction or renovation of buildings which did not meet them.

32.4 Our predecessors noted in their Report of 18 January 2009 that, whilst the majority of the proposals were in line with, or replicate, the measures which the UK had already
adopted, some would go much further, and were regarded as “extremely challenging”. In addition, some of the definitions in the proposal needed to be clarified; and the financial implications, though not yet quantified, were likely to be significant.

32.5 They were also told that the Government would be able to produce an Impact Assessment once the proposals have been agreed, and, although they recognised that a number of uncertainties made it difficult to produce such an Assessment, they expressed concern at the suggestion that this could only be done after the measure had been adopted. In particular, they stressed the need for a proper Assessment before any such agreement, and said that, before they could consider clearing the proposal, they would wish to see this (and to receive more information on the progress of negotiations in Brussels).

32.6 Our predecessors subsequently noted on 8 July 2009 that they had recently received a letter from the Government, together with a supplementary Explanatory Memorandum. These said that, subject to the outcome of a consultation exercise, the Government was in the main content with the vast majority of what had been proposed, not least because the UK had in many such cases already gone further (or was proposing to do so). However, they noted that the Government had identified three main areas of concern where issues of subsidiarity or costs might outweigh the benefits, namely:

- the suggestion that there should be a single methodology to calculate cost-optimal levels of energy efficiency, where the impact could not in any case be confirmed until this had been developed by the Commission;
- the setting by the Commission of the definition of low and zero carbon properties, together with an obligation on Member States to set targets for the number of buildings meeting this requirement; and
- the extension to public buildings larger than 250m² of a requirement to display an energy certificate, where the Government considered that the focus should instead be on encouraging the take up of the existing requirement applying to buildings larger than 1000m².

32.7 Our predecessors also noted that the Government had provided an Impact Assessment, which suggested that there would be a one-off cost of about £2.5 million, as well as annual costs of £8 million arising from the wider display of energy certificates within the public sector, but that the average annual monetised benefit would be only £1.3 million (though there would also be certain non-monetised benefits arising from an annual reduction in emissions of carbon dioxide). The Assessment further noted that there would be additional, as yet unquantified, costs in meeting the requirements relating to cost-optimal improvements and arising from a single definition of low and zero carbon buildings (together with the associated targets to increase the number of such buildings).

32.8 In commenting on the complexity of this apparently straightforward document, our predecessors also noted that the costs and benefits quantified so far would result in a small net cost, and that the Government still had a number of outstanding concerns, including the timetable envisaged by the Commission, and the subsidiarity implications of achieving cost-optimal levels of energy efficiency, and of the projected increase in the number of low and zero carbon buildings. They therefore said that they intended to continue to hold the
document under scrutiny, pending further clarification on these points, and the outcome of the Government’s consultation exercise.

**Minister’s letters of 14 December 2009 and 13 April 2010**

32.9 Despite a request to be kept informed of developments, our predecessors were next sent a letter on 14 December 2009 by the then Parliamentary Under-Secretary of State at the Department for Communities and Local Government (Mr Ian Austin), indicating that political agreement had been reached on 19 November. Moreover, that letter did not in fact reach them — a fact which only came to light at the end of March 2010, as a result of which the Minister wrote again on 13 April 2010, enclosing a further copy of his original letter.

32.10 In these letters, the Minister highlighted the following main changes which had been made to the original proposal:

- the suggestion that the number of low or zero carbon new and existing buildings should be increased had been dropped, and a concept of “near zero energy building” introduced, including a requirement that, in such a case, the energy should to a very significant extent be from renewable sources, including that produced on-site or nearby: this would be accompanied by a requirement that all new buildings receiving planning permission after 31 December 2020 (or 31 December 2018, in the case of new buildings occupied by public authorities) must comply with it;

- the definition of “cost optimal level” had been revised, and has now been defined as the energy performance level which leads to the lowest cost during the estimated life cycle — which is to be determined by each Member State — taking into account energy-related investment costs, maintenance and operating costs, and disposal costs, where applicable; and

- the thresholds for the display of energy performance certificates had been changed, so that for buildings occupied by a public authority and frequently visited by the public it would now be reduced from its present level of 1000m² to 500m² (reducing further to 250m² five years after implementation), whilst the proposed new threshold for commercial buildings has been increased from 250m² to 500m².

32.11 The Minister said that the UK fully supported the definition of near zero energy buildings, which fitted very well with its own definition of zero carbon homes, and that, although it was initially concerned that any requirement on the reliance of renewable energy sources could increase development costs, the Commission had issued an assurance that this represented an aspiration rather than an obligation. He added that, in view of the change made to the definition of cost-optimal, the Government’s earlier concerns over subsidiarity had been allayed. In particular, he suggested that the standards currently in force in the UK would equal, and may exceed, the level of performance which would now be required, and that the UK would not in any case provide incentives for the construction of renovation of buildings which do not comply with minimum energy performance standards. His Department has also provided a revised Impact Assessment, which suggests that there would now be a one-off cost of £2.5 million and an average annual cost of £760,000, whilst the annual benefit would be £2.5 million, thus giving rise to a net benefit.
Conclusion

32.12 It is evident from the information provided — albeit belatedly — by the previous Government to our predecessors that the UK’s earlier concerns about this proposal have now been met, and also that, rather than a small net cost, there will now be a small net benefit. In view of this, and the fact that the proposal was agreed by the Council as long ago as November 2009, we see no point in holding the document under scrutiny. We are therefore clearing it.

32.13 However, in doing so, we would like to register two concerns over the way in which this document was handled by the Department. First, although our predecessors specifically asked in their Report of 8 July 2009 to be kept informed of developments, the then Minister did not write until 14 December 2009 to say that political agreement had been reached a month earlier. This demonstrably unsatisfactory situation was then compounded by the fact that this letter did not reach us — a fact which only came to light at the end of March, when departmental officials asked whether the Committee had seen the letter.

32.14 We appreciate that these difficulties cannot be laid at the door of the present Government, but we would expect the Department — and indeed all Departments — to keep us fully informed of developments, particularly where there has been an explicit request for this to be done, and above all to provide information before a document has been agreed. Secondly, if a Minister has sent us a letter which evidently merits a response from us, but no such response has been received within (say) two or three weeks, we believe that departments should, as a matter of course, check whether we have indeed received the letter. That would at least help to avoid the further delay which occurred in this instance.
33 Marketing of construction products

### Background

33.1 In 1989, the Council adopted a Directive (“the Construction Products Directive”) which specified conditions for the marketing of products used in the construction of buildings and civil engineering works. The aim was to ensure that reliable information was presented about products and to help establish fair competition in the EU’s single market.

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

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

33.4 The main differences between the Construction Products Directive and document (a) are as follows:

- Document (a) is a draft Regulation. It would, therefore, have direct effect. Member States would not need to transpose it. So there would be no room for Member States to apply the requirements differently in their national legislation, creating obstacles to fair competition in a single market for construction products;

- CE marking would be mandatory;

- The arrangements for assessing new and innovative products would be simplified and standardised; and

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

Previous scrutiny of document (a)

33.5 In June 2008, the previous Committee concluded that the aims of the proposal — simplification and clarification of the requirements for the marketing of construction products and the removal of barriers to the single market — seemed admirable. Our predecessors asked the Government to provide a report on its consultations about the proposal, a copy of the Government’s Impact Assessment and progress reports on the negotiations. Meanwhile, document (a) was retained under scrutiny.

33.6 In February 2009, the Government provided the information for which the previous Committee had asked and said that, during the negotiations in the Council Working Group, the Government had given broad support to the Commission’s draft Regulation subject to some amendments.

33.7 The Impact Assessment took account of the comments the Government had received from the industry and others when it consulted them about a draft. The main findings of the Impact Assessment were as follows:

- the voluntary take-up of CE marking in the UK was likely to be about 60%;
• a move to mandatory CE marking would probably impose on UK manufacturers a one-off cost of £40 million and subsequent annual costs of £7 million;

• it had not been possible to quantify the potential benefits of the draft Regulation; and

• mandatory CE marking would have a disproportionately adverse effect on the manufacturers (mostly small businesses) of individual products made for a particular project.

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

• manufacturers who already used CE marking were in favour of or neutral about the proposed move to mandatory marking, whereas those who did not were opposed to the move; and

• there was strong and widespread opposition to the proposal for a simplified process for the assessment and verification of products made by micro-enterprises on the grounds that the proposals were unclear, could cause confusion and might provide insufficient checks on products which are safety-critical.

33.9 In March 2010, the then Parliamentary Under-Secretary of State at the Department of Communities and Local Government (Lord McKenzie of Luton) told the previous Committee that the main difference of opinion between Member States was about whether the CE marking should be compulsory for all products. The Government’s position during the negotiations in the Council working group had been that, if CE marking were to become mandatory, the requirement should be linked to national or local building/works regulations, which set out the characteristics that are required for the product to be used in a particular area.

33.10 The Minister also said that many of the European Parliament’s first reading amendments were minor and acceptable. But some were not, such as the proposal to require manufacturers to declare whether their product contains a dangerous substance. The Commission and a majority of Member States, including the UK, believe that this would create an undesirable overlap with the REACH Regulation.138

33.11 The previous Committee noted that there remained disagreements between Member States on some key points and, most importantly, about whether the CE marking should be compulsory and what special provision should be made for small businesses. Our predecessors decided, therefore, to keep document (a) under scrutiny and welcomed the Minister’s intention to write again when the position was clearer.

The Minister’s letter of 29 April 2010

33.12 In her letter of 29 April, the then Parliamentary Under-Secretary of State at the Department of Communities and Local Government (Barbara Follett) told us that the

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138 REACH: the Registration, Evaluation, Authorisation and Registration of Chemicals Regulation.
Presidency was aiming to take a revised text of the draft Regulation to the meeting of the Competitiveness Council for political agreement towards the end of May. The Committee of Permanent Representatives of the Member States (Coreper) had already considered the revised text of the key Articles. A qualified majority of Member States had indicated support for the Presidency’s draft.

33.13 The Minister enclosed with her letter a confidential copy of the Presidency’s compromise text. She said that the text was clear and relatively straightforward. Moreover, it established the link between the CE mark and national building regulations and it incorporated a number of other amendments requested by the UK.

**Document (b)**

33.14 Document (b) is a revised text of the draft Regulation. It was prepared by the Presidency. It does not differ significantly from the compromise text the former Minister sent us on 29 April.

**The Government’s view on document (b)**

33.15 In his letter of 3 June, the Parliamentary Under-Secretary of State at the Department for Communities and Local Government (Andrew Stunell) tells us that on 25 May the Competitiveness Council reached a political agreement on the Presidency’s compromise text. The Government voted in favour of the proposal. The Minister says that, in the Government’s view:

“It was important to take this opportunity to agree the new Regulation. Council working party negotiations have now been in progress for two years, during which time the UK has secured a number of significant improvements to the text, and successfully argued for deletion of a number of proposals that were viewed unfavourably by either UK industry or regulators. The Presidency also agreed to a number of UK drafting suggestions on the text in the final weeks of negotiations. The political agreement has cemented these changes into the Council text, and while further changes may result from Second Reading negotiations with the European Parliament, there is now a firm Council basis for those discussions.

“The alternative would have been to abstain and maintain our scrutiny reserve. While there is a chance that the Regulation would have achieved a qualified majority regardless, the final weeks of negotiation indicated that the UK held a pivotal position in securing an agreement. If our abstention had broken the qualified majority, then the Regulation could have been abandoned and the potential benefit of replacing the current Directive lost. Longer term, the failure of the Regulation would have raised the risk that infraction proceedings might have been pursued against the UK under the current Construction Products Directive.”

The Minister hopes that the Committee will understand why, in these circumstances, he decided to take part in the vote for the Regulation.

33.16 His Explanatory Memorandum of 23 June provides a very detailed comparison of the similarities and differences between documents (a) and (b). It also tells us that the
Council is expected to begin negotiation with the European Parliament in the autumn with a view to reaching a Second Reading deal.

**Conclusion**

33.17 It appears that the Government has been successful in achieving most of its negotiating objectives. In particular, it has succeeded in establishing a firm link between the CE marking and the national regulations of the place where the product is to be used. We are grateful for the Minister’s explanation of his reasons for taking part in the Council’s agreement of the draft Regulation while it was still under scrutiny. Had we been able to consider document (b) before the Council meeting on 25 May, we would have cleared it. Accordingly, we now clear document (b). We also clear document (a), which has been superseded by document (b).

### 34 Green Paper on cultural and creative industries

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<th>(31577)</th>
<th>9073/10</th>
<th>COM(10) 183</th>
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<td>Commission Green Paper: <em>Unlocking the potential of cultural and creative industries</em></td>
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**Legal base** —  
**Document originated** 27 April 2010  
**Deposited in Parliament** 25 May 2010  
**Department** Culture, Media and Sport  
**Basis of consideration** EM of 28 May 2010  
**Previous Committee Report** None  
**To be discussed in Council** No date set  
**Committee’s assessment** Politically important  
**Committee’s decision** Cleared

**Background**

34.1 Article 173 of the Treaty on the Functioning of the European Union (TFEU) requires the EU and Member States to ensure the existence of the conditions necessary for the competitiveness of the EU’s industry. To that end, the Article requires them to foster the exploitation of the industrial potential of innovation, research and development.

34.2 In 2007, the Commission proposed a European Agenda for Culture which included four objectives. One of them is the promotion of culture as a catalyst for creativity and innovation by, for example, training people from the cultural industries in

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entrepreneurship and encouraging partnerships between the cultural sector and people and organisations concerned with research, tourism and information technology.

34.3 In November 2007, the Council approved the European Agenda for Culture. The European Council endorsed it in December 2007.

34.4 According to the Commission, the cultural and creative industries account for about 2.6% of EU GDP and provide employment for about five million people in the Member States.

The Green Paper

34.5 The Commission’s Green Paper invites views on ways to provide a stimulating environment for the EU’s cultural and creative industries. It includes in its definition of cultural industries the performing and visual arts, the cultural heritage, film and video, DVD, video games, music and books; and it includes architecture, graphic design, fashion design and advertising in its definition of creative industries.

34.6 The Green Paper notes that the Commission is developing several major policies which will have a significant effect on the industries’ environment. They include a Digital Agenda for Europe, which will aim, among other things, to create a single market for online content and services; and an EU strategy on intellectual property.

34.7 The Commission says that a deeper understanding is needed about how the cultural and creative industries can benefit from being located in the same place by fostering networking and providing better support for creative start-ups. Views are invited on:

“How to create more spaces and better support for experimentation, innovation and entrepreneurship in the [cultural and creative industries]? More particularly, how to increase access to ICT services in/for cultural and creative activities and improve the use of their cultural content? How could ICTs become a driver of new business models for some [cultural and creative industries]?”\(^\text{140}\)

34.8 The Commission says that partnerships between art and design schools or universities and businesses can contribute to getting a better match between the supply and demand for people with the right skills. It also says that, in order to bridge the gap between professional training and professional practice, “peer-coaching” (the exchange of experience between peers facing the same challenges) could provide a useful means to help cultural and creative industries respond to change. The Green Paper asks for views on:

“How to foster art and design schools/business partnerships as a way to promote incubation, start-ups and entrepreneurship, as well as e-skills development?

How could peer-coaching in the [cultural and creative industries] be encouraged at the level of the European Union?”\(^\text{141}\)

\(^{140}\) Green Paper, page 10, end of section 3.1.

\(^{141}\) Green Paper, page 11, end of section 3.2.
34.9 The Green Paper says that difficulties in obtaining capital are a major barrier to growth for many businesses. It invites views on:

“How to stimulate private investment and improve [cultural and creative industries’] access to finance? Is there added value for financial instruments at the EU level to support and complement efforts made at national and regional levels? If yes, how?”

34.10 The Commission also invites views on:

“How to strengthen the integration of [cultural and creative industries] into strategic regional/local development? Which tools and which partnerships are needed for an integrated approach?"

“What new instruments should be mobilised to promote cultural diversity through the mobility of cultural and creative works, artists and cultural practitioners within the European Union and beyond. To which end [sic] could virtual and online access contribute to these objectives?”

“Which tools should be foreseen or reinforced at EU level to promote cooperation, exchanges and trade between the EU [cultural and creative industries] and third countries?”

“How to accelerate the spill-over effects of [cultural and creative industries] on other industries and society at large? How can effective mechanisms for such knowledge diffusion be developed and implemented?”

“How can ‘creative partnerships’ be promoted between [cultural and creative industries] and education institutions/businesses/administrations?”

“How to support the better use of existing intermediaries and the development of a variety of intermediaries acting as an interface between artistic and creative communities and [cultural and creative industries] on the one hand, and education/business and administrations, on the other hand?”

34.11 The Commission invites replies to the questions in the Green Paper by 30 July 2010.

The Government’s view

34.12 In his Explanatory Memorandum of May 2010, the Minister for Culture, Communications and Creative Industries (Mr Edward Vaizey) welcomes the Green Paper. He emphasises the importance of the creative industries to the UK economy. For example, in 2007, they accounted for 6.2% of UK Gross Added Value and employed two million people. They grew by an average of 5% a year between 1997 and 2007. The Minister adds

142 Green Paper, page 12, end of section 3.3.
143 Green Paper, page 14, end of section 4.1.
144 Green Paper, page 16, end of section 4.2.
145 Green Paper, page 17, end of section 4.3.
146 Green Paper, page 18, end of section 5.
that the creative industries are regarded as “a key driver” of economic growth during the economic downturn.

34.13 The Government will be responding to the Green Paper and the Minister says that he will send us a copy of the response.

Conclusion

34.14 We recognise the importance of the UK’s creative industries and so we draw the Green Paper to the attention of the House. In the exercise of the power given to us by paragraph 11 of Standing Order No. 143 we also ask the Culture, Media and Sport Committee to provide us with its opinion on the Green Paper. We thank the Minister for his offer to send us a copy of the Government’s response to the Commission’s questions. We look forward to reading it. Meanwhile, we clear the Green Paper from scrutiny.

35 Reductions in EU greenhouse gas emissions

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<th>Document</th>
<th>Commission Communication: Analysis of options to move beyond 20% greenhouse gas emission reductions and assessing the risk of carbon leakage</th>
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<td>(31648)</td>
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<td>COM(10) 265</td>
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Legal base

Document originated 26 May 2010
Deposited in Parliament 3 June 2010
Department Energy and Climate Change
Basis of consideration EM of 16 June 2010
Previous Committee Report None, but see footnotes
To be discussed in Council See para 35.16
Committee’s assessment Politically important
Committee’s decision Cleared

Background

35.1 In February 2007, our predecessors reported on a number of documents relating to climate change and energy — notably a Commission Communication “Limiting global climate change to 2 degrees Celsius — The way ahead for 2020 and beyond”,147 which identified the crucial need, on both climate change and energy grounds, to reduce atmospheric concentrations of greenhouse gases. In particular, it suggested that the Community should make a firm independent commitment to achieve at least a 20%
reduction in such emissions by 2020 through its Emissions Trading Scheme (ETS) and other climate change policies. The European Council subsequently agreed that this aim should be achieved by Member States being given precise, legally binding targets, and, following a proposal from the Commission, these were set out in April 2009 in Decision No 406/2009/EC in relation to sources not covered by the Community’s ETS, such as transport and housing. (Other measures which formed part of this wider package included a new Directive on renewable energy, amendments to the ETS, and measures relating to carbon capture and storage.)

35.2 At the same time, the Commission has pointed out that a 20% cut, or action by the EU alone, would not be enough to combat climate change, and that all countries will have to make an additional effort, including cuts by developed countries of 80–95% by 2050: for that reason, the EU has also offered to make a 30% cut by 2020 as part of an overall international agreement. However, the Commission has noted that, since that commitment was made, circumstances have changed significantly, with an unprecedented economic crisis and the failure of the Copenhagen summit to reach a full, binding agreement — though it adds that, under the so-called Copenhagen Accord, countries (as well as the EU) accounting for some 80% of current emissions have made pledges to cut these, and that it will be essential to integrate the Accord with the continuing negotiations within the United Nations Framework Convention on Climate Change (UNFCCC).

The current document

35.3 Following a request from the Environment Council on March 2010, it has now put forward this Communication, which does not seek to press the case for moving now towards to a 30% target — for which it says the necessary conditions have clearly not been met — but rather to stimulate a debate on the implications of achieving different target levels, and the options for doing so.

The 20% target today

35.4 The Commission says that the starting point must be to consider what the 20% target currently implies. It points out that the economic crisis has had a major impact, although this has worked in different directions. Thus, on the one hand, it has produced a significant cut in EU emissions, which had already fallen between 2005 and 2008 as a result of high energy prices and action on climate change, and which fell by a further 11% between 2008 and 2009, accompanied by a corresponding fall in the carbon price (from €25 to €8 per tonne of carbon dioxide). Consequently, whereas the cost in 2008 of meeting the 20% target in 2020 was estimated to be at least €70 billion, that figure has now fallen to €48 billion. On the other hand, the Commission notes that the crisis has also left business with much less capacity to fund the necessary investment, coupled with uncertainty over the time it will take to recover, and that the lower carbon price will cut the revenue which governments can expect from auctioning allowances under the ETS, putting added pressure on public finances.

149 OJ No. L.140, 5.6.09, p.136.
35.5 The Commission also notes that there is a widespread consensus that the development of resource-efficient and green technologies will be a major driver of growth, a point recognised in the emphasis within the Europe 2020 programme on the need to re-orientate the EU’s industrial base towards a more sustainable future in the face of stiff global competition, not least in areas such as automobile emissions and renewable energy. Given this, and the increasing need for energy security, the Commission suggests that the EU needs to boost still further the incentives to develop these industries at a time of tight public spending. It also comments on the steps required after 2020 to maintain the trajectory needed to limit temperature increases by 2050 to 2°C. Against a background where developed countries will need by then to have reduced emissions by 80–95%, it says that, even if some of this reduction could be achieved by EU efforts outside its own borders, its domestic emissions would need to fall by about 70%, and that the trajectory agreed in 2008 — which reduce these by 20% by 2020 (and up to 25% by 2030, if unchanged) — would not be sufficient. It adds that, the more the necessary action is delayed, the greater the cost, and that a long-term roadmap to 2050 is needed to plan investment in the most cost-effective way.

The 30% target

35.6 The Commission suggests that the factors which have affected the 20% target also highlight the issues arising on a 30% target, which it suggests would in all probability entail increasing the stringency of existing policies or taking new initiatives. It goes on to examine possible options, including:

— **Options outside the Emissions Trading Scheme**

The Commission states that this Scheme is the primary tool for achieving emissions reductions, and that action could principally involve a gradual reduction in the quantities auctioned by perhaps 15% over the period 2010–30, adding that auctioning revenue could still increase as a result of the expected rise in the carbon price. At the same time, it also suggests that those who invest in top performing technology could receive extra unallocated free allowances.

— **Technological options**

The Commission observes that regulation can contribute to increased energy and resource efficiency, through product standards in areas such as eco-design and carbon dioxide emissions from motor vehicles, and from implementing the Digital Agenda in relation to smart grids and meters.

— **Carbon taxes**

In noting that some Member States already calibrate their tax system for fuels and products to reflect the carbon dioxide component, the Commission says that the introduction of taxes which target carbon dioxide emissions in areas not covered by the ETS would represent a straightforward market-based instrument, which could make an important contribution to reaching targets, whilst generating considerable revenues.
— **Using EU policies to drive emissions reductions**

The Commission says that the EU could encourage low-carbon investment through a greater volume of cohesion policy funding, and that significant energy savings remain unused due to market and regulatory barriers. It also highlights the potential contribution of land use, land use change and forestry (LULUCF) measures, and of providing incentives under the Common Agricultural Policy to encourage more sustainable practices.

— **Using the leverage of international credits**

The Commission observes that the EU took the lead in recognising that efforts outside its borders, such as under the Clean Development Mechanism\(^\text{150}\) (CDM), can stimulate action by the private sector, but suggests that such initiatives could slow down innovation within the EU and may now be more appropriate for emerging economies themselves. However, it says that one solution might be to replace CDM credits with new sectoral credits, which would redirect finance towards areas with the greatest potential for carbon reduction. It also says that the EU will continue to pursue agreement through the International Maritime Organisation (IMO) and UNFCCC on maritime emissions, but will take its own steps if no agreement has been reached by the end of 2011, and that, following the significant progress made in Copenhagen in the fight against the loss of tropical forests, further cooperation with the developing countries in question should be fostered.

35.7 The Commission next assesses the challenge of meeting the 30% target. It notes that the €70 billion which it was initially assumed would be needed to achieve a 20% reduction would now be sufficient to take the EU more than halfway towards meeting a 30% target, and that, with the additional costs of moving from 20% to 30% now being put at €33 billion, the overall cost of doing so (including that of meeting the 20% target) would be €81 billion (or 0.54% of GDP), only €11 billion more than the projection made in 2008 for achieving 20%. However, it again cautions that reduced profitability of companies, lower spending power of consumers, and reduced access to bank loans has affected the EU’s ability to invest in low carbon technologies.

35.8 It also identifies the sectors which might provide the greatest potential for emissions reductions as including electricity (through improved demand-side efficiency and a reduction on carbon-intensive supply-side investments), heating from households and services, and reductions in methane and nitrous oxide emissions from agriculture; it suggests that the potential for reducing emissions is greatest among the poorer Member States, provided the necessary resources, for example, through the cohesion policy, can be found to do this without jeopardising economic growth; and it believes that in relative terms the cost-effective split between efforts within and outside the ETS are largely the same for a 30% reduction target as for one of 20%.

35.9 The Commission says that achieving a 30% target will also have a variety of other consequences. These include the restoration of incentives for innovation; a reduction by 2020 of some €40 billion in imports of oil and gas; significant long-term benefits to

\(^{150}\) This enables countries seeking to reduce emissions to do so by means of projects in developing countries.
Europe’s competitiveness; improvements in air quality, reducing by €3 billion the costs of meeting the target levels for particulates, sulphur dioxide and heavy metals set out in the Thematic Strategy on Air Pollution (and thereby also achieving additional health benefits of between €3.5 and €8 billion in 2020).

**Carbon leakage**

35.10 The Communication also addresses, in the context of Directive 2009/29/EC on the Emissions Trading Scheme, the issue of “carbon leakage” (whereby, in the absence of sufficient global effort, domestic action leads to a shift in market share towards less efficient installations elsewhere, resulting in increased emissions globally). It notes that, the more competitor countries sign up to comparable efforts to cut emissions, the less the risk of such leakage, and adds that the reduction in the carbon price and fall in emissions means that those energy-intensive sectors within the ETS before 2013 are likely to end up with a very considerable number of unused free allocations, which can be carried over to the Scheme’s third phase (2013–20), thus putting them in a comparatively better position internationally as compared with 2008. The Commission also points out that the continuing UNFCCC negotiations make a definitive assessment difficult, but that implementation of the Copenhagen Accord would clearly be a move in the right direction. In the meantime, it comments that evidence of the extent to which economic activity has relocated outside Europe is so far inconclusive, but that the incremental impact of moving to a 30% target is likely to be limited, so long as special measures for energy-intensive industry remain in place.

35.11 The Commission goes on to observe that the main issue regarding carbon leakage is the competitive difference between the EU and third countries, and that there are three broad ways in which this could, if necessary, be tackled — by giving support to energy-intensive industries through continued free allowances; by adding to the costs of imports to compensate for the advantage of avoiding low-carbon policies; or by taking measures to bring the rest of the world closer to EU effort levels. It says that the most obvious step to take within the EU is to maintain the free allocation of allowances, but that it would also be possible to include imports within the ETS, as for example in the case of international aviation, though it adds that this does raise issues about the EU’s trade policy in relation to an open trade system and its compatibility with WTO requirements, as well as the increased costs of imported inputs for EU manufacturers and a number of practical difficulties.

35.12 The Commission has also provided in an accompanying document an assessment of how the mitigation commitments and actions which countries have pledged relate to the goal of limiting the global average temperature rise to below 2°C. It suggests that, provided all high end pledges put forward are fully implemented, a major part of the efforts required by 2020, including the peaking of global emissions, could be bridged, though it adds that there are a number of risks and uncertainties relating to the offers tabled which will need to be carefully managed in order to secure the highest level of ambition. The Commission also says that global emissions will be around 48Gt CO$_2$e (Gigatonnes or billion tonnes of carbon dioxide equivalents) in 2020 if countries implement their highest mitigation offers, with 46Gt in 2020 considered to be the highest total compatible with the 2 degrees goal. The document goes on to provide a short assessment of the merits and drawbacks of
alternative legal forms for an international agreement, concluding that a global legal framework which builds on the essential elements of the Kyoto Protocol should remain the EU’s preferred outcome: and it ends by analysing the scope for, and implications of, the development of green low-carbon technology in terms of employment within the EU and the EU’s wider competitive position.

**The Government’s view**

35.13 In his Explanatory Memorandum of 16 June 2010, the Minister of State at the Department for Energy and Climate Change (Gregory Barker) says that the UK agrees with the Commission that the Copenhagen Accord represents an important step towards an ambitious global agreement, and should be the basis for further progress in the international negotiations. He adds that it is working with other countries to incorporate the Accord into the ongoing UNFCCC negotiations and make it operational at the earliest opportunity: and he also points out that the Government’s coalition programme states that it “will push for the EU to demonstrate leadership in tackling international climate change, including [by] supporting an increase in the EU emissions reduction target to 30% by 2020”. It therefore very much welcomes this Communication, which it says will act as an evidence-base, and starting point for discussions, about a 30% reduction among EU Member States over the coming months.

35.14 As regards individual aspects of the Communication, the Minister says that:

- the Government looks forward to discussing with the Commission over the coming months how the ETS would work in practice towards achieving a 30% emissions reduction target;

- that the other possible policy options identified by the Commission for delivering further emissions reductions in those sectors which are not covered by the ETS are in very general terms, and a long way from being legislative proposals, but that the UK will be talking to other Member States and the Commission in the coming months to better understand what the implications might be, and whether or not it should endorse them;

- that, before an assessment can be made of the UK’s share of the EU-wide cost of moving beyond a 20% target, it will be necessary to have a better idea of the policy options which will be used, and the Government will be working with the Commission and other Member States over the coming months to develop a shared understanding of how the target will be split;

- likewise, the benefits which the Commission associates with moving to a 30% target are all set out at EU level, and the extent to which these benefit the UK depends on the exact policy mechanisms which are put in place;

- although not referred to in the Communication, a major benefit of a higher EU target will be a reduction in global emissions, both in terms of a direct reduction of 530MtCO₂e in 2020, and the further impact on the ambition of others under the Copenhagen Accord;
• the first three UK carbon budgets, running from 2008 to 2022, were set in 2009, and are based on the UK’s share of an EU-wide 20% target: so, if the EU moves to a 30% target, the UK’s second and third carbon budgets will need to be amended accordingly, once the policy proposals to achieve this, and their allocation between Member States, have been agreed; and

• the UK has been encouraging the Commission to take an evidence-based approach to carbon leakage, and believes that the risk of this is limited to a small number of energy-intensive sectors, and could be managed by the measures in the EU ETS Directive.

35.15 The Minister also says that the UK shares the Commission’s analysis as regards the likelihood of attaining the 2 degrees target, and the associated risks and uncertainties. He adds that the UK view, based on existing analysis from Lord Stern and the Hadley Centre, is that it could be possible to establish a credible 2 degrees trajectory with emissions as high as 48Gt in 2020, provided countries are prepared to make deeper cuts in later years, although it recognises that stronger early global action is likely to be a more cost effective approach. He also says that the Government is committed to working towards an ambitious global climate deal, and welcomes the work of the Commission in looking at the benefits and drawbacks of different options for the legal form of such an agreement.

35.16 As regards the timetable, the Minister says that the Communication was due to be discussed at the Environment Council on 11 June and the European Council on 17 June, and would then be the subject of more detailed discussion later in the year in preparation for the next UN Climate Change Conference in Cancun in November 2010.

Conclusion

35.17 Although this Communication deals with a subject of obvious importance, it deliberately avoids an attempt to press the case for a move towards a 30% emissions reduction target, seeking to concentrate instead on analysing the implications of achieving different targets and the options for doing so. Moreover, as the Government has pointed out, it does so in fairly general terms and in relation to the EU as a whole, making it difficult at this stage to identify how individual Member States might be affected. Consequently, although we think it right to draw the document to the attention of the House, we do not consider that further consideration at this stage is necessary, bearing in mind that the Council will now be concentrating on developing the EU’s negotiating mandate for the Cancun meeting. We are therefore clearing it.
36 Fishing opportunities for 2011

Commission Communication: Consultation on fishing opportunities for 2011

Legal base
Document originated 17 May 2010
Deposited in Parliament 25 May 2010
Department Environment, Food and Rural Affairs
Basis of consideration EM of 2 June 2010 and Minister’s letter of 15 July 2010
Previous Committee Report None
To be discussed in Council See para 36.8 below
Committee’s assessment Politically important
Committee’s decision Cleared

Background

36.1 The Council sets for each calendar year the total allowable catches (TACs) which may be taken by EU vessels in the major fisheries in its waters, these being divided between Member States according to a pre-determined key. Because of the need for the Commission’s proposals to be based on the latest scientific advice, this has often meant they have not been available until very near the time when decisions need to be taken, which in turn has presented problems both for decision-makers in Brussels and for proper Parliamentary scrutiny. The Commission has therefore sought of late to put forward in the middle of the year a general assessment of the position and of its intentions as a basis for consultation with the industry and Member States, and the current document seeks to do this for fishing opportunities in 2011.

The current document

36.2 The Commission says that its approach follows seven guiding principles:

- setting fishing opportunities at a level which ensures sustainable exploitation of resources in environmental, economic and social terms;
- limiting changes in catches from one year to another as far as practicable, in order to provide a stable and predictable framework for fishermen;
- respecting the EU’s international commitments, notably those at the World Summit on Sustainable Development (WSSD), to rebuild stocks so as to reach their maximum productivity by 2015;
- ensuring the implementation of long-term plans;
- reducing fishing of over-exploited stocks, and re-building those which are depleted;
• basing proposals on scientific advice, usually provided by the International Council for the Exploration of the Sea (ICES); and
• application of the precautionary approach.

36.3 The Commission notes that, if the aim of reaching maximum sustainable yields by 2015 is to be met, many of the long-term plans having this as their objective now need to be implemented, and that it will be making appropriate proposals: it also says that, where no such plans have yet been proposed, it would be right to move towards the maximum sustainable yield by reducing fishing mortality in four equal steps, starting in 2011.

36.4 It then assesses the state of the EU’s fishing resources, commenting that the number of stocks known not to be over-fished has increased from two in 2005 to 11 in 2010, with good progress having been made in areas such as the North Sea; that the number of stocks subject to advice to stop fishing has decreased from 20 to 14; that the number of stocks outside safe biological limits, but not subject to advice to stop fishing, has diminished from 30 in 2003 to 22 in 2010; and that, whilst TACs have still been set at much higher levels than those advised by scientists, this excess has decreased from 47% to 34% in 2010. On the other hand, it says that there are more stocks, not least in the west of Scotland and the Celtic and Irish Seas, where scientists have not provided advice because of concerns over data quality or other reasons. It also highlights the fact that the absence of an agreement on migratory pelagic stocks for 2010 implies catches of mackerel nearly 40% higher than the sustainable catch which would have been set if the long-term plan agreed in 2009 by the EU, Norway and Faroes had applied, and suggests that, although this stock is currently at a high level, there is a risk of rapid depletion if good management is not restored. Overall, it suggests that, whilst there are signs of improvement, success is far from guaranteed, and that efforts to eliminate over-fishing have to be maintained.

36.5 On the setting of fishing opportunities, the Commission notes the continuing need to restrict catches and effort, and suggests that a reinforced move towards an approach based on maximum sustainable yields should help to reduce the gap between the scientific advice and the actual TAC, with there also being a need for adaptations in fishing effort in a number of long-term plans. It adds that such plans remain at the core of its policy, and that, although no new ones came into force in 2009, it intends to propose measures for west of Scotland haddock and Celtic Sea herring in 2010, when work will also continue on bringing more stocks under long-term management. It also addresses the rules for setting TACs where no long-term plans are in force, where there are currently 11 different approaches according to the scientific assessment of the state of the stock. It suggests that, where a stock is over-fished but within safe biological limits, the permitted change in TAC from one year to another should be increased from 15% to 25%, whilst in the case of stocks where no scientific advice is available (or the state of the stock is not known precisely) it says that TACs “should be adjusted towards recent real catch levels”.

The Government’s view

36.6 In his Explanatory Memorandum of 2 June 2010, the Minister for Natural Environment and Fisheries at the Department for Environment, Food & Rural Affairs (Mr Richard Benyon) says that the improvement in the scientific prognosis for some stocks is encouraging and reflects efforts to reduce exploitation rates in fisheries over recent years.
However, he says that the UK shares concerns that a number of stocks continue to be outside safe biological limits and agrees that efforts need to be made to reduce exploitation levels. In particular, he is concerned at the increasing number of stocks for which scientific advice or full analytical stock assessments are not available, which he suggests hampers the management of the fisheries for long-term sustainability, and he also believes that efforts need to be made to take account of all sources of information on the state of stocks, including that collected and provided by the fishing industry.

36.7 More specifically, the Minister says:

- that the move towards fishing rates based upon maximum sustainable yields is to be welcomed, that the Government is committed to meeting its international obligations under the WSSD, and that it is encouraged that ICES is this year providing scientific advice on this basis for the first time (though he highlights the need for full consideration of the economic impact on fishing communities);

- that long-term management plans have clearly contributed to the success of measures to reduce exploitation levels in the North Sea, and that the UK will continue to work with the Commission and other Member States towards the development of further plans, adding that a clear framework for the setting and allocation of fishing opportunities is essential;

- that the Government shares the Commission’s concerns over the lack of agreement with coastal states on mackerel, particularly given the economic importance of the stock to the UK, and will continue to press for a solution to this issue in the coming weeks;

- that further reductions in effort under the cod recovery plan can be expected to result in a reduction in ‘days at sea’ for vessels fishing West of Scotland, in the Irish Sea and in the North Sea, and that, since the UK industry has made considerable efforts to increase the sustainability of its fishing practices, the Government will continue to argue that the management of fishing effort should reflect the need to reward fishermen for these undertakings; and

- that the Government supports the need for a more satisfactory approach to the setting of TACs in the absence of scientific advice, and will continue to work with the Commission in finding a solution, though it does not believe that reducing TACs to average landings in the absence of advice (the ‘use it or lose it’ approach) is consistent with advice not to increase effort, and considers that such a policy not only encourages fishermen to see the TAC as a target, not a limit, but fails to recognise that catches fluctuate for a number of reasons independent of the state of the stock.

36.8 In the coming months, the Government says that it will undertake extensive consultation with stakeholders on both this document and in reaction to the scientific advice released in the second half of the year, in order to inform the UK position for the autumn negotiations on the TACs for 2011 on the Commission’s formal legislative proposals, which are expected at the end of October 2010. He observes that, although this Communication is not itself a formal legislative proposal, and the agreement of Member
States on its content is not being sought, the Council will have an opportunity on 29 June to discuss the framework set out in it, and that the UK Government and organisations will also be able to submit written comments.

**Minister’s letter of 15 July 2010**

36.9 The Minister concluded by saying that scientific advice on the most significant commercial demersal species was due to be issued by ICES on 30 June, and he has since sent us a letter of 15 July, summarising the main points. He says that for many (though not all) of the fisheries covered, the situation is similar to last year, with stocks below recommended levels and reduced or poor entry levels of young fish. As a result, there are a significant number of key UK stocks where further cuts are advocated, including North Sea cod (20% cut in TAC, and 15% cut in effort), haddock (5% cut in TAC), whiting (15% cut in TAC) and saithe (13% cut in TAC); Irish Sea cod (25% cut in both TAC and effort), haddock (15% cut in TAC), whiting and sole (20% cut in TAC); and West of Scotland cod (25% cut in TAC and effort), haddock (25% or more cut in TAC) and whiting.

**Conclusion**

36.10 As we have indicated, the Commission has in recent years produced reports of this kind in order to help prepare the ground for subsequent discussions on the level of TACs and fishing effort for the subsequent calendar year, and, although these have not always warranted a substantive Report to the House, there are two reasons why we believe such a Report would be appropriate in the current case. First, the Commission’s analysis suggests that there have in certain cases been some improvement in the state of the stock as a result of the action taken. Against this, however, it is clear from the advice since provided by ICES that, despite such progress, further quite significant cuts could well be proposed in TACs and effort levels for a number of stocks of importance to the UK.

36.11 Since the Commission intends to bring forward legislative proposals in the autumn, we do not believe it would be sensible at this stage to recommend that further consideration should be given by the House to this document given that it is the subject of a widespread consultation, and that it is likely to be overtaken by events before any such consideration could take place. Nevertheless in clearing it, we think it right to draw it to the attention of the House.
37 Bio-waste management

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**Legal base**

- **Document originated**: 18 May 2010
- **Deposited in Parliament**: 25 May 2010
- **Department**: Environment, Food and Rural Affairs
- **Basis of consideration**: EM of 14 June 2010
- **Previous Committee Report**: None, but see footnotes 151, 152
- **To be discussed in Council**: See para 37.8
- **Committee’s assessment**: Politically important
- **Committee’s decision**: Cleared

**Background**

37.1 One of the EU’s strategic goals has been to reduce the impact on health and the environment of the increasing amounts of waste generated by economic growth. Although waste management is already governed by a substantial body of regulation, the Commission believes that there remain opportunities for further improving the management of some major waste streams, including bio-waste (defined as biodegradable garden and park waste, and food and kitchen waste). In particular, it has pointed out that very different national policies apply to bio-waste management within the Community, and that consideration should be given to whether national action is sufficient, or Community action is needed. It therefore sought in December 2005 to explore in a Thematic Strategy the various issues which arise, and this was followed in December 2006 by a Green Paper. In the light of responses to that latter document, it has now produced this Communication, which seeks to draw conclusions, lays out recommendations on the steps needed to reap the full benefits of proper bio-waste management, and describes the main potential courses of action at the different levels (and how to implement them).

**The current document**

37.2 The Commission observes that between 118 and 138 million tonnes of bio-waste is produced within the EU each year, of which about 88 million tonnes is municipal waste. It notes that the waste management options available include separate collection, biological treatment (including anaerobic digestion and composting), mechanical-biological treatment, incineration and landfill, with the environmental and economic implications of each depending on local conditions. Within this framework, it notes the three main

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151 (27143) 5047/06: see HC 34–xviii (2005–06), chapter 7 (8 February 2006).
152 (30311) 17559/08: see HC 19–xv (2008–09), chapter 7 (29 April 2009).
approaches adopted by Member States — heavy reliance on incineration of waste diverted from landfill, accompanied by a high level of material recovery and biological treatment; high material recovery rates accompanied by composting and mechanical-biological treatment, but relatively low incineration; and reliance on landfill, particularly in a number of the new Member States. It also points out that on average 40% of bio-waste within the EU is still landfilled (with consequential environmental risks such as emissions of greenhouse gases and pollution of soil and water), and that this contravenes the guiding principles of EU waste and sustainable resource management policy, notably the “waste hierarchy”, which identifies prevention as the best option, followed by re-use, recycling and energy recovery.

37.3 The Commission goes on to review the Community legal instruments relating to the treatment of bio-waste. In addition to the general requirements laid down in the Waste Framework Directive (2008/98/EC), these include the Landfill Directive (1999/31/EC) which requires the level of biodegradable bio-waste from municipal landfills to be progressively reduced by 2016 to 35% of that in 1995. It goes on to point out that, if the recycling and recovery of bio-waste were to be maximised, this could:

- save up to 60% of the food waste generated by households;
- avoid about 10 million tonnes of carbon dioxide-equivalent emissions, representing a 4% contribution to the EU’s target of reducing emissions from sectors not covered by the Emissions Trading Scheme by 10% in 2020 compared with 2005;
- contribute, through the resultant production of bio-gas, about one-third of the EU’s target for the use of renewable energy in transport;
- increase the market for compost by a factor of 2.6, to reach about 28 million tonnes;
- produce resource savings by substituting 8–10% of phosphate, potassium and lime fertilizers with compost; and
- improve 3–7% of depleted agricultural soils in the EU with compost.

It notes that these are in part alternative solutions, but that there are certain synergies, and it says that its analysis confirmed that the current EU policy framework provides significant and cost-effective opportunities for improved bio-waste saving, with the most important of these being the avoidance of greenhouse gas emissions, followed by the production of good quality compost and bio-gas. It also suggests that a better alignment of bio-waste management with the waste hierarchy and other provisions of the Waste Framework Directive would produce environmental and health benefits of between €1.5 and 7 billion.

**Initiatives at EU level**

37.4 The remainder of the Communication sets out a number of actions which could be taken to optimise bio-waste management. It says that, whilst Member States should be given a wide level of discretion in choosing the measures best suited for their own
circumstances, initiatives at EU level will help to accelerate progress and ensure a level playing field. It therefore proposes to take the following steps:

— Prevention of bio-waste

The Commission notes that, under the Waste Framework Directive, Member States are obliged to develop national waste management plans in line with the waste hierarchy, and must also develop national waste prevention plans by 2013, with benchmarks to measure progress. However, it says that, in the vast majority of Member States, no clear and measurable steps have been taken to increase bio-waste, due partly to lack of clear guidance, and that, although the impact of binding EU prevention targets cannot yet be assessed, it could itself adopt indicators under the Comitology procedure. It adds that this could be supported by specific guidance on bio-waste prevention, whilst work continues towards developing a set of indicators for future EU-level waste prevention targets.

— Treatment of bio-waste

The Commission says that, where bio-waste cannot be prevented, Member States should choose the best management options according to their circumstances, and that a number of them have already reduced, or are expected to dramatically reduce, landfilling and increase treatment. However, it also believes that, without further incentives, some Member States will in the foreseeable future be unable to take significant steps towards composting and bio-gas production, despite the significant potential benefits. It recognises that, due to different conditions, further work is needed, notably from a subsidiarity perspective, before considering whether to move towards an EU target for biological treatment, and it says that it will attempt to conclude whether such a target could be set by 2014, though it adds that this would probably have to be accompanied by enhanced separate collection.

— Soil protection

The Commission suggests that compost and digestate from bio-waste are under-used materials, often because of a lack of end-user confidence, and that their use should be regulated so as to avoid adverse effects on soils. It considers that standards for compost and digestate should be established to enable their free circulation and to allow their use without further monitoring, and it is therefore considering the technical basis for such a proposal. It also notes that not all biologically treated waste will comply with the highest standards, but that these materials could nevertheless be valuable if applied in a safe manner, and that, although full harmonisation across the EU would not be feasible, minimum rules could be set as a safety net.

— Research and innovation

The Commission notes the importance of research and innovation in developing new technologies, and that the Seventh Framework Programme (2007–13) contains a number of relevant themes.

— Full implementation of existing measures
The Commission says that, although existing legislation provides an excellent basis for bio-waste management, it needs to be properly implemented, and that it therefore intends — in parallel with Member States — to reinforce its efforts in this area, together with preparing guidelines on the application of life-cycle thinking and assessment in the waste sector. It identifies the diversion targets in the Landfill Directive as being one of its top priorities, and says that a number of steps can be taken, including a close monitoring of attainment levels, and in-depth analysis of Member States’ strategies for biodegradable waste management, and European financial support through regional policies.

**Action to be taken by Member States**

37.5 The Commission also suggest that the following actions can be taken by Member States:

— **Waste management via the “waste hierarchy”**

The Commission says that, subject to specific local conditions, Member States should implement the provisions of the Waste Framework Directive and properly apply the “waste hierarchy”. It notes that this approach will become legally binding on 12 December 2010, and will make a significant contribution to optimised bio-waste management.

— **Prevention of bio-waste**

The Commission suggests that, in line with the “waste hierarchy”, prevention should be increased, making best use of waste prevention programmes, national benchmarks, monitoring, assessment and periodical reporting, and it says that it could provide assistance by creating a framework for such activities.

— **Promotion of separate collection and biological treatment of bio-waste**

The Commission believes that composting and anaerobic digestion present the best option for unpreventable bio-waste, with a good quality of input being an important pre-condition, which could in the majority of cases be best achieved by separate collection. It recommends that Member States should introduce separate collection systems as a matter of priority, whilst recognising that such systems will differ, depending upon the types of waste collected and the availability of treatment options.

— **Protecting soils**

The Commission says that it is proposing minimum standards for the use of compost and digestate in agriculture by means of a revision of the Sewage Sludge Directive, which would likely be equal to, or less stringent than, the national rules already in place in some Member States, thus minimising the need to re-adjustment.

— **Compost**
The Commission says that Member States should promote the production and use of compost from separately collected bio-waste, and proactively support its wide take-up by end-users, in order to improve resource efficiency and maintain soil quality.

— Zero landfilling

The Commission notes that zero landfilling has been achieved by some Member States, and that all Member States should aim for this as soon as possible in the case of untreated bio-waste. It adds that, in seeking to minimise landfilling, other options higher in the waste hierarchy can contribute, including energy efficient incineration, provided over-investment does not have the effect of limiting subsequent biological treatment or prevention.

— Producing energy from wastes

The Commission notes that decarbonisation of the energy sector is one of the main challenges for the EU, and that Member States should bear in mind the role of bio-waste conversion to electricity, heat or transport fuels when considering measures to meet their renewable energy targets.

The Government’s view

37.6 In his Explanatory Memorandum of 14 June 2010, the Parliamentary Under-Secretary at the Department for Environment, Food & Rural Affairs (Lord Henley) says that the Government welcomes this analysis, and, as it does not believe that any further legislative measures are needed in this area, it agrees with the Commission that there are no policy gaps at EU level which could prevent Member States from taking appropriate action. It is also content with the approach taken at this stage on subsidiarity, although it says that there could be issues if the Commission were to bring forward actual proposals introducing EU targets on waste prevention or on the biological treatment of bio-waste.

37.7 As regards individual aspects of the Communication, he says that the UK:

- would welcome guidance on bio-waste prevention in relation to the national plans required under the Waste Framework Directive, which will provide clarity and help to share good practice: but it is not convinced that EU bio-waste prevention targets would be beneficial, and therefore welcomes the Commission’s intention to continue to assess their appropriateness;

- is not convinced of the benefits of an EU target on the biological treatment of bio-waste, and, since it believes that the main need is for proper enforcement of existing measures (and in particular the Landfill Directive), it welcomes the emphasis which the Commission has put on this;

- supports the general principle of “end-of-waste” criteria, but in the case of composts and digestates, believes that national standards relating to their use are more appropriate; and

- welcomes the suggestions made by the Commission regarding the actions to be taken by Member States, and fully intends to apply the “waste hierarchy” properly
in its bio-waste management planning: in particular, it will look to promote the separate collection\textsuperscript{153} of bio-waste where this is economically, environmentally and technical appropriate, and in the meantime it has implemented the diversion targets in the Landfill Directive and is promoting energy from waste in line with the Renewable Energy Directive.

37.8 The Minister says that the Communication was presented briefly at the Environment Council on 11 June. He adds that the Commission plans to produce an Impact Assessment by the end of the year in relation to the introduction of minimum rules for compost and digestate produced from bio-waste which does not meet “end-of-waste” criteria, but has given no indication of when it expects to conclude its other investigations and analysis.

**Conclusion**

37.9 The issue of bio-waste management was dealt with at some length by our predecessors in their Report of 29 April 2009 on the Commission’s Green Paper, and to the extent that this Communication takes the issues involved a stage further, we too think it right to draw it to the attention of the House. Having said that, the document does not raise any new, or major, concerns, although, as the Government has pointed out, should the Commission eventually come forward with any proposals for setting EU-wide targets for the prevention of bio-waste or for its treatment or separate collection, it will be necessary to consider the subsidiarity implications. In the meantime, we are clearing the current document.

\textsuperscript{153} The devolved administrations in Scotland and Wales would see some merit in EU targets in this area.
38 Fishing opportunities in 2010–11

(a) Draft Council Regulation amending Regulation (EU) No. 53/2010 as regards certain fishing opportunities for cod, redfish and bluefin tuna and excluding certain groups of vessels from the fishing effort laid down in Chapter III of Regulation (EC) No. 1342/2008

(b) Draft Council Regulation establishing the fishing opportunities in the Bay of Biscay for the 2010–11 fishing season and amending Regulation (EU) No. 53/2010

Legal base
See para 38.5 below

Document originated
(a) 11 June 2010
(b) 7 July 2010

Deposited in Parliament
(a) 16 June 2010
(b) 12 July 2010

Department
Environment, Food and Rural Affairs

Basis of consideration
(a) EM of 30 June 2010
(b) EM of 16 July 2010

Previous Committee Report
None

To be discussed in Council
26 July 2010

Committee’s assessment
(Both)Legally important

Committee’s decision
Cleared, but further information requested

Background

38.1 Each year, the EU fixes the fishing opportunities for its vessels, and those for 2010 were set out in Regulation (EU) No. 53/2010. However, in-year adjustments are frequently made in order to reflect changes in circumstances, including the updating of relevant scientific advice and subsequent decisions taken by regional fisheries organisations of which the EU is a member.

The current proposals

38.2 The Commission has accordingly put forward these two proposals, which would make certain changes to the fishing arrangements applying in 2010. Document (a) would amend Regulation (EU) No. 53/2010 to reflect changes agreed internationally by the North Atlantic Fisheries Organisation (which regulates catches in the North West Atlantic) and by the International Commission for the Conservation of Atlantic Tunas. Also, Regulation (EC) No 1342/2008 enables the Council to grant requests from Member States for certain vessels to be exempted from the effort limitation provisions laid down under long-term recovery plans, and this proposal would enable such requests from Germany, Ireland and
France to be approved. Document (b) would amend the total allowable catches (TAC) set for anchovy in the Bay of Biscay in the light of newly available scientific advice.

**The Government’s view**

38.3 The UK has no direct interest in the Bay of Biscay fishery, and in a Explanatory Memorandum of 30 June 2010, the Parliamentary Under-Secretary for Natural Environment and Fisheries at the Department for Environment, Food & Rural Affairs (Mr Richard Benyon) said that the UK supports the proposed changes, and that the Government will be putting in on behalf of UK vessels a similar request for an exemption from the effort limitation provisions.

**Conclusion**

38.4 These proposed changes have a minimal impact on the UK, and, since they therefore raise no important policy issues, we are clearing these documents. However, they do raise a legal issue which concerns us, and on which we would welcome the Government's views.

38.5 In each case, the Explanatory Memorandum provided gives Article 43(3)TFEU as the legal base, and says that the proposal is subject to special legislative procedure. In a letter from the previous Minister for Europe on 11 January 2010 on the definition of “legislative act” under the EU Treaties, we were told that an act could only be adopted by the ordinary or a special legislative procedure, and therefore be considered a legislative act, if the relevant legal base “explicitly” referred to the legislative procedure. Yet Article 43(3) is silent on this. We would be grateful, therefore, if the Minister would confirm whether the Government has departed from the view of the previous Government when he states in his Explanatory Memorandum that these Regulations are adopted by special legislative procedure. The question of legislative procedure is significant because it determines the application of the Protocols on national parliaments and on the principle of subsidiarity, and in particular whether national parliaments have an eight week period in which to consider a proposal.

38.6 We would also be grateful if the Minister could tell us whether, prior to the Lisbon Treaty coming into force, the Council considered that it was acting “in its legislative capacity” in accordance with Article 7 of the Council’s 2004 rules of procedure when adopting these types of Regulation on fishing opportunities. If it did (which would seem likely) national parliaments would have had a Treaty-enshrined right to six weeks for scrutiny before adoption in the Council under Article I(3) of the pre-Lisbon Protocol on national parliaments, but would now be denied even this if the current proposals were deemed not to be legislative acts.

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39 Food prices: the EU and developing countries

Legal base

Document originated 12 March 2010
Deposited in Parliament 17 March 2010
Department International Development
Basis of consideration EM of 31 March 2010

To be discussed in Council To be determined
Committee’s assessment Politically important
Committee’s decision Cleared

Background

39.1 Encouraged by the European Council and the European Parliament, and fearful of the impact not only on the developing countries themselves but also on the prospects of achieving the UN Millennium Development Goals, in July 2008 the Commission proposed a two-year facility to help those countries combat soaring food prices. The Commission reckoned that high food prices would contribute to a €1 billion (£0.789 billion) CAP under-spend in 2008 and 2009. Using UN figures, the Commission estimated that the financing need for 2008–9 would be €18 billion (£14.2 billion); given the Community average of financing 10 per cent of worldwide development cooperation, the Community would finance €1.8 billion (£1.42 billion). With €800 million currently available from other instruments, it was envisaged that the remaining €1 billion would come from the CAP under-spend.

39.2 In his covering Explanatory Memorandum of 28 August 2008, the then Secretary of State for International Development (Mr Douglas Alexander) supported the principle of collective EU action to address the situation but not the proposal in its current form. He welcomed the objective of encouraging a positive supply response from farmers in developing countries in the short to medium term. But, as well as acting to prevent loss of life of the most vulnerable, he also believed that investing in agriculture and rural development was essential.

39.3 Moreover, the Government also objected to the proposed use of under-spend for this purpose on budget discipline grounds. Noting that under-spend was normally returned to Member States, and arguing that the budget margins should be kept for unforeseen needs or programmes in-year and not used for new proposals that are not programmed into the
Financial Framework. The then Secretary of State said that he would work with the several other Member States that shared UK concerns to ensure that alternative proposals and financing mechanisms were fully explored to allow for a collective EU response that would ensure that the MDGs were met; the government would also continue to argue that financial aspects of any new proposals with important cost implications for Member States should be fully discussed and agreed by Finance Ministers in ECOFIN before a final decision on proposals as a whole could be taken.

39.4 Recalling the Government commitment to UK aid reaching 0.7% of Gross National Income by 2013, with part of this to be spent on food and agriculture, the then Secretary of State also noted that any UK share of a Commission or similar proposal would come from DFID’s existing, enhanced, budget allocation. If an alternative proposal for a food facility were to be developed, which would be effective in leveraging additional resources from others as part of an overall increased effort to ensure the MDGs were met, without compromising the principle that EC Budget under-spend should normally be returned to Member States, he might support it; but he would need to be convinced that using existing aid programme funds for this purpose would deliver better development outcomes than alternative uses of these resources. The then Secretary of State further noted that the proposed use of budget under-spend would represent a cost to Member States, the UK share of which would be around 15% or about £120 million (spent over three years, from DFID’s existing budget allocation).

39.5 Finally, on the timetable, the then Secretary of State said that in order to use the unspent funds, the Commission required the Regulation to come into force by end 2008; and that co-decision would require agreement at first reading by November 2008.

39.6 The then Secretary of State having clearly outlined his objections to the proposal in its current form, and noting that deliberations on the Regulation would begin on 25 August in the European Parliament Development Committee and among Member States on 4 September, the previous Committee said that it would not expect him to agree any revised proposal without further scrutiny, asked him to keep the Committee informed of the progress of these discussions, and in the meantime retained the document under scrutiny.\textsuperscript{155}

39.7 In his letter of 31 October 2008, the then Secretary of State said that it now seemed unlikely that the original plan to use CAP surpluses would be approved, given Member States’ opposition, and that “Council committees continue to look for ways to find the necessary funds including through contingencies reserves and reprioritisation of existing budgets.” Meanwhile, he said, discussions continued “around the best way to programme the resources to meet needs”; he believed that “to ensure sustainability, the €1 billion (£0.79 billion) should be used on a mix of immediate measures (e.g. seeds & fertilisers) and other complementary measures which support medium and long-term sustainability.”

39.8 The then Secretary of State went on to say that the European Parliament had suggested a number of substantive amendments to the original proposal, which included “the setting of firm criteria for the choice of countries to benefit.” He agreed with this

amendment, as it would indicate which countries were eligible and add flexibility whereby some countries would graduate from needing support and others could move in when they needed it; principles and indicators for setting the criteria should, however, be tight so “politicised choices” were “easily taken out of discussion.” However, as long as a fixed list of criteria was agreed, he did not see a need to set an arbitrary limit to the number of countries which could be eligible for assistance under the facility. But he did agree with the European Parliament’s amendment proposing the broadening of the number of channels and beneficiaries, which he said should include channels such as the World Bank, international NGOs and “good Direct Budget Support where the Governments concerned explicitly identify strategies for addressing high food prices and targeting the vulnerable.” But he did not support European Parliament’s further amendment of imposing an arbitrary 40% limit on the level of support channelled through international organisations, his view being that “the criteria for choosing the channels for distributing the funds should be the potential for effective and efficient implementation.”

39.9 For its part, the previous Committee noted that, although the main objection no longer obtained, the Secretary of State had nonetheless made plain his objections to certain aspects of the European Parliaments amendments. Moreover, it was also not clear at this stage how, and to what extent, the revised proposal met his main criterion — that an alternative proposal for a food facility should leverage additional resources from others as part of an overall increased effort to ensure the MDGs are met. The previous Committee also asked if the immediate measures consisted of expenditure on seeds and fertilisers, or whether some would be spent on food imports, and how much of the €1 billion would come from “contingencies reserves and reprioritisation of existing budgets”; and how much would come from “channels such as the World Bank, international NGOs and good Direct Budget Support where the Governments concerned explicitly identify strategies for addressing high food prices and targeting the vulnerable” and if any would come from DFID’s budget. In the meantime, it continued to retain the document under scrutiny and said that it would not expect the Secretary of State to agree to any revised proposal until he had reported again with the answers to these questions and the outcome of the ongoing discussions about funding and the European Parliament’s proposed amendments.156

39.10 In his letter of 28 November 2008, the then Secretary of State enclosed a copy of the revised Regulation. Its primary objectives would be to:

— encourage a positive supply response from the agricultural sector in target countries and regions;

— support activities to respond rapidly and directly to mitigate the negative effects of volatile food prices on local populations in line with global food security objectives, including UN standards for nutritional requirements;

— strengthen the productive capacities and the governance of the agricultural sector to enhance sustainability of interventions.

39.11 A differentiated approach was to be pursued “depending on development contexts and impact of volatile food prices … so that target countries or regions and their

populations are provided with targeted, tailor-made and well adapted support, based on their own needs, strategies, priorities and response capacities." Measures supported under this Regulation should be coordinated with those supported under other instruments, including those concerning humanitarian aid, development cooperation and stability, and the ACP-EU Partnership Agreement “so as to ensure continuity of cooperation, in particular as regards the transition from emergency to medium- and long-term response.” Taking into account the specific country-level conditions, measures eligible for implementation would be:

— measures to improve access to agricultural inputs and services including fertilizers and seeds, paying special attention to local facilities and availability;

— safety net measures aiming at maintaining or improving the agricultural productive capacity, and at addressing the basic food needs of the most vulnerable populations, including children;

— other small-scale measures aiming at increasing production based on country needs: microcredit, investment, equipment, infrastructure and storage; as well as vocational training and support to professional groups in the agriculture sector.

39.12 Implementation should also be “in line with the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action”, and be focused on:

“small and medium-sized farms for family and food-producing agriculture, particularly those run by women, and poor populations most affected by the food crisis, avoiding any kind of distortion of local markets and production; agricultural inputs and services shall as far as possible be locally purchased.”

39.13 Entities eligible for funding should include:

— partner countries and regions, and their institutions;

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160 In February 2005, at the Paris High Level Forum on Aid Effectiveness, more than 100 signatories — from donor and developing-country governments, multilateral donor agencies, regional development banks and international agencies — endorsed the Paris Declaration on Aid Effectiveness. It contains 56 partnership commitments aimed at improving the effectiveness of aid; lays out 12 indicators to provide a measurable and evidence-based way to track progress; and sets targets for 11 of the indicators to be met by 2010. The Declaration is focused on five mutually reinforcing principles: Ownership: Developing countries must lead their own development policies and strategies, and manage their own development work on the ground; Alignment: Donors must line up their aid firmly behind the priorities outlined in developing countries’ national development strategies; Harmonisation: Donors must coordinate their development work better amongst themselves to avoid duplication and high transaction costs for poor countries; Managing for results: All parties in the aid relationship must place more focus on the end result of aid, the tangible difference it makes in poor people’s lives; and Mutual accountability: Donors and developing countries must account more transparently to each other for their use of aid funds, and to their citizens and parliaments for the impact of their aid.
161 The statement issued after the 3rd High Level Forum on Aid Effectiveness in Accra, Ghana, on 4 September 2008 by Ministers of developing and donor countries responsible for promoting development and Heads of multilateral and bilateral development institutions “to accelerate and deepen implementation of the Paris Declaration on Aid Effectiveness”. The full text of the Accra Agenda for Action can be found at http://site resources.worldbank.org/ACCRAXT/Resources/4700790-1217425866038/AAA-4-SEPTEMBER-FINAL-16h00.pdf. For further information on the Forum, see http://www.undg.org/docs/9198/UNDG-Report-Accra-HLF-full-version.doc.
— decentralised bodies in the partner countries, such as municipalities, provinces, departments and regions;

— joint bodies set up by the partner countries and regions with the Community;

— international organisations, including regional organisations, UN bodies, departments and missions, international and regional financial institutions and development banks;

— appropriate Community institutions and bodies and EU agencies;

— public or parastatal bodies, local authorities and consortia or representative associations thereof;

— companies, firms and other private organisations and businesses;

— financial institutions that grant, promote and finance private investment in partner countries and regions;

— non-State actors operating on an independent and accountable basis; and

— natural persons.

39.14 Community financing could take the following forms:

— projects and programmes;

— budget support, especially sectoral budget support, if the partner country’s management of public spending is “sufficiently transparent, reliable and effective, and if the conditions for budget support set out in the relevant geographical financing instrument have been met”;

— contributions to international or regional organisations and international funds managed by such organisations; and

— contributions to national funds set up by partner countries and regions to attract joint financing from a number of donors, or contributions to funds set up by one or more donors for the purpose of the joint implementation of projects.

39.15 Agreements would expressly entitle the Commission and the Court of Auditors to perform audits, including document audits or on-the-spot audits of any contractor or subcontractor who received Community funds. The Commission would monitor and review activities implemented under this Regulation, where appropriate by means of independent external evaluations, in order to ascertain whether the objectives had been met and enable it to formulate recommendations with a view to improving relevant future development cooperation operations. The Commission should associate all relevant stakeholders, including non-State actors and local authorities, in the evaluation phase of the Community assistance provided under this Regulation.

39.16 The Commission was also obliged to provide the European Parliament and the Council with:
— a report on the implementation of the measures, including, as far as possible, on the main outcomes and impacts of the assistance provided under this Regulation, no later than 31 December 2012; and

— in December 2009, an initial interim report on the measures undertaken.

39.17 Both reports should “pay particular attention to the requirements of the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action.”

39.18 The then Secretary of State then answered the questions we posed as follows:

“a). Possible leveraging of additional resources from others and whether any would come from DFID’s budget and how much of the €1 billion would come from “contingencies reserves and reprioritisation of existing budgets

“All outstanding budgetary issues were resolved at the 2009 EU Budget Conciliation discussions between the Council and the European Parliament on 21 November … The full €1 billion (£0.79 billion) will come from EU contingency reserves and the reprioritisation of existing budgets. No additional bilateral contributions are therefore required to be contributed from Member States, though contributions to the EU budget will increase.

“One of the contingency lines is the Emergency Aid Reserve (EAR). This exists to respond to sudden, unforeseen crises. The budgetary rules allow for Member States to increase the amount available in the Reserve, and it has been duly agreed that a one-off increase of €240 million (£189 million) be made to the 2008 allocation as a contribution to the food facility in addition to €100 million (£79 million) of uncommitted funds from existing resources within the Reserve.

“In summary, the €1 billion (£0.79 billion) will come from:

- €100 million (£79 million) from the Emergency Aid Reserve comprising €22 million (£17 million) from 2008 and €78 million (£61 million) in 2009.
- €240 million (£189 million) from the one-off increase in the allocation for the Emergency Aid Reserve for 2008.
- €420 million (£330 million) from the Flexibility Instrument (a non-oda contingency budget line) in 2009.
- €240 million (£189 million) reprioritisation from within the External Actions chapter of the EU Budget comprising €70 million (£55 million) in 2009 and €170 million (£134 million) in 2010.

“Thus over €760 million (£598 million) of the €1 billion (£0.79 billion) will represent additional oda in terms of existing commitments within the EU Budget (it is not yet clear how much of the reprioritisation of External Actions will involve existing non-oda commitments).
“The UK share of the cost of the food facility is just under £120 million which will come from DFID’s budget. This will not be brought to account for at least two years, and will be manageable within DFID’s existing resources.

“Comitology procedures have also been introduced to ensure Member State supervision of spending decisions, and indicative criteria have been set to determine where resources will be spent.

“b). Whether immediate measures consist of expenditure on seeds and fertilizers, or whether some will be spent on food imports

“There are no plans to use the facility’s funds for imported food.

“c). Channels

“A wide range of channels for distributing the funds has been included in the draft legislation. The draft also specifies that a “differentiated approach depending on development contexts and impact of volatile food prices shall be pursued so that target countries or regions and their populations are provided with targeted, tailor-made and well adapted support, based on their own needs, strategies, priorities and response capacities.”

39.19 On the question of Timing, the then Secretary of State said that the European Parliament would vote on the draft legislation on 3 December, and that the Council would then vote at the 8 December General Affairs and External Relations Council (GAERC) “at which point the Regulation will be fully agreed”, the aim being to publish it in the Official Journal (the formal end of the legal process) on or before 31 December 2008, as this was the final deadline if 2008 resources were to be used. It was subsequently made clear, however, that the Regulation would be voted on at the 16 December 2008 Economic and Financial Council.

The previous Committee’s assessment

39.20 Although the main objection to the draft Regulation was removed at an early stage, the then Secretary of State was plainly sceptical about the proposal unless it was able to leverage additional resources from others as part of an overall increased effort to ensure that the UN Millennium Development Goals were met, and had said that he would need to be convinced that using existing aid programme funds for this purpose would deliver better development outcomes than alternative uses of these resources. He had also clearly expressed reservations about certain European Parliament amendments. Given all this and the fact that the draft Regulation had been substantially changed since then, the previous Committee felt that he should have done somewhat more than answer its specific questions, in order to explain how the revised draft — which continued not to meet his “leverage” criterion — nonetheless sufficiently met his other objections now to warrant both his general support and the expenditure of just under £120 million from DFID’s budget. Instead, it noted, they would have expected a further Explanatory Memorandum, and asked the then Secretary of State to ensure that on any future such occasion this was forthcoming.
39.21 That said, the previous Committee felt that it could reasonably be inferred from the Regulation itself that it was now in line with his overall approach; it now appeared to be properly framed in terms of sustainable developmental objectives, focus and implementation mechanisms; and also appeared now to contain appropriate provisions on coordination and to ensure proper control of expenditure, evaluation and reporting to the Council and the European Parliament. Even though they felt that they lacked clear assurances from the then Secretary of State on these points, the previous Committee had no wish to hold up this response to a pressing problem, and therefore cleared the draft Regulation.

39.22 They also asked that, in a year’s time, the then Secretary of State should deposit the interim Report along with an Explanatory Memorandum outlining its findings, his views thereon and his assessment of the Regulation’s effectiveness thus far.¹⁶²

The Commission Staff Working Document

39.23 This report from the Commission to the European Parliament and the Council on measures is undertaken under Article 11 of Regulation EC/2008/1337, which calls on the Commission to provide an interim report on the measures undertaken under the Regulation.

39.24 In his Explanatory Memorandum of 31 March 2010, the then Parliamentary Under Secretary at the Department for International Development (Mr Michael Foster), notes that the “Food Facility” Regulation constitutes the main European Commission response to the crisis in developing countries brought about by soaring food prices, and “aims to bridge the gap between emergency response and long-term development.” He also notes that the initiative:

— will expire on 31 December 2010, with activities ending by the end of December 2011. He regards “this very tight timeframe” as having “made the planning, programming and implementation of the activities particularly challenging, both for the EC and for the implementing partners”;

— includes a list of 50 target countries and indicative allocations to each of these countries;

— has four mechanisms for implementation.

* International Organisations (IO) including: the Food and Agriculture Organisation (FAO); the World Food Programme (WFP); the World Bank (WB); and the International Fund for Agricultural Development (IFAD) — €510 million (£455 million);

* Non-governmental organisations, private sector and Member States’ agencies through a Call for Proposals — €200 million (£179 million);

* National governments through budget support — €210 million (£188 million);

• Regional level interventions in Africa — €60 million (£54 million);

— the final €20 million (18 million) was retained for the administrative and management costs; and

— the three areas of eligible action under the Food Facility are: Measures to improve access to agricultural inputs and services, 40%; safety net measures, 36%; and other small-scale measures aimed at increasing production (including micro-credit, infrastructure, storage, vocational training), 23%.

39.25 The then Minister then says that:

“Most projects implemented by IOs are at an early stage of implementation. The earliest projects began implementation in the spring of 2009 and are starting to show results. Seeds, fertilizers and agricultural tools have been distributed; safety net mechanisms are in operation, vulnerability assessments undertaken, national capacity building training delivered and coordinating mechanisms strengthened.”

The Government’s view

39.26 The then Minister comments as follows on the Report:

“The adoption of the Food Facility Regulation demonstrated the EC’s ability to react rapidly and substantially to the food security problems in developing countries caused by the food price volatility of 2007/08. Thus far, the Facility is the most significant global response to stimulate agricultural development and fight hunger. After the entry into force of the Food Facility Regulation on 1 January 2009, the European Commission has organised its implementation with speed and efficiency.

“Thus far the measures taken show that the implementation of the Food Facility is advancing well. Nevertheless challenges exist that may impact their future effectiveness. These include difficulties of a political and/or security nature in a number of target countries, as well as the very tight implementation period for the projects and programmes. In line with the Regulation, a final report will be presented by the Commission before the end of 2012.”

39.27 He assesses the Facility’s strengths thus:

“The Facility has provided significant additional funds to an EU response to high food prices. There has been improved co-ordination between EC departments to programme the funds quickly. The preparation of the IO country fiches has resulted in better coordination and linking at country level, for example, in Bangladesh between EC office, DFID, WFP and FAO. The process has proved the EC can work quickly when needed. The facility has been improved through Member State engagement by: increasing the timescale of the facility from 2 to 3 years; broadening the implementers beyond IOs by including a Call for Proposals, the regional bodies and budget support. Care has been taken that the Facility adds value to ongoing initiatives and avoids duplication. Regarding the Call for Proposals, UK and other Member States were successful in lobbying for an open, non-ring fenced Call for Proposals to give an even playing field for NGOs.”
39.28 And its weaknesses as follows:

“A perception that in some cases programme quality may have been compromised by the urgency to spend quickly. This has resulted, in our view, to an over-emphasis on the IOs, particularly FAO. However, the EC maintain there were quality controls in place and only the best proposals got through. A large number, 50 countries, have been selected and this could mean a dilution of impact. Gambia, Cuba, Guatemala, Honduras, Jamaica, Nicaragua and Bolivia would not be DFID priorities.

“At the early stages of the Facility there were opportunities to improve performance by addressing the overall principles of the Facility. However, once approved there was less opportunity, particularly regarding the first tranche of €320 million (£286 million) to the IOs.”

39.29 The then Minister concludes by saying that, to address these weaknesses, the UK and other Member States have “called for an evaluation and lesson learning exercise at the completion of the Facility [which] would measure results and performance of the different implementing organisations and recommend improvements to the process should there be another Facility.”

**Conclusion**

39.30 Given its interim nature, no questions arise at this juncture. But the then Minister has clearly indicated the areas of weakness thus far, and what is expected of the final evaluation. We look forward to receiving it and the new Minister’s views and assessment in due course, particularly as the circumstances that brought about the Facility will almost certainly occur again — as suggested by the attention being devoted by the Commission to the food supply question in the two Commission Communications that we consider elsewhere in this Report.163

In the meantime, we are reporting the picture so far, given the widespread interest in the House in development issues, and clear the document.

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163 (31470) 8246/10, (31471) 8250/10; See chapter 45 of this Report.
40 The EU and global health

The EU Role in Global Health

Legal base

Document originated 31 March 2010
Deposited in Parliament 25 May 2010
Department International Development
Basis of consideration EM of 23 June 2010
Previous Committee Report None
To be discussed in Council 10 May 2010 Foreign Affairs Council
Committee's assessment Politically important
Committee’s decision Cleared, but relevant to the debate on Communication 8910/10

Background

40.1 The Commission’s starting point is that “Global health is a term for which no single definition exists.” For the Commission, however, it “is about worldwide improvement of health, reduction of disparities, and protection against global health threats.” Addressing global health, thus defined, “requires coherence of all internal and external policies and actions based on agreed principles.”

40.2 As health is increasingly influenced by globalisation, “the EU’s social model, its strong safety norms, and its global trade and development aid position allow it to play a major role in improving global health.” The World Health Assembly has the authority to adopt resolutions and binding international regulations: but “most resolutions are not binding and compliance depends on national capacities and political will.” Progress towards the health Millennium Development Goals (MDGs) is uneven and largely off track in most developing countries. The EU is already exercising its treaty-based powers via the EU Health Strategy, its Research Framework Programmes and the European Consensus on Development. All in all, “the EU’s leading role in international trade, global environmental governance and in development aid, as well as its values and experience of universal and equitable quality healthcare give it strong legitimacy to act on global health.”

The Commission Communication

40.3 Against this background, the Commission says that this Communication “proposes an EU vision on global health, defines the guiding principles that should apply to all relevant policy sectors and presents a number of areas where the EU could more effectively act.” It is accompanied by three Commission Staff Working Documents with more detailed information regarding “Contributing to Universal Coverage of Health Services through
Development Policy”, “Global health: responding to the challenges of globalization” and “European Research and Knowledge for global health”.

40.4 The Commission calls for “A Stronger EU Vision, Voice and Action”. With “a plethora of actors and initiatives engaged in global health and a continuing need to mobilize resources”, there is a need for “a clearer and more efficient global leadership.” With the entry into force of the Lisbon Treaty, “the role of the EU in WHO would need to be included in wider reflections concerning its role in the United Nations”. At global level, “the EU should defend a single position within the EU agencies [and] … support stronger leadership by the WHO in its normative and guidance functions”.

40.5 “An Enhanced EU Response” should:

— increase the alignment and predictability of EU support, prioritising fragile states, AIDS orphans and off-track health MDGs;

— improve its capacity for analysis and dialogue on global health challenges at national, regional and international levels;

— assume research capacities to making the biggest impact on public health;

— ensure that the EU’s internal or external policies and actions coherently promote equitable and universal coverage of health services, particularly in its five main Policy Coherence for Development areas, viz., trade and financing, migration, security, food security and climate change;

— work towards reducing fragmentation of funding and shifting WHO funding to its general budget;

— promote the strengthening of health systems that deliver health care for all through EU participation in global financing initiatives, such as the GFATM and the GAVI, and by “its participation in the governance of” the International Financial Institutions (IFIs);

— support the implementation of national health strategies by country systems, offering predictable EU aid of at least three years duration and channelling two thirds of health Official Development Assistance (ODA) through partner-countries’ owned development programmes and 80% using partner countries’ procurement and public financing management systems;

— help partner countries to strengthen the participation of all stakeholders in national health policies, and to formulate policies that raise domestic revenue for the health sector so user fees can be replaced with fair financing;

— tackle maternal and child malnutrition by supporting government nutrition policies through interlinked health and food security interventions in the worst-affected countries; and

164 The Global Fund against Aids, Tuberculosis and Malaria; see http://www.theglobalfund.org/en/ for full information.
165 The Global Alliance for Vaccines and Immunisation; see http://www.gavi alliance.org/about/index.php for full information.
“ensure that all relevant internal or external policies contribute to promoting equitable and universal coverage of quality health services”, with the impact assessment of the relevant policy areas to include analysis of the effects of policy options on global health.

40.6 The Commission concludes with a number of concrete proposals, such as Member States ensuring that their migration policies do not undermine the availability of health professionals in third countries, and designating a coordinator on global health, to work with Member State counterparts and the Commission in a platform to exchange information and meet regularly to agree on common positions and opportunities for joint action.

**The Government’s view**

40.7 In his Explanatory Memorandum of 21 June 2010, the Parliamentary Under-Secretary at the Department for International Development (Mr Stephen O’Brien) says that the decision to produce a Communication on the EU role in Global Health “was inspired by the UK’s Department of Health-led inter-departmental strategy Health is Global”, and that, with the primary goal for this Communication being to promote a more effective strategic approach to Global Health, his Department represented the UK Government on the Expert Group that “fed into this Communication as the main focus of the paper relates to international development and the achievement of the Health Millennium Development Goals (MDGs).”

40.8 The Minister then explains that this document “supports many UK priorities in the health sector”, including:

- “increased coherence and harmonisation of EU and Member State actions towards key MDGs”
- “strong support to national health strategies and systems”
- “a commitment to increased resources being made available to reach the health MDGs”; and
- “endorsing the International Health Partnership (IHP), which seeks to apply the good-aid Principles of the Paris Declaration on development assistance to the health sector, and the associated Joint Assessment of National Strategies (JANS) process, which serves to help strengthen and assess the robustness of the national health strategy.”

40.9 Within the Communication, the Minister notes “support for designing a financial system that will remove financial barriers to accessing health services, which is considered a key step in making progress against the maternal and child mortality MDGs.”

40.10 He describes family planning and reproductive health as “central to the achievement of the MDGs, and particularly MDG 5 on improving maternal health”. He continues thus:

“The UK is committed to supporting reproductive health, and universal access to family planning and reproductive health services, supplies and information, as set out in the ICPD and Beijing Declarations and Programmes of Action. This issue
often proves controversial for some EU Member States, and is lacking in the Communication. The emphasis on reproductive health in the Council Conclusions is therefore welcome.”

40.11 The Minister then:

“accepts that the Communication does not contain detailed reference to achieving outcomes in specific health areas, as this was meant to be a high-level strategic guidance document. From the outset, the European Commission aimed to produce a brief strategic guide to how itself and EU Member States should engage with global health issues — instead of listing detailed priority health issues, it would promote strong health systems as the best way to achieve the health MDGs, with external assistance aligned behind robust national health plans focussed on achieving the health MDGs.”

40.12 The Minister also says that he “would have wished to see more on increased donor commitments, along the lines of the 2008 EC Agenda for Action on MDGs166”, but that “this met with considerable resistance and was not ultimately included.”

40.13 Turning to the role of the EU and Member States in WHO and other international institutions with a Global Health mandate, the Minister notes that the Communication makes specific reference in places to these matters

“For example, it states that "With the entry into force of the Lisbon Treaty, the role of the EU in WHO would need to be included in wider reflections concerning its role in the United Nations”. It also suggests that ‘the EU should endeavour to defend a single position within the UN agencies’”.

40.14 Against that background, the Minister then says:

“The Government will wish to ensure that further work on the matters outlined in the Communication fully respects the division of competences between the EU and the Member States. Work is still on-going in Brussels on the question of EU representation and participation in international bodies and organisations such as the WHO following the entry into force of the Lisbon Treaty. The Government’s position is that the Lisbon Treaty does not change the balance of competencies between the Member States and the EU. Therefore, any proposal for enhanced EU engagement in international bodies such as the WHO should be approached on a case by case basis and will require a detailed analysis of the costs and benefits relating thereto.”

40.15 The Minister concludes by noting that Council Conclusions on “The EU Role in Global Health” were adopted at the Foreign Affairs Council on the 10th of May 2010.

40.16 In welcoming the Communication, the Council says that these conclusions are “part of the overall process of establishing the EU position for the MDG High Level Plenary Meeting to be held in New York, which will further define the EU response to the most off-track situations”, noting that “Progress towards achieving the health-related MDGs has

been uneven and insufficient, particularly for MDGs 4 and 5 and especially in Sub-Saharan Africa.” The Council affirms that the “EU has a central role to play in accelerating progress on global health challenges, including the health MDGs and non-communicable diseases, through its commitment to protect and promote the right of everyone to enjoy the highest attainable standard of physical and mental health.”

40.17 The conclusions also call on the EU and its Member States “to act together in all relevant internal and external policies and actions by prioritizing their support on strengthening comprehensive health systems in partner countries … strengthening their capacities to develop, regulate, implement and monitor effective national health policies and strategies [and ensuring] full participation of the representatives of civil society and other relevant stakeholders, including the private sector.”

40.18 On the question of the WHO and the respective roles of the EU and Member States, the Conclusions say:

“The Council calls on EU Member States and the Commission to support an increased leadership of the WHO at global, regional and country level, in its normative and guidance functions addressing global health challenges as well as in technical support to health systems governance and health policy, given its global mandate. Accordingly, the Council requests Member States to gradually move away from earmarked WHO funding towards funding its general budget. Without prejudice to respective competencies, the EU and its Member States will endeavour to speak with a stronger and coherent voice at the global level and in dialogue with third countries and global health initiatives.”

Conclusion

40.19 Given the inter-relationship between the subject matter of this Communication and the related Communication 8910/10, “A twelve-point EU action plan in support of the Millennium Development Goals”, we consider it relevant to the debate in European Committee B that we have recommended on the latter in chapter XX of this Report.

40.20 As well as discussing the way forward on the Millennium Development Goals, the debate will also provide an opportunity to examine further the Minister’s position on the question of EU representation and participation in international bodies and organisations such as the WHO following the entry into force of the Lisbon Treaty. Given his view that the Treaty does not extend the EU’s legislative powers in the field of human health, which Article 6 TFEU confines to actions to support, coordinate or supplement the actions of Member States, we find it odd that he seems to see any proposal for enhanced EU engagement in international bodies as dependent not on legal principles but rather upon “a detailed analysis of the costs and benefits relating thereto.”

40.21 We now clear the document.

168 (31519) 8910/10; see chapter 2 of this Report.
41 Addressing the needs of the most vulnerable in Sudan

Draft Council Decision concerning the allocation of funds de-committed from projects under the 9th and previous European Development Funds (EDF) for the purpose of addressing the needs of the most vulnerable population in Sudan

Legal base
Articles 1(4) and 6 of the Internal Agreement between Member States on the Financing of Community Aid in accordance with the ACP-EC Partnership Agreement; unanimity

Document originated
3 May 2010

Deposited in Parliament
25 May 2010

Department
International Development

Basis of consideration
EM of 26 May 2010

Previous Committee Report
None

To be discussed in Council
12 July 2010

Committee’s assessment
Politically important

Committee’s decision
Cleared

Background

41.1 In 2009, the International Criminal Court (ICC) issued an arrest warrant for the President of Sudan, Omar al-Bashir, over two counts of alleged war crimes and five counts of crimes against humanity. In the same year, the Government of Sudan decided not to ratify the first revision of the Cotonou Agreement (the basis for the EDF) because it contains new articles that relate to the ICC. As a consequence, Sudan cannot access €297 million of funds that would otherwise have been made available to it under the 10th EDF.

The Council Decision

41.2 In his Explanatory Memorandum of 26 May 2010, the Secretary of State for International Development (Mr Andrew Mitchell) says that this is a crucial period for Sudan. He notes that: in January 2011, the semi-autonomous South of Sudan will hold a referendum on secession from the rest of Sudan; irrespective of the outcome, they will continue to face huge humanitarian and development challenges requiring strong engagement from donors; and that other marginalised areas in Sudan — principally Darfur, The Three Areas and the East — also continue to face huge humanitarian and development challenges. He then explains that, given the political and humanitarian situation, Member States have encouraged the Commission) to find ways to channel funds to the Sudanese population, and that it has now proposed using €150 million of “de-committed” funds — funds not used as originally intended — from the 9th and previous EDFs; discussions in the Council’s Africa Caribbean and Pacific (ACP) Working Group suggest that the requisite unanimity among Member States will be forthcoming; once this
obtains, the Commission Delegation in Sudan will then consult Member States on how the funds will be utilised. They will, the Secretary of State underlines, not be channelled through the Government of Sudan. The focus is expected to be on rural development and basic services to be used in the marginalised areas of the South, Darfur, the East and the Transitional Areas. EU Member States will subsequently be required to give formal approval to the Commission’s spending proposals through the EDF Management Committee.

41.3 In addition, the Secretary of State notes that the Commission:

— is also currently considering the possibilities of providing additional funding for Sudan through its Instrument for Stability, and plans to bring forward a proposal in May;

— has indicated that it may, at a later date, bring forward a proposal for using 10th EDF funding, whilst avoiding any benefits going to the Government of Sudan, to address any remaining funding shortfall. But (the Secretary of State says) practical and legal difficulties would first need to be resolved with such a proposal.

The Government’s view

41.4 The Secretary of State notes that the UK is strongly engaged in Sudan, both bilaterally (c.£250 million annually, of which £140 million is humanitarian and development funding, with around half spent in the South of the country) and through international organisations such as the EU and UN. He says that there are no additional financial implications arising from this proposal, the de-committed funds identified from the 9th and prior EDFs having already been made available by Member States to the Commission, who are holding them in a reserve awaiting Member States’ consideration of possible re-programming. He describes the UK as having been at the forefront of efforts to get additional Commission funding approved for Sudan despite its non-ratification of the 2005 revision of the Cotonou Agreement, and says that it has taken over a year for the Commission to make this proposal. In order to avoid the risk that the proposal is perceived to undermine the Cotonou agreement, with funds continuing to flow to Sudan despite non-ratification, he says that key conditions for Member States are that “programming will focus on the marginalised and under-developed areas of Sudan, and that no funds will be routed through the Government of Sudan”; that the Commission has indicated that it can find implementing partners in the marginalised areas that avoid routing funds in this way; and that the funds will be managed according to the implementation arrangements for EDF 10.

41.5 Finally, he says that he expects the proposal to be submitted to the Council for decision in May, with the programming proposal to be submitted subsequently for Member States’ formal approval in the EDF Committee later in May or in June.

41.6 Subsequently, it became clear that the proposal had been held up because of difficulties in agreeing a joint European Commission-Council statement to accompany the proposal to clarify when funds could be channelled through the Government of Sudan.
The Minister’s letter of 5 July 2010

41.7 In his letter of 5 July 2010, the Parliamentary Under-Secretary at the Department for International Development (Stephen O’Brien) says that although the proposal itself was uncontroversial and accepted by all Member States, agreement on this joint European Commission-Council statement proved more problematic. He continues as follows:

“The original language of the statement read: ‘The Council and the Commission agree that, in the implementation of this Decision, no funds shall be channelled through the central Government of Sudan.’

“Subsequently, the Commission broke silence procedure on this proposed language. The Commission argued that, given that the funds might be used over an extended period of time and circumstances might change, the proposed language could undermine the Commission’s ability to deliver on the commitment to provide funds to the most vulnerable areas of Sudan.

“The Commission subsequently proposed revised language indicating that it would consider channelling funds through the Government of Sudan in certain circumstances, and that it did not intend to refer back to Member States before doing so. The UK then broke silence on this proposed statement, as we were concerned that it did not offer sufficient safeguards to Member States against these funds going through the Government of Sudan.

“Subsequent negotiations between the UK and the Commission led to the following compromise language:

“The Council and the Commission agree that, in the implementation of this Decision, funds should not be channelled through the central Government of Sudan. In exceptional circumstances, when such channelling is necessary for the EU’s support to peace and development in Sudan and/or in order to ensure that the Sudanese population receive the full benefits of these funds, the Commission will, in the context of EU donor coordination in Sudan, consult with Member States in advance to verify the need for such channelling.”

41.8 The Minister says that this language represents a good outcome for the UK:

“It provides guarantees that the Commission will consult Member States before putting money through the Government of Sudan channels, but without requiring new bespoke procedures to be established in Brussels (a key Commission concern). The people in the marginalised areas of Sudan are amongst the poorest in the world, and this funding will represent a significant contribution towards improving services for them.”

41.9 The Minister concludes by noting that, this having been agreed, the combined proposal and statement was expected to be adopted by the Council on 12 July 2010.
Conclusion

41.10 The proposal would appear to have been well thought through, and appropriate procedures agreed concerning Government of Sudan channels. Although no questions arise, we felt that a short Report would be appropriate because of the strong UK involvement in an area of sustained political interest.

41.11 We now clear the document. In so doing, the Committee recognises that that the Dissolution and delay in establishing the Committee militated against the Minister withholding agreement until this Decision had been scrutinised, and does not object, on this occasion and in these circumstances.

42 Financial Management of the 8th-10th European Development Funds

| (31650) | Commission Annual Report on the Financial Management of the 8th- |
| 10289/10 | 10th European Development Funds (EDFs) in 2009 |

Legal base —
Document originated 29 April 2010
Deposited in Parliament 4 June 2010
Department International Development
Basis of consideration EM of 21 June 2010
Previous Committee Report None
To be discussed in Council To be determined
Committee’s assessment Politically important
Committee’s decision Cleared

Background

42.1 The European Development Fund (EDF) is the EU’s main development co-operation instrument for 78 African, Caribbean and Pacific (ACP) countries and 20 Overseas Countries and Territories (OCTs). The 8th EDF was established in 1995.

42.2 The 9th EDF was signed in 2000 and came into force in 2003 under the Cotonou Agreement. The 9th EDF provided €13.8 billion (£11.7 billion) of Community assistance.

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169 EDFs 7 and 8 were established under the 3rd Lomé Convention, which preceded the Cotonou Agreement. The Cotonou Partnership Agreement between the African, Caribbean and Pacific (ACP) states and the European Community and its Member States was signed in June 2000 for a period of twenty years. It provides the legal basis governing the political, commercial and developmental relations between the two parties.
for the period 2003–2007. The UK share of the 9th EDF was 12.69%. Funds are still being drawn down for the 9th EDF.

42.3 The 10th EDF provides €22.7 billion (£19.3 billion) of Community assistance for the period 2008–2013. The UK share of the 10th EDF is 14.82%.

**The Commission Report**

42.4 The 10th EDF Financial Regulation requires the Commission to report each year on the financial management of the EDFs.

42.5 This report and accompanying annex summarises the European Commission’s main achievements in meeting its financial and operational objectives for the EDF in 2009. Set out against the headings “more aid, better aid, faster aid” and “Respect of the principles of sound financial management: ensure an effective control environment and accountability”, they include:

— 40% of 10th EDF funds now committed and approved;

— targets for global and individual commitments and contracts exceeded;

— €192 million (£163 million) disbursed under the Vulnerability Flex (VFlex) and Flex mechanisms in 11 ACP States helping to reduce the 2009 fiscal gap in countries most affected by the global economic downturn;

— €3.1 billion (£2.6 billion) payments made, equivalent to 94% of the target rate;

— the signature of the Intra-ACP Co-operation Strategy in March 2009, which included the approval of €200 million each (£170 million) for the new 10th EDF Water and Energy Facilities, both of which incorporate a co-financing window with EU development finance institutions; and

— closely monitoring transactions, using samples, annual audit plans and follow-up Internal Audit Service and Internal Audit Capability recommendations.

42.6 In cases where targets were not fully met, the report provides explanations, for example:

— the slight shortfall in payments is due to the delay in payments to countries who are either currently subject to Article 96 consultations (a process which applies to countries who do not abide by the Cotonou Agreement principles of democracy, human rights and the rule of law) or who have not ratified the Cotonou Agreement);

— that total amounts committed by September 2009 were behind the target of 28% was due partly to technical problems with the Commission’s internal systems, which delayed commitments to later in the year, and partly to bottlenecks in its programming process; and

— unspent commitments increased by 2.7%, following a high number of commitments at the end of 2009 to ensure full use of the 9th EDF funds; however, due to slow contracting processes, a high number of these commitments were not spent in 2009.
42.7 The report also outlines priorities for the EDF in 2010 as being to:

— accelerate progress on the commitment and implementation of the Regional Indicative Programmes and on the Overseas Countries and Territories (OCT) programmes;

— ensure commitment and disbursement of the 2010 VFlex resources, together with other B envelope resources;¹⁷⁰ and


The Government’s view

42.8 In his Explanatory Memorandum of 21 June 2010, the Parliamentary Under-Secretary at the Department for International Development (Mr Stephen O’Brien) notes that there are no major policy implications stemming from what he describes as “this clearly written and informative report”, which he welcomes, and which he says “provides a detailed summary of another largely positive year, with a frank assessment of the challenges ahead.”

42.9 Referring to the Commission’s 2009 objectives, the Minister says that he agrees with these objectives, that they have been largely achieved and that the Commission has provided plausible evidence in the report to substantiate its assessments. He welcomes the progress made to date, but also says:

“We will however continue to push for faster disbursement of EU aid and ensure that we are getting value for money through our EU spend on development.”

42.10 Where targets have not been met, the Minister says that a full explanation has been provided, that he acknowledges these explanations and that he will work with the European Commission and other Member States to make sure these issues are addressed for the future.

42.11 The Minister goes on to explain that, in response to the current economic crisis, the European Commission established the Vulnerability Flex (V-Flex) instrument to assist the most vulnerable ACP states, and that €500 million (£424 million) from EDF10 reserves has been allocated for 2009–2010 to mitigate the social consequences of the crisis and maintain public expenditure in priority areas:

“We have been very supportive of this instrument. It demonstrates the Commission’s willingness to respond quickly to the crisis and take the initiative.”

42.12 Turning to “value for money” issues, the Minister says:

“The European Commission’s Quality Support Groups continue to play an important role in improving the quality of its projects. We welcome the overall increased focus on results, monitoring and evaluation, in the management of

¹⁷⁰ All countries receive A & B envelopes. A envelopes provide funding for programmes and B envelopes for emergency and unforeseen needs.
Commission aid, and are pleased to see the 7% increase in projects scoring as good or very good performers.

“We also welcome the revision of the guidelines on General Budget Support and will continue to work with our EU counterparts to put in place mechanisms and safeguards to improve the transparency and accountability of the Commission’s Budget Support.”

42.13 The Minister concludes by describing the details on the Commission’s audit processes in the annex as useful.

**Conclusion**

42.14 No questions arise. We thought it appropriate, however, to draw this report to the attention of the House because of the widespread interest in development issues, both generally and more specifically (such as the focus on General Budget Support), and the sums of money involved (in the UK’s case, €3.36 billion, or £2.86 billion, in the 10th EDF).

42.15 We now clear the document.
43 The EU and ACP banana producers

| (b) | (31427) 7703/10 + ADD 1 COM(10) 103 | Commission Communication: Biennial Report on the Special Framework of Assistance for Traditional ACP Suppliers of Bananas |
| (c) | (31429) 7717/10 COM(10) 101 | Commission Communication: Banana Accompanying Measures: Supporting the Sustainable Adjustment of the Main ACP Banana-Exporting Countries to New Trade Realities |

**Legal base**
(a) Article 209(1) TFEU; QMV  
(b) and (c) —

**Document originated**
17 March 2010

**Deposited in Parliament**
(a) 19 March 2010  
(b) and (c) 23 March 2010

**Department**
International Development

**Basis of consideration**
EM of 31 March 2010

**Previous Committee Report**
None

**To be discussed in Council**
To be determined

**Committee’s assessment**
Politically important

**Committee’s decision**
Cleared

**Background**

43.1 Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (DCI) replaced the range of geographic and thematic instruments that had been created over time and as needs arose. Its aim is “to improve development cooperation.” Under this instrument, the EU finances measures aimed at supporting geographic cooperation with the developing countries included in the list of aid recipients of the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD/DAC), which are listed in Annex 1 to the Regulation.\(^{171}\)

43.2 In chapter 44 of this Report we outline two Council Decisions that are designed to usher in new arrangements between the EU and banana producers generally, which will

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\(^{171}\) For full information on the DCI, see http://europa.eu/legislation_summaries/development/general_development_framework/l14173_en.htm.
have particular implications for those banana producers with whom the EU has long had a special relationship, namely those from the ACP countries. As explained there, it has been necessary to come to these new arrangements because: since 1995 the EU has been challenged at the World Trade Organisation (WTO) by the US and countries from Latin America over the preferential market access given to ACP countries by the EU; the WTO has repeatedly ruled against the EU; and, as a result, the EU has negotiated the “Geneva Agreement on Trade in Bananas” with Latin American countries and the “Agreement on Trade in Bananas” with the US — which agreements settle all disputes with the US and Latin American countries over bananas.

43.3 In that chapter, we also outline the steps that the EU has taken to facilitate the adjustment that ACP banana producers will have to make, viz., a package of transitional financial assistance — the Banana Accompanying Measures (BAMs) — worth €190 million (£170 million) over four years.172

The documents

43.4 Against this background, the documents considered here are:

— an amendment to the DCI to enable the financing of the BAMs;
— a Commission Communication outlining the BAMs in greater detail; and
— a Commission Communication on the Special Framework of Assistance (SFA) for traditional ACP suppliers of bananas, which was created in 1999, expired in 2008 and, under which, some €376 million was provided.

43.5 The SFA is being implemented across twelve ACP countries173 and was designed either to improve the competitiveness of ACP banana producers or to support diversification into other economic activities.

43.6 In his Explanatory Memorandum of 31 March 2010, the then Minister of State at the Department for International Development (Mr Gareth Thomas) notes that an external evaluation of the SFA “highlighted some positive results”. He says that 48% of SFA funds supported increased competitiveness objectives between 1999 and 2008; that the four countries still supporting this objective (Belize, Cameroon, Cote d’Ivoire and Suriname) have maintained or increased export quantities during 2006–2008; and the SFA programme “has offered them stronger prospects for a viable banana sector in a more open environment.”

43.7 He also notes that the results of measures to support diversification “were less visible, and require more time to assess.” He continues thus:

“As of 2008, nine countries supported diversification objectives and have seen investments in tourism, horticulture, agricultural extension, rural development and small scale irrigation. While SFA diversification efforts will have contributed to

172 (31431) 7776/10, (31432) 7780/10; see chapter 44 of this Report.
173 Belize, Jamaica, Dominica, St Lucia, St Vincent, Grenada, Suriname, Cameroon, Ivory Coast, Somalia, Cape Verde and Madagascar.
economic diversification and growth, the programmes lacked focus or proper monitoring and evaluation systems. There were many small investments with limited potential for real, measurable impact. However given only half of SFA funds have been disbursed it is hard to evaluate its full impact at this stage. Efforts to increase disbursements are beginning to show progress.”

43.8 The then Minister (Mr Gareth Thomas) then notes that:

“An evaluation of similar EC measures to support loss of preferences for ACP sugar producers highlighted the need to integrate programmes better, consider using budget support as a delivery mechanism and ensure appropriate stakeholder consultation before and during implementation.”

43.9 Turning to the future, the then Minister says:

“BAMs plan to apply the lessons of these earlier programmes with clearer objectives to facilitate clear demonstration of results. BAMs will be implemented through country specific strategies, and where possible will be incorporated into wider National Adaptation Strategies. They will also try to address the broader social impacts of restructuring and reducing the banana sector in recipient ACP countries. Budget support will be considered where appropriate. Future trading prospects of ACP exporters within a changing trade environment will be assessed more carefully to ensure any competitiveness measures implemented have a good chance of success. The assistance scheme will be monitored throughout and assessed in 2012.”

43.10 The then Minister also explains that the BAMs will be financed by the “use of margins and redeployment within EC expenditure allocated under “The EU as a Global Player””. The choice of financing in this way is, he says, “due to under-utilisation and absorption constraints.” Disbursements will take place through the Development Cooperation Instrument and under a specific budget line, entitled BAMs. “Use of the margin will result in an increase in the overall level of the EU budget, which will in turn carry additional cost for the UK.”

43.11 He also notes that there will be a small revenue loss to the Commission because of reduced tariff levels on banana imports, which will be shared according to each Member State’s GNI-share contribution to the budget.

The Government’s view

43.12 The then Minister goes on to say that the EU commitment to provide the BAMs to the ACP “has been essential to the conclusion of the banana dispute by reassuring ACP countries they will have support to adjust or diversify.” He again expresses his belief that it is “right to open up the EU market to other developing countries at an appropriate pace, to ensure non-discrimination between countries of similar levels of development”, and that it is also important to comply with WTO rulings.

43.13 He notes that, although many ACP banana producers have been undergoing structural adaptation activities, the reduced tariff reduction on Latin American banana exporters will require further and more rapid adjustment: “ACP countries, with appropriate support from the EU, will have to assess long-term competitiveness in a more
open market either to increase productivity further or to diversify as their preferences gradually erode.”

43.14 Turning to the UK contribution towards supporting opportunities for increased trade, improved competitiveness and regional integration in the Caribbean region, the Minister again highlights COMPETE Caribbean — a US $ 42 million Challenge Fund Programme, implemented in partnership with the Inter-American Development Bank (IDB) and the Canadian International Development Agency (CIDA), in which DFID will contribute $16m (c. £10m), CIDA $16m (c. £ 10m) and the IDB $ 9m (c.£6m) — which he says will “help tackle the lack of export diversification and innovation, and weak entrepreneurship, across the region.” He continues as follows:

“...The UK has also funded a number of initiatives to support ACP countries adjust to eroding preferences and make best use of the funds available through the EC, for example funding studies, workshops and support for ACP countries to draw up national adaptation plans so they can access EC funds faster. The EC document, ‘Biennial Report on the SFA for Traditional ACP suppliers of Bananas’ makes reference to UK support, for example in St. Lucia ‘SFA disbursement rate improved substantially since 2007, especially with recent help of DFID funded technical assistance to the NAO between January and December 2008.’

“The UK is actively working with the EC to align better UK and EC private sector focused initiatives in the Caribbean supporting improved diversification outcomes. The focus is on promoting emerging growth sectors174 both through improving the investment climate and direct assistance to firms to innovate and diversify.”

43.15 The then Minister then professes himself “encouraged that the SFA programme is showing improvements in disbursement rates and that some of the previous recommendations from reviews have been incorporated” He believes the BAM to be an improvement on previous EC support to banana producers:

“...but the Commission will need to follow up proactively to ensure that lessons learnt previously are acted upon. We will continue to lobby the EC to do this.

“The UK will, where possible, monitor the implementation of EC aid at the local level and feedback wider systemic lessons that need to be addressed at headquarters. The UK will engage with the Commission in Brussels to ensure that BAMs applies the lessons learned from earlier programmes of support for both bananas and sugar.”

Conclusion

43.16 As our predecessors noted, the SFA was not the Commission’s shining hour. This continues to be borne out in what the Minister has to say: programmes lacking focus or proper monitoring and evaluation systems; many small investments with limited potential for real, measurable impact; difficulty in evaluating full impact, given only half of SFA funds are disbursed; evaluation of similar EC measures to support loss of preferences for ACP sugar producers also highlighting the need to integrate

174 For example Information and Communication Technologies, niche tourism, arts and entertainment.
programmes better, consider using budget support as a delivery mechanism and ensure appropriate stakeholder consultation before and during implementation.

43.17 The BAM can hardly not be an improvement. But that will be down to the Commission in the first instance. As the Minister notes, the Commission will need to follow up proactively to ensure that lessons learnt previously are acted upon. Its record under the SFA has not been impressive. And, with a much reduced presence in the Caribbean, it is not clear how the then Minister’s Department is going to be able to keep the Commission under pressure.

43.18 The BAM scheme is to be assessed in 2012. We would like the Minister of State at the Department for International Development to write to us by the end of 2011 with information about, and views on, its impact, and on the effectiveness of the Commission in fulfilling its brief (c.f. paragraph 43.16 above); and with similar information and views on what has happened under the SFA by then.

43.19 In the meantime, we clear the documents.

### 44 The EU and banana producers

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<td>Draft Council Decision on the conclusion of a Geneva Agreement on Trade in Bananas between the European Union and Brazil, Colombia, Costa Rica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru and Venezuela and of an Agreement on Trade in Bananas between the European Union and the United States</td>
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<td>(31432)</td>
<td>COM(10) 98</td>
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<td>+ ADDs 1–2</td>
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Legal base Article 209(1) TFEU; QMV
Document originated 17 March 2010
Deposited in Parliament 24 March 2010
Department International Development
Basis of consideration EM of 31 March 2010
Previous Committee Report None
To be discussed in Council To be determined
Committee’s assessment Politically important
Committee’s decision Cleared
Background

44.1 Since 1993, the Common Market Organisation (CMO) for bananas in the European Union (EU) has provided a preferential trade regime in favour of African, Caribbean and Pacific (ACP) banana-exporting countries. For several ACP states, banana production for export to the EU forms an important economic activity.

44.2 Since 1995 the EU’s CMO has been challenged at the World Trade Organisation (WTO) by the US and countries from Latin America over the preferential market access given to ACP countries by the EU. The WTO has repeatedly ruled against the EU. As a result the EU has negotiated the “Geneva Agreement on Trade in Bananas” with Latin American countries and the “Agreement on Trade in Bananas” with the US. These agreements settle all disputes with the US and Latin American countries over bananas.

44.3 In his Explanatory Memorandum of 31 March 2010, the then Minister of State at the Department for International Development (Mr Gareth Thomas) explains that this means that tariffs on bananas imported from 11 Latin American countries will be reduced from €176 (£157) per tonne to €114 (£102) per tonne over seven to nine years and there will be no quota restrictions. This, the then Minister says, “solves one of the longest-running trade disputes and is a key blockage removed within the Doha Development Agreement negotiations.” He continues as follows:

“ACP banana producers will continue to have duty-free quota-free access to the EU market if they have signed an Economic Partnership Agreement with the EU or are a Least Developed Country and are subsequently eligible for Everything But Arms (EBA) trade preferences. However the reduction in the EU’s Most Favoured Nation (MFN) tariff to Latin American producers will decrease the preference margin received by ACP banana producers. ACP producers accounted for 17% of the EU market in 2008.

“This reduction matters for ACP banana suppliers as it is has come sooner than expected and because their production costs are generally higher than Latin America. The EC has analysed the likely impact of the changes in the banana tariff schedules on ACP banana-supplying countries. They assess that it is unlikely the changes will have major macroeconomic impacts, but there could be significant loss of export revenues for some countries. In addition there could be important impacts on local producers with social implications if cost-saving measures are not introduced. Additional assistance will help ACP producers adjust to the increased competition or diversify into other areas where they can be competitive.

175 The Latin American countries are Colombia, Panama, Ecuador, Costa Rica, Honduras, Guatemala, Peru, Brazil, Mexico, Nicaragua and Venezuela.

176 The then Minister adds that “the pace will depend if the Doha Development Agreement is reached at the WTO.”

177 The least developed countries (LDCs) receive more favourable treatment than other developing countries. In February 2001, the Council adopted Regulation (EC) 416/2001, the so-called “EBA Regulation” ("Everything But Arms"), granting duty-free access to imports of all products from LDCs, except arms and ammunitions, without any quantitative restrictions (with the exception of bananas, sugar and rice for a limited period). EBA was later incorporated into the GSP Council Regulation (EC) No 2501/2001, The Regulation foresees that the special arrangements for LDCs should be maintained for an unlimited period of time and not be subject to the periodic renewal of the Community’s scheme of generalised preferences. Beneficiaries of the special arrangements for least developed countries require formal recognition by the United Nations. At present, 49 developing countries belong to the category of LDCs. For further information see http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/everything-but-arms/.
“To facilitate this adjustment, the EU has proposed a package of transitional financial assistance — the Banana Accompanying Measures (BAMs) worth €190 million (£170 million) over four years. The Commission will also try and source an additional €10 million (£8.9 million), if there are unused funds available from other budgets. These BAMs are in conformity with the EU’s WTO obligations and have a clear restructuring and hence temporary nature, with a maximum duration of four years. (2010–2013).

“The BAMs will be provided to the ten main ACP banana exporters, who have on average exported in excess of 10,000 tonnes to the EU over 1999–2008. The allocations will be based on the level of banana exports, the economic importance of the banana sector and the level of development, as measured by the UN’s Human Development Index. The BAMs will seek to build on the restructuring activities already undertaken by ACP banana producers under the Special System of Assistance (SSA, 1994–1999) and the Special Framework of Assistance (SFA, 1999–2008. Total funds granted under the SFA are Euro 376 million and as of end 2008, 73% of allocated funds had been committed to contracts). It will also seek to incorporate lessons learnt from these programmes.”

The Government’s view

44.4 The then Minister (Mr Gareth Thomas) goes on to describe the banana agreements as “significant”, in that they “bring an end to a protracted dispute and the uncertainty and tension which have accompanied it since 1993” which in turn “will unblock one potential barrier to concluding the Doha Development Agreement (DDA) negotiations.” Noting that the DDA discussions are “currently stalled”, he says that “the UK continues to push globally for action to conclude the deal which we consider as the best way of achieving a fair and comprehensive deal on trade for developing countries.”

44.5 He then says that:

- “it is right to open up the EU market to other developing countries at an appropriate pace; to ensure non-discrimination between other countries of similar levels of development;
- it is “important to comply with WTO Appellate Body rulings;
- “the EU commitment to provide the BAMs to the ACP has been essential to the conclusion of the banana dispute by reassuring ACP countries they will have support to adjust or diversify;
- “the reduced tariff reduction on Latin American banana exporters will require further and more rapid adjustment; and
- “ACP countries, with appropriate support from the EU, will have to assess long-term competitiveness in a more open market. They will need to increase productivity further, develop further niche markets or diversify as their preferences gradually erode.”

44.6 The then Minister outlines UK support to the Caribbean region as follows:
“The UK is providing additional support to the Caribbean region by supporting opportunities for increased trade, improved competitiveness and regional integration. Its flagship programme COMPETE Caribbean — a US $ 42m\textsuperscript{178} Challenge Fund Programme — will help tackle the lack of export diversification and innovation, and weak entrepreneurship across the region. The UK has also funded a number of initiatives to help ACP countries adjust to preference erosion and to make best use of the funds available through the EC, for example funding studies, workshops and support for ACP countries to draw up national adaptation plans so they can access EC funds faster. The UK also works with the EC in supporting diversification activities for the private sector.”

44.7 Turning to the Financial Implications, the then Minister says that:

“There will be a small revenue loss to the Commission because of reduced tariff levels on banana imports. This cost will be shared according to each member state’s GNI-share contribution to the budget.

“The EU also has a small number of EU banana producers that are located in the outer regions of the European community\textsuperscript{179} and banana production is a major source of employment, finance and social cohesion. They already receive very generous payments because of their locations. They may well apply to the European Commission for additional compensation if the tariff changes have a negative effect. However they already receive annual support of €279 million (£249 million) which translates to approximately €463 (£413) per tonne of bananas produced and further concessions are unlikely.”

44.8 Finally, the then Minister says that these Council Decisions will go to a Council between May and July 2010.

Conclusion

44.9 These Council Decisions are related to three other documents — a Council Regulation amending the relevant financial regulation in order to finance the BAMs and two Commission Communications: one on the BAMs and the other on the previous European Commission assistance to the Caribbean banana producers — which we consider elsewhere in this Report, and which raise questions about the Commission’s effectiveness in implementing the BAMs, given its lack of success so far with the previous support scheme.

44.10 Thus, although the Council Decisions raise no questions, we consider that they warranted a substantive Report to the House.

\textsuperscript{178} COMPETE will be implemented in partnership with the Inter-American Development Bank (IDB), and the Canadian International Development Agency (CIDA) DFID will contribute $16m (approx £10m), CIDA $16m (approx. £10m) and the IDB, $9m (£6m).

\textsuperscript{179} EU banana producers are Canary Islands, Martinique, Guadeloupe, Madeira and Azores.
The EU and food security in the developing world

(a)  
(31470)  
8246/10  
+ ADD 1  
COM(10) 127

(b)  
(31471)  
8250/10  
+ ADD 1  
COM(10) 126

Legal base
Documents originated  —
Deposited in Parliament  31 March 2010
Department  International Development
Basis of consideration  EMs of 2 and 9 June 2010
Previous Committee Report  None
To be discussed in Council  10–11 May 2010 Foreign Affairs Council
Committee’s assessment  Politically important
Committee’s decision  Cleared

Background

45.1 In its introduction to the first of these documents, the Commission says that in recent years, hunger and malnutrition have increased and that, in 2010, over 1 billion people are “considered to be food insecure.” It sees food insecurity as affecting human development, social and political stability, and progress towards achieving the Millennium Development Goals (MDGs), with fragile states in particular encountering severe difficulties in achieving MDG 1 — eradicating extreme poverty and hunger. It goes on to recall that “soaring food prices on global markets in 2007–08 sparked a rethink of global food security”: the United Nations (UN) High Level Task Force (HLTF) on the Global Food Security Crisis was set up to enhance coordination within the UN; the Global Partnership on Agriculture, Food Security and Nutrition (GPAFSN) was launched; and G8 leaders agreed a comprehensive agenda on food security at the Summit in L’Aquila, Italy, in 2009. For its part, the European Union reacted to the growing food security challenges with an additional €1 billion “Food Facility” as a temporary measure to support those developing countries worst affected: “The EU and its Member States are, and have been for many years, the most important and reliable players in world food security, both financially and politically.”

Commission Communication 8246/10

45.2 The Commission goes on to note that recent developments and future challenges require a new common food security policy, further strengthening EU leadership in the
global food security agenda, and improving the effectiveness of EU assistance, in line with the Lisbon Treaty, the EU2020 initiative and the European Consensus on Development:180

“Future food security challenges include population growth, pressures on natural resources and ecosystem services, and adverse impacts of climate change on agriculture, affecting growing conditions and making adaptation measures necessary. Moreover, key issues in the current food security agenda, such as nutrition, price volatility, social protection and safety nets, biofuels, food safety, research and innovation, large-scale land acquisition, and the ‘Right to Food’ concept need integration into an overall policy framework.”

45.3 Against this background, the Commission says that the objective of this Communication is “to provide a common policy framework for the EU and its Member States in the fight against world hunger and malnutrition, thereby contributing towards achieving MDG 1. It describes it as:

“coherent with other thematic papers (on education, health, gender and tax governance) and the 2010 Spring Development package, which together set out an EU position for the UN High Level Event on MDGs in September 2010.”

45.4 It also notes that this Communication is complemented by a Communication on Humanitarian Food Assistance, which focuses on emergency and post-emergency contexts (and which we consider below).

45.5 The comprehensive approach it proposes has four main elements:

— Increasing food availability: helping developing countries to grow more food, either to supply local demand or to provide jobs in rural areas. The Commission notes that small-scale farming is dominant: about 85% of farmers in developing countries produce on less than two hectares of land, and that mixed crop/livestock smallholding systems produce about half of the world’s food, and says that, “therefore, sustainable small-scale food production should be the focus of EU assistance to increase availability of food in developing countries”;

— Improving access to food: primarily by improving employment and income-earning opportunities in both rural and urban areas, including through diversification and trade, thus making food more affordable for a larger number of people. This should be complemented by social transfer mechanisms. The EU and its Member States should assist partner countries in establishing and operating social mechanisms in support of

180 The European Consensus on Development identifies shared values, goals, principles and commitments which the European Commission and EU Member States will implement in their development policies, in particular:

— reducing poverty — particularly focusing on the Millennium Development Goals;

— development based on Europe’s democratic values — respect for human rights, democracy, fundamental freedoms and the rule of law, good governance, gender equality, solidarity, social justice and effective multilateral action, particularly through the UN;

— developing countries are mainly responsible for their own development — based on national strategies developed in collaboration with non-government bodies, and mobilising domestic resources. EU aid will be aligned with these national strategies and procedures.

Published as 2006/C 46/01, full information and background is available at http://ec.europa.eu/development/policies/consensus_en.cfm.
vulnerable population groups, especially women. Experiences on successful mechanisms will be shared and operational systems will be supported;

— Improving the nutritional adequacy of food intake, by supporting nutrition strategies and policies, and the setting up of coordination mechanisms between agriculture, health, education, and social protection programmes; and

— Improving crisis prevention and management through the strengthening of early warning systems, actions to reduce price volatility, the maintenance of adequate stock levels, and encouraging freer trade in food products.

45.6 The Commission then argues that maximising the effectiveness of food security investments requires a focus by the EU and its Member States on:

— **National and regional agriculture and food security policies and strategies:** Food security objectives and targets need to be better integrated into partner countries’ other sector policies in such areas as transport, infrastructure, fisheries, health and education; and farmer organisations, civil society, private sector, vulnerable groups and other stakeholders must be involved in the development and review of these policies.

— **Harmonising EU intervention:** The EU approach needs to be anchored in the Paris Declaration on Aid Effectiveness, the Accra Agenda for Action and the EU Code of Conduct on Division of Labour. The EU and its Member States should identify regions and countries where tasks will be divided based on comparative advantage and coordinate actions under the guidance of a lead donor. EU and Member States policy frameworks and financing instruments need greater harmonisation and greater complementarity, as well as coordination with private investments, in order to produce more effective results;

— **Improving the coherence of the international governance system:** support the rapid reform of the Committee on World Food Security (CFS) as the central body on food security, so that it has an oversight role in other specific domains with implications for food security, including food aid and nutrition; plus further rationalisation of the priorities of, and improved cooperation between, the three Rome-based UN agencies (FAO, WFP, IFAD).

45.7 To achieve these goals, the following priority actions are identified:

— Improve smallholder resilience and rural livelihoods: target smallholder farmers (in particular women), by providing support for effective and sustainable national policies, strategies and legal frameworks, and for equitable and sustainable access to resources, including land, water, (micro) credit and other agricultural inputs; involve them in policy-making and encourage links with EU counterparts;

— Support effective governance, both at the national and the international levels (as set out above);

— Improve on regional agriculture, food security and nutrition policies;

— Strengthen assistance mechanisms for vulnerable population groups.
At its meeting on 10 May 2010, as part of its preparation for the UN MDG review summit in September 2010, the Council adopted conclusions on the Communication and asked the Commission to propose an implementation plan for this framework before the end of 2010.181

The Government’s view

In his Explanatory Memorandum of 9 June 2010, the Parliamentary Under-Secretary of State at the Department for International Development (Mr Stephen O’Brien) notes that agriculture, food security and nutrition are already substantial elements of DFID’s programme. He says that the UK took a leading role in the policy dialogue with the Commission during the development of the Policy Framework and that, as a result, “the outcome closely matches our analysis of the causes of food insecurity and the international responses needed.”

He goes on to say that DFID’s principal policy response has been to work with others to implement a Global Partnership for Agriculture, Food Security and Nutrition:

“This approach was endorsed at last year’s G8 summit at L’Aquila, and at last November’s FAO (Food and Agriculture Organisation) Food Summit. It prioritises raising agricultural production in developing countries to increase the availability of food, reducing overall poverty levels by making food more affordable to poor households, expanding social protection programmes for the most vulnerable, and putting greater emphasis on tackling nutrition. Making progress on these fronts requires coordinated action across a range of sectors including health, education, water and sanitation, as well as agriculture. A parallel priority is to continue with efforts to get the international trading system working better for poor countries, including getting the Doha Development Round of trade talks back on track.”

The Minister also says that DFID is already engaged in numerous activities that support the Policy Framework objectives:

“A significant part of DFID’s bilateral programme, including our agricultural research programme, is directed at helping smallholder farmers to increase their productivity. We continue to support effective governance in food security, increasingly through developing countries’ own national and regional initiatives — for example the Africa Union’s Comprehensive African Agricultural Development Programme — as well as through reform of the UN’s Food and Agriculture Organisation (FAO). We are significant donors of humanitarian assistance through the World Food Programme, and we remain by some margin the largest bilateral donor to the UN’s Central Emergency Response Fund.”

Commission Communication 8250/10

45.13 In its introduction to this Communication, the Commission says that, in accordance with the orientation of the Humanitarian Aid Consensus, and more generally to promote best practice in the provision of humanitarian food assistance by the EU and its Member States, the principal aims of this Communication are to:

— maximise the effectiveness and efficiency of EU food assistance, in accordance with the Commission’s humanitarian mandate defined by the humanitarian legal framework, and in accordance with the Financial Regulation;

— improve policy coherence, coordination, and complementarity between the Commission, Member States and other donors, in the provision of food assistance; and

— inform partners and stakeholders of the Commission’s objectives, priorities and standards in the delivery of humanitarian food assistance.

45.14 The Communication therefore sets out the policy framework for EU humanitarian food assistance and seeks to outline: the issues and trends to be taken into account; the concepts, definitions and objectives that should drive humanitarian food assistance; the principles that should underscore this work; and the scope of activities undertaken.

45.15 It also says that this Communication should be read in conjunction with the Commission’s Communication on food security, noting that separate Communications on these interrelated topics are “deemed necessary in order to respect the distinction between their policy focus i.e. food assistance linked to humanitarian objectives for populations affected by crises in emergency contexts and food security linked to development objectives”, and stating that “the two policy frameworks have been “designed in such a way as to ensure coherence and safeguard against uncoordinated overlap.”

45.16 The Communication sets out the troubling picture for food security in much the same way as does its counterpart. It notes an increasing incidence of natural disasters, often exacerbated by the impact of climate change. In addition, conflict and repression continue to undermine people’s livelihoods resulting in large numbers of displaced persons. It estimates that high food and fuel prices in 2007–08 increased the number of undernourished people by 172 million to 1.02 billion in 2009, and that approximately 10% are “food insecure as a consequence of a disaster or emergency situation.”

45.17 To promote best practice in providing humanitarian food assistance by the EU and Member States, the Communication aims to:

— maximise the effectiveness and efficiency of EU food assistance;

— improve policy coherence, coordination and complementarities with other actors; and

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— inform partners and stakeholders of the Commission’s objectives, priorities and standards in delivery of humanitarian food assistance.

45.18 The policy aims to ensure the consumption of sufficient (in quantity), safe and nutritious food before, during and in the aftermath of a humanitarian crisis when access to sufficient food is compromised. Food assistance may involve the direct transfer of food, but may also use a wider range of tools, such as providing water, sanitation and health services, inputs, cash or vouchers and skills. The choice of the most appropriate intervention and transfer instrument (e.g. cash-based or in-kind) must be context-specific, evidence-based and regularly reviewed. Complementary measures alongside food assistance, such as public health measures, are vital as they influence food use and therefore nutrition.

45.19 EU interventions will be underscored by the following good practice principles:

— financing of interventions will be prioritised according to severity of the crisis, unmet needs, and the expected impact of the response;

— use of flexible resources to ensure delivery of the most appropriate and effective response in a specific context;

— when food aid is deemed the most appropriate tool, local purchase (i.e. from the country of operation) or regional purchase will be prioritised to support local markets and cut transport costs;

— measures to ensure food needs are met in ways that do not create dependency, expose beneficiaries to undue risk, and minimise negative environmental impacts;

— nutrition will be incorporated into all food assistance needs assessments and responses, and will focus on defined vulnerable groups, especially children under two and pregnant and lactating women;

— beneficiary communities will be involved in identifying needs and designing and implementing responses;

— seek to mainstream gender considerations in food-needs assessments, design of responses and impact analysis; and

— seek to uphold Linking Relief Rehabilitation and Development (LRRD) principles and facilitate LRRD objectives.  

45.20 To achieve its objectives, the core role of the humanitarian food assistance work is to save lives through delivering assistance to meet basic humanitarian food and nutrition needs. However, it also aims to fulfil supportive functions, specifically contributing to reducing risk and vulnerability, and to improving effectiveness through capacity strengthening and advocacy.

183 The objective of LRRD is to assess the measures designed to fill the gap that exists between relief (short-term) and development aid (long-term) and to provide a broader view of the problems involved in assisting the Third World, taking account of the various types of crises, other actors on the international stage and the risk of structural dependence. See http://europa.eu/legislation_summaries/humanitarian_aid/r10002_en.htm for further information.
45.21 The Communication also highlights the importance for mainstreaming disaster risk reduction (DRR), preparedness, mitigation and prevention, within the limits of the humanitarian mandates and food assistance objectives. DRR initiatives, such as early warning systems and strategic food reserves, often require long-term support and are seen as being beyond the remit of humanitarian policy.

**The Government’s view**

45.22 In his Explanatory Memorandum of 2 June 2010, the Minister of State at the Department for International Development (Mr Alan Duncan) welcomes the EU framework for tackling hunger in emergencies through its Humanitarian Food Assistance policy, and the consultative process undertaken in producing it. He notes how the Communication sets out ways to improve the effectiveness of EU spend on food security in emergencies, and ways to encourage greater investment in alternatives to food aid, and the greater emphasis on nutrition, including making sure that in emergencies direct and indirect responses to acute malnutrition are better prioritised.

45.23 The Minister wishes to encourage the EU to use this Communication to advocate similar principles of good practice in other humanitarian institutions, saying that:

> “Core to this will be defining food assistance as not only direct food transfers, but also a wider range of tools (as described above). ECHO, the EU body in charge of delivering humanitarian assistance, has a role in this context — to work closely with multilateral and bilateral donors and International NGOs to improve policy and practice in delivering humanitarian food assistance.”

45.24 The Minister is also supportive of the accompanying Commission Staff Working Document, which addresses the operational dimensions of the Communication, with the following comments:

> “The EU needs to clearly articulate potential synergies between different Communications and instruments, for example, the EU Agriculture and Food Security Policy Framework, the EU Strategy for Disaster Risk Reduction strategy and LRRD strategy.

> “The Communication’s reference to protection of agricultural livelihoods potentially opens the door for ECHO to fund FAO (Food and Agriculture Organisation) humanitarian action. This is an opportunity for ECHO to assist ‘handover’ from humanitarian to rehabilitation programming between WFP (World Food Programme) and FAO, and broadening the skill-set of humanitarian aid workers.

> “In protracted crises, food assistance interventions should address underlying causes and aim to enable an exit strategy.

> “ECHO should also include food fortification with minerals and vitamins as an option for response. Breastfeeding practice should also be a focus to reduce under-two malnutrition rates and reduce bad practice such as dumping of infant formula in emergency settings. This is an emerging area of leadership for ECHO.”
“ECHO should ensure funded partners be part of the Humanitarian Cluster coordination mechanism (implemented by the UN during an emergency to ensure good sectoral coordination). Where robust assessment methodologies exist for nutrition and food within Clusters, ECHO should insist they are used in reporting and evaluating impact.”

45.25 At its meeting on 10 May 2010, the Council adopted conclusions that welcomed the Communication as capturing best practice and articulating “the objectives, principles and standards by which the EU and its Member States can tackle hunger in humanitarian crises in the most effective, efficient and coordinated way”, and deemed it “a necessary and timely policy framework, recalling the increasing humanitarian needs, and the growing number of undernourished people in the world” as well as recognising its “important contribution to the fulfilment of a commitment made in the Action Plan for the European Consensus on Humanitarian Aid, to ‘elaborate diversified approaches and interventions to food assistance’ including livelihood support responses in different contexts on the basis of needs assessment and analysis.”

Conclusion

45.26 We have considered these Communications as essentially two sides of the same coin. Given the magnitude of the problem — over 1 billion people considered to be food insecure, with adverse effects on human development, social and political stability, and on progress towards achieving the Millennium Development Goals, and in particular MDG 1, eradicating extreme poverty and hunger — and the imminence of the 20–22 September 2010 UN MDG Review High Level Plenary Meeting, we are drawing them to the attention of the House.

45.27 We now clear the documents.

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184 See http://www.europa.eu.int/eurbool/es/article_9728_es.htm for the full text of the conclusions.
185 Also see chapter 2 of this Report, on Commission Communication 8910/10: “A twelve-point EU action plan in support of the Millennium Development Goals”.
46 Cotonou Agreement: implementing the latest revision

(a)  
(31534) Draft Council Decision on the signature, on behalf of the European Union, of the Agreement amending for the second time the Partnership Agreement between the European Union and the African, Caribbean and Pacific States

9255/10 + ADD 1 COM(10) 211
(b)  
(31663) Draft Council Decision on the position to be adopted by the European Union within the ACP-EC Council of Ministers concerning the transitional measures applicable from the date of signing to the date of entry into force of the Agreement amending for the second time the Partnership Agreement between the European Union and the African, Caribbean and Pacific States

10383/10 COM(10) 279

Legal base
Articles 217 and 218 TFEU; unanimity

Document originated
(a) 30 April 2010
(b) 27 May 2010

Deposited in Parliament
(a) 25 May 2010
(b) 4 June 2010

Department
International Development

Basis of consideration
EMs of 7 and 11 June 2010

Previous Committee Report
None

Discussed in Council
14 June 2010 Foreign Affairs Council

Committee’s assessment
Politically important

Committee’s decision
Cleared

Background

46.1 The Cotonou Partnership Agreement between the African, Caribbean and Pacific (ACP) states and the European Community and its Member States was signed in June 2000 for a period of 20 years, subject to five-year reviews. Cotonou provides the legal basis governing the political, commercial and developmental relations between the two parties, and a framework to allow coordinated EU action in ACP countries on issues such as human rights, good governance, rule of law and migration. The agreement also contains the objectives for the European Development Fund (EDF), which provides development assistance to the ACP states.

46.2 The European Commission negotiates with the ACP on behalf of the EU on the basis of a mandate agreed by Council. Negotiations on the Second Review of the Agreement started on 29 May 2009 and were concluded at an extraordinary Joint Ministerial meeting in Brussels on 19 March 2010. The EU negotiator, Commissioner Piebalgs, and the
Gabonese Secretary of State Bunduku-Latha as the ACP representative, initialled the revised Agreement with amendments as detailed in chapter 1 of this Report.\textsuperscript{186}

**The first Council Decision**

46.3 Document 9255/10 contains the draft Council Decision to allow the President of the Council to sign the revised Cotonou Agreement and to make the necessary amendments to bring the Cotonou Agreement into line with the Lisbon Treaty.

**The Government’s view**

46.4 In his Explanatory Memorandum of 7 June 2010, the Secretary of State for International Development (Mr Andrew Mitchell) explains that this draft Decision is the first of the legal documents required to finalise the Second Revision of Cotonou. He says that the revised Agreement “meets the overall EU aims as agreed at the outset and provides a good framework for the EU’s relationship with the ACP states.” He describes the references to the Accra Agenda for Action on aid effectiveness, the Monterrey aid commitments on financing for development, the Paris aid effectiveness principles and the need for all parties to make a concerted effort to achieve the MDGs as “all important for future efforts to improve the effectiveness of actions by the EU and by the ACP states themselves to secure progress towards the MDGs”, and also says that “recognition in the text of the serious global challenge of climate change reinforces the need for the EU to act to tackle climate change and address its impact in developing countries.”

46.5 He again highlights the revised Article 33 on taxation as important:

“Taxation has a key role to play in mobilising domestic resources for development and reducing reliance on external aid. The Article promotes participation in international tax cooperation processes and compliance with international standards, in line with the G20 tax transparency initiative. In this context, a number of ACP countries, particularly Caribbean countries with significant financial sectors, are concluding tax information exchange agreements with G20 and OECD countries. The Article on taxation should also facilitate a wider range of ACP countries participating in, and benefiting from, international tax transparency.”

46.6 The Secretary of State also welcomes the commitment in the Joint Declaration on migration to continue dialogue and enhance co-operation in this area:

“No agreement in the future will be helpful but the UK’s bilateral readmission agreements with many ACP countries are not directly dependent on Cotonou and remain in force.”

46.7 The Secretary of State then points out that Article 96 of the Agreement maintains the process which the two sides (ACP and EC) should follow should there be a breach in “essential” elements — respect for human rights, democratic principles and the rule of law — commenting and that:

\textsuperscript{186} See (31447)—: “Second Revision of the Cotonou Agreement — Agreed Consolidated Text” in chapter 1 of this Report.
“they remain of crucial importance in securing progress in all developing countries. The UK will support work to implement this Article effectively.”

46.8 The Secretary of State also points out that the Agreement contains updated language on trade and new text to reflect Economic Partnership Agreements, and says that the Agreement “reflects a balance between the interests of the ACP countries in maintaining their trade preferences with the EU and the EU’s freedom to negotiate trade agreements with third parties.”

46.9 He goes on to welcome:

“the modifications to the programming sections of the revised Agreement, in particular the streamlining of the Intra-ACP programming and the increased flexibility of allocation processes. The latter will ensure that the Commission is better placed to respond to global shocks such as the financial crisis, for which it had to develop a specific response mechanism (the Vulnerability-Flex) due to the limited flexibility under the current Agreement.”

46.10 Finally, the Secretary of State supports the proposed changes to the Cotonou Agreement to bring it in line with the Lisbon Treaty as outlined in the Decision, which he says is “a necessary step for consistency.”

The second Council Decision

46.11 This draft Decision is the second of the legal documents required to finalise the Second Revision of the Cotonou Agreement. The next step will be for all parties to take forward the ratification process. Parties to the Agreement have two years to ratify the revised text for it to come formally into force. The draft Decision allows for the revised Agreement to come provisionally into force whilst the ratification process takes place.

The Government’s view

46.12 In a separate Explanatory Memorandum of 11 June 2010, the Parliamentary Secretary at the Department for International Development (Mr Stephen O’Brien) says:

“whilst this makes little difference to individual EU Member States, it means that it can provide a revised framework for the European Commission to use in its programming and implementation work. If the European Commission was to wait for ratification, it would mean that the next programming process (envisaged to start in 2011) for country strategies in the ACP countries would be informed by the existing First Revision of Cotonou, which is now out of date. The UK therefore welcomes this provisional application.”

46.13 The Minister again notes that:

— the revised Agreement does not commit the EU to any further funding after the current European Development Fund 10 (EDF10), which expires in 2013;

— discussions on ACP funding post-EDF10 will take place alongside the broader discussions for the Financial Perspectives (2014 — 2020); and
— the European Commission will, however, use the revised Agreement to influence their programming for ACP countries up until 2015, when this Agreement will next be considered for revision.

46.14 Finally, the Minister says that this Decision is also scheduled to be approved by the Foreign Affairs Council on 14 June, before the final Agreement is signed on behalf of the EU at the ACP-EU Ministerial Council on 22 June in Ouagadougou, Burkina Faso; and that, following signature, the European Parliament will need to give its consent to the Agreement, before the Council can adopt a third and final Decision on conclusion of the Agreement.

Conclusion

46.15 No questions arise from the procedure or the documents. But we are nonetheless drawing them to the attention of the House because of the importance of the Agreement and the revisions to it.

46.16 As we note above, we consider this elsewhere in our Report, and have recommended that it be debated in the European Committee. 187

46.17 In the meantime, we now clear these Council Decisions.

187 See chapter 1 of this Report.
47 European Investment Bank

Legal base
(a) Articles 209 and 212 TFEU; QMV; co-decision
(b) Articles 209 and 212 TFEU; QMV; co-decision

Documents originated
(a) 21 April 2010
(b) 21 April 2010

Deposited in Parliament
(a) 25 May 2010
(b) 25 May 2010

Department
International Development

Basis of consideration
(a) EM of 21 June 2010
(b) EM of 22 June 2010

Previous Committee Report
None; but see (30361) 5444/09 (30509) 8051/09: HC 19–xxiv (2008–09), chapter 7 (15 July 2009)

Discussed in Council
(a) To be determined
(b) 8 June 2010 Economic and Finance Council

Committee’s assessment
Politically important

Committee’s decision
Cleared

Background
47.1 The European Investment Bank (EIB) was created by the Treaty of Rome in 1958 as, according to its website, “the long-term lending bank of the European Union”; its mission is “to further the objectives of the European Union by making long-term finance available for sound investment”; its task being “to contribute towards the integration, balanced development and economic and social cohesion of the EU Member States.” To this end, the EIB “raises substantial volumes of funds on the capital markets which it lends on favourable terms to projects furthering EU policy objectives”. The EIB “continuously adapts its activity to developments in EU policies.”

47.2 It offers four main services to clients:

— Loans: granted to viable capital spending programmes or projects in both the public and private sectors; counterparties range from large corporations to municipalities and small and medium-sized enterprises;
— **Technical Assistance**: expert economists, engineers and sectoral specialists to complement EIB financing facilities;

— **Guarantees**: available to a wide range of counterparties, e.g. banks, leasing companies, guarantee institutions, mutual guarantee funds, special purpose vehicles and others; and

— **Venture Capital**.

47.3 The EIB is active both inside and outside the European Union. According to its website, about 90% of EIB lending is attributed to promoters in the EU countries supporting the continued development and integration of the Union; while outside the Union, EIB lending is governed by a series of mandates from the European Union in support of EU development and cooperation policies in partner countries — in the enlargement area in southern and eastern Europe; in the Mediterranean Neighbourhood; in Russia and the Eastern Neighbourhood; in the African, Caribbean and Pacific (ACP) countries; in South Africa; in Asia; and in Latin America.188

47.4 A Community guarantee aims to prevent such operations, which often bear a significantly higher level of risk than the EIB’s operations within the EU, from affecting the credit standing of the Bank, and thereby to allow the EIB to maintain attractive lending rates outside the EU.

47.5 In February 2009 the previous Committee considered an Explanatory Memorandum of 3 February 2009 from the then Minister of State at the Department for International Development (Mr Gareth Thomas), in which he explained that the proposal dealt with therein — to provide a Community guarantee to EIB operations in non-EU countries under the External Lending Mandate (ELM) of the Bank — was originally adopted by the Council in December 2006 to cover the renewal of the ELM that expired on 31 January 2007. However, he explained, following an action brought by the European Parliament:

— the Court of Justice annulled that Council Decision, ruling that it should have been adopted on the basis of Articles 179 (Development Cooperation) and 181a (Economic, Financial and Technical Cooperation with Third Countries) of the EC Treaty as opposed to Article 181a only;

— the Court had allowed a grace period of 12 months to enable the Council Decision to be replaced by one adopted under the dual basis of both Articles; and

— the main practical difference resulting from the amendment was that the new legal basis would be adopted as a co-decision of the Council and European Parliament.

47.6 The then Minister further explained that the proposal clarified the exact nature of the guarantee and extended the coverage to loan guarantees made by the EIB, as well as loans; it also comprehensively covered the EIB for losses on operations with the public sector (national and local/regional) or public sector guaranteed operations, and for operations falling outside of the public sphere, against specific political risk only.

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188 See http://www.eib.org/ for full information.
47.7 The then Minister also noted that the proposal:

— included articles setting the size of the regional ceilings, putting the size of the whole ELM at €27.8 billion (£26.5 billion), including a €2 billion (£1.9 billion) optional mandate to be decided by the European Parliament and the Council and based on the outcome of the mid-term review of the ELM, due to be produced by 30 June 2010;

— set out which countries were eligible and how countries could become eligible; and

— included articles relating to the consistency of EIB actions with EU policy, cooperation with other International Financial Institutions (IFIs), reporting and accounting standards and recovery of payments made by the Commission under the guarantee.

47.8 The then Minister went on to say that amending the current legal base to encompass Development Cooperation would enable the then Government to emphasise promoting an EIB that focussed on the development impact of its operations (particularly in terms of the value they added), rather than the quantity; renewal of the ELM would improve the development impact of the EIB by promoting:

- improved quality of EIB development investments;
- a more unified EU development package comprising a balanced mix of grants, loans and equity; and
- a more coherent and clear role for EIB within the international development architecture.

47.9 But the then Minister had one serious reservation: the European Parliament’s proposal to bring the mid-term review forward would not give the reviewers adequate time, as the process had only recently begun. The UK and other Member States were pushing for: the review to report back by April 2010; the “transitional” arrangement to be regarded as being valid until December 2011; and the new Commission proposal to be presented as soon as it was able to take account of the findings of the mid-term review in 2010. So, although clearing the Decision, the previous Committee asked the Minister to inform it of his as-yet-uncompleted endeavours to rein in the EP and ensure that the next EIB mandate benefited from a proper evaluation of its present one.

47.10 In July 2009, the then Minister reported what he described as a good outcome (in the previous Committee’s view rightly), which would ensure that the next ELM mandate would be informed by a review of the present mandate that would be overseen by a group of “Wise Persons” (which would include a senior DFID official). As well as welcoming this, the previous Committee also:

- looked forward to hearing from him in due course about the outcome of the reviews and the “Wise Persons” report;

- continued to hope that, in some way, the extensive experience of the Court of Auditors in assessing the EU’s development assistance activity could also be brought to bear on the review process (proposed by the previous Committee, the then Minister having reported in April that he had been unable to make much headway);
• took the opportunity to remind the then Minister of its expectations concerning any review or evaluation of the European Neighbourhood Partnership Instrument; and

• again made the point that the common denominator of all this activity was to ensure the efficient, economical and effective use of a great deal of EU taxpayers’ money.189

The Commission Report

47.11 In 2009, the activities of the EIB outside the EU amounted to €8.8 billion (£7.46 billion) out of an overall EIB financing of €79.1 billion (£67 billion). Under Article 9 of Council Decision No 633/2009/EC granting a Community guarantee to the EIB against losses under loans and loan guarantees for projects outside the Community, the Commission is required to present a mid-term report on its application, accompanied by a proposal for its amendment.

47.12 The Mid-Term Review is composed of a Report and an accompanying Staff Working Document, which draws on a set of evaluations: an external evaluation supervised by a Steering Committee of “Wise Persons” (SCWP), an evaluation carried out by an external consultancy (COWI) and specific evaluations carried out by the EIB evaluation department. The Report assesses EIB financing activity under the current mandate from 2007 to 2009, with a reference to the previous mandate 2000–2006.

47.13 In his Explanatory Memorandum of 21 June 2010, the Parliamentary Under-Secretary at the Department for International Development (Mr Stephen O’Brien) says that these various evaluations found that EIB operations under the ELM carried out between 2000 and 2009 were “in line with EU external policies, although a clearer prioritisation would have helped better target EU policy objectives.” He continues as follows:

“The current system of fixing regional objectives in the Mandate was seen as relatively rigid and not reflecting evolving EU policies and priorities. At the end of 2009, 46% of the total ceiling for the Mandate had been signed, with significant regional differences: high utilisation in Pre-Accession countries (60%) and Asia (62%); average in Southern Neighbourhood countries (44%) and Latin America (47%); and low in the Eastern Neighbourhood and Russia (11%).”

47.14 The Minister then outlines the findings per region as follows:

“Pre-Accession countries. EIB financing increased considerably over the period 2000–2009, in particular due to the strong increase of activity in Turkey of €0.5 billion/year (£0.42 billion/year) in the early 2000s compared to €2.5 billion/year (£2.12 billion/year) in 2008–2009. The main area of activity has been the transport sector followed by global loans for SMEs. Significant support has been provided for the enlargement process, promoting EU policies.

“Mediterranean Countries. Following the introduction of the Facility for Euro-Mediterranean Partnership (FEMIP), the focus has been to promote the development of the private sector and investments in infrastructure. Annual lending has grown from €0.77 billion/year (£0.65 billion/year) in 2000–2002 to €1.38 billion/year (£1.17 billion/year) in 2007–2009. The lending rates in the current mandate are in line with expectations but FEMIP (EIB own risk) implementation has been slower — only 14% was committed at the end of 2009. Private sector lending represents 35%, compared to 23% under the previous mandate. This increase has been driven by global loans for SMEs (16%), by private industrial investments (10%) and by Public-Private-Partnerships (PPPs) in environment and infrastructure (9%). EIB lending has been usefully complemented by private equity investment — an average of €44 million (£37 million) per year over the last five years.

“Eastern Neighbourhood and Russia. In the first and second Mandates, 85% of €100 million (£85 million) and 46% of €500 million (£424 million) were signed respectively. Under the current Mandate, only 11% of the available amount (€3.7 billion (£3.1 billion)) was signed at the end of 2009. This slow uptake can be attributed to the narrow sectoral focus and the subsequent limited interest by project promoters, the political and economic environment in partner countries, and the time required to pursue co-financing with the EBRD.

“Asia and Latin America (ALA). The Decision requests the ALA mandate to include environmental sustainability as an objective. The previous Mandate has been fully committed, and with a rate of 50% for the current one — €2.8 billion (£2.37 billion) for Latin America and €1 billion (£0.85 billion) for Asia). The evaluation found that the small size of the ALA mandate and limited access to EIB operational staff make it hard for the Bank to reach its objectives for these region.

“South Africa. The previous Mandate has been fully subscribed, with 54% committed under the current one. EIB operations were considered effective in the public sector, whereas private operations were most effective when carried out in cooperation with local financial intermediaries.

47.15 The Minister then notes that:

— cooperation with the European Commission and with International Financial Institutions (IFIs)/European Bilateral Financial Institutions (EBFIs) has gradually intensified over the past years;

— the evaluations found that blending mechanisms established under the Instrument for Pre-Accession, the European Neighbourhood Instrument and the Development Cooperation Instrument to combine budget grants and IFIs/EBFIs loans provide a valuable means to increase aid effectiveness and avoid duplication; and

— the amount of co-financing by the EIB and IFIs/EBFIs has increased to a total of 60% of EIB financing (2009).
The Government’s view

47.16 The Minister goes on to welcome the report as evidence of increased coordination between EIB and the European Commission and other IFIs/EBFIs. However, he says:

“there is room for further progress; HMG supports the call for much closer collaboration with IFIs/EBFIs as well as clearer links between EIB’s mandate and other external EU objectives in respective regions, focusing on sectors of EIB comparative advantage. There is scope for more shared objectives and closer integration in the planning and implementation of both EIB’s and the European Commission’s external programmes.”

47.17 The Minister also welcomes the initiative to mix EU grants with EIB loans (blending mechanisms), but remains “cautious about the excessive proliferation of different financing arrangements [and] supports an early comprehensive and simultaneous review of the existing blending mechanisms with a view to define the optimal structure that will deliver the best value for money.”

47.18 The Minister concludes by noting that there has been no indication to date if this Report will be discussed in the Council at a later stage.

The Council Decision

47.19 The proposal draws *inter alia* on the external evaluation supervised and managed by the SCWP, supported by the external consultant, and will be adopted subject to co-decision of the Council and the European Parliament.

47.20 The proposal includes:

- activation of the optional €2 billion (£1.7 billion) mandate, which increases the ELM’s total lending ceiling from €25.8 billion (£22 billion) to €27.8 billion (£23.6 billion) (with the extra funds to be lent between now and the end 2013). The Commission recommends the €2 billion (£1.7 billion) should be used across all regions for climate change mitigation and adaptation projects;

- regional mandates to be replaced by common objectives focusing on climate change, social/economic infrastructure and local private sector development;

- development of operational guidelines reflecting EU regional strategies by the Commission together with the EIB, and in consultation with the European External Action Service as appropriate;

- activation of lending under the ELM for Iraq, Iceland, Belarus, Libya and Cambodia;

- strengthened capacity to support EU development objectives; and

- creation by the Commission and the Council of a working group composed of Member States’ representatives and the EIB to study the development of an “EU platform for cooperation and development”.


The Government’s view

47.21 In his Explanatory Memorandum of 22 June 2010, the Minister (Mr Stephen O’Brien) says that the UK has been heavily engaged in this review and that the proposal has broad support from all Member States.

47.22 He goes on to say that renewal of the ELM helps improve the development impact of the EIB by promoting:

- improved quality of EIB development investments, including a greater focus on monitoring the development impact of its operations;
- a more unified EU development package comprising a balanced mix of grants and loans; and
- a more coherent and clear role for EIB within the new European and international development architecture.

47.23 The Minister identifies a number of features in the ELM that he believes should help improve EIB’s effectiveness by:

- replacing the current system of regional mandate objectives with horizontal high-level objectives. This means the end of the so called Mutual Interest Clause for operations in Asia and Latin America, whereby EIB financing is restricted to projects involving EU companies;
- maximising coordination between EIB financing and the EU’s grant resources;
- strengthening of local presence of the Bank (by proposing that EIB offices outside the EU should be located within EU delegations to foster cooperation, while sharing operating costs); and
- Strengthening of cooperation with International Financial Institutions (IFIs) and European Bilateral Financial Institutions (EBFIs) including through co-financing, risk sharing and mutual reliance on procedures.

47.24 The Minister continues as follows:

“The review has clearly shown that there is value added in the EIB’s external lending. However, it is important that the EIB invests more human resources for the management of its external operations, to be able to support EU’s development objectives and meet the requirements of the mandate across regions. This would include, for example, better ex-ante appraisal of the environmental, social and development aspects of its operations, and effective monitoring.

“The Government is supportive of an increased role for the EIB, especially in areas where it could come to complement and, eventually, substitute for grant spend through the EU budget. This would justify a higher lending level overall, and the subsequent limited extra contingent liability on behalf of the UK.

“The other proposals included in the revised legislation are all sensible and non-contentious. The only point of concern was the extension of the mandate to cover 5
new countries, including Iceland. On this we have worked with the Dutch to secure a footnote in the legislation stating that lending to Iceland would not commence until it has satisfied its EEA obligations.”

47.25 Turning to the financial implications, the Minister notes that, with the EIB’s lending supported by a Guarantee Fund that is currently 9% of all outstanding guaranteed loans:

“increasing the ELM’s lending ceiling by €2 billion (£1.7 billion) may have an impact on the EU Budget so far as it needs to keep the Guarantee Fund provisioned up to this 9% target. The Commission advise that this provisioning will not exceed €180 million (£153 million) over the period 2012–2020. Whether the guarantee fund will actually need further provisioning (representing a call on the budget within this limit) over the next few years will depend on overall lending levels for all loans that qualify for the guarantee and on the level of default.”

47.26 The Minister concludes by noting that:

— the Economic and Finance Council agreed the Commission’s legislative proposal on 8th June 2010;

— due to Parliamentary Scrutiny obligations, the Government abstained from the vote; and

— the deadline for agreement by co-decision is October 2011.

**Conclusion**

47.27 We are grateful to the Minister for his helpful analysis of the review and the Council Decision. It is in the nature of such endeavours that there is always room for improvement. But the review and the ensuing Council Decision suggest strongly that the process is moving in the right direction.

47.28 In clearing the documents, we ask only that the Minister writes to us if the European Parliament proposes any significant changes to the Council Decision.
48 Aviation security

| (31729)   | Commission Communication on the use of security scanners at EU airports |
| 10865/10  |                                                                          |
| COM(10) 311 |                                                                            |

**Legal base**
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**Document originated** 15 June 2010

**Deposited in Parliament** 23 June 2010

**Department** Transport

**Basis of consideration** EM of 8 July 2010

**Previous Committee Report** None

**Discussion in Council** 24 June 2010

**Committee’s assessment** Politically important

**Committee’s decision** Cleared

**Background**

48.1 Regulation (EC) No 820/2008 lays down measures for the implementation of common EU basic standards in aviation security. The main principle behind these standards is to screen passengers and cargo in order to keep threatening articles such as knives or explosives (“prohibited articles”) away from aircraft. For this Member States and/or airports are given a list of approved screening methods from which they must provide an effective screening process. Current prescribed screening methods include hand searches and archway metal detectors. Further detail of the EU legal framework for aviation security is set out in the so-called implementing package, comprising Regulation (EU) No 185/2010 and further implementing acts.

48.2 This legislation has direct effect in the UK and airports are not generally permitted to substitute alternative primary screening methods, such as security scanners. Only a new Decision of the Commission supported by Member States and the European Parliament could be a basis for the general addition of security scanners as an option for aviation security screening. However, Member States can be permitted to introduce security scanners for airport trials (as currently at Manchester airport) or as a “more stringent measure” (as currently at Heathrow and Gatwick airports). Security scanners can be used as a secondary screening method, but UK experience has found that this can be cumbersome and inefficient.

48.3 All EU legislation must comply with fundamental rights protected by European law (as well as with EU health standards). Protected rights under the EU Charter of Fundamental Rights and the European Convention on Human Rights include rights relating to human dignity, privacy, personal data, human health and non-discrimination. Respecting such rights does not in principle prevent the adoption of measures restricting them. However any limitation must be provided for by law and must be justified, necessary and proportionate.
The document

48.4 Following the Detroit incident on Christmas Day 2009, and in response to a European Parliament resolution of 23 October 2008, the Commission presents this Communication to set out its current thinking on security scanners for aviation security. The Commission provides a factual basis for discussing the key issues associated with the possible introduction of security scanners as a measure for screening passengers at EU airports and the purpose of its Communication is to explore whether the current EU legislative package should be amended to allow security scanners as a generally applicable alternative screening method. It summarises the present position, sets out the issues, for example privacy and health concerns, and explains the possible legislative options.

48.5 The Commission:

- concludes that common EU standards for security scanners can ensure the equal protection of fundamental rights and health through technical standards and operational conditions;
- reports that tests have shown that security scanners can improve the quality of security controls at airports over and above current methods;
- suggests that alternatives to ionising radiation type scanners should be available for vulnerable groups and that passengers should receive clear and comprehensive information on scanners at the airport;
- takes note of ongoing discussions on allowing persons to opt-out of being scanned and notes that this would bring in issues such as security, cost, feasibility and could undermine the usefulness of scanners; and
- concludes that the Commission will decide whether or not to propose an EU legal framework for the use of scanners at EU airports in the light of discussions with the European Parliament and the Council, with any legislative proposal being accompanied by an impact assessment.

48.6 The Communication was presented and briefly discussed at the Transport Council on 24 June 2010. The Commission indicated that a legislative proposal allowing scanners to be used as a primary measure for screening passengers may be forthcoming by the end of 2010.

The Government’s view

48.7 The Minister of State, Department for Transport (Mrs Theresa Villiers) tells us that safety of the travelling public is the Government’s highest priority. She comments further that:

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190 When a man attempted to ignite an explosive device on a plane as it neared Detroit from Amsterdam.
the Government considers that the use of security scanners is a proportionate response to a very real terrorist threat;

precise deployment of scanners will need to take into account responses to the Government’s current consultation on an interim Code of Practice on the use of advanced imaging technology (security scanners) in aviation security;\(^{192}\)

the Government welcomes the Commission’s Communication given the continuing threat to civil aviation from terrorism; and

it believes that security scanners can play a key part in both protecting the travelling public and improving passenger facilitation.

48.8 The Minister continues that the Government believes that points the legislation to be proposed by the Commission should take into account are:

the decision on whether to deploy security scanners should be for individual Member States;

there should be no specific additional restrictions at the EU level on the use of scanners which involve ionising radiation — the existing provisions in Directive 96/29/Euratom, requiring Member States to conduct an in-depth risk assessment, are sufficient to ensure public protection;

the Government’s advice is that the health risk from such scanners is too small to be quantified;

as noted in the Communication, this is also the conclusion of a French Government report;

the Government respects, however, the fact that some Member States have national legislation governing exposure to ionising radiation and so deployment of security scanners in those countries would need to take that into account;

Member States should be required to produce and publish codes of practice which set out how passengers’ privacy and data protection rights will be protected under applicable EU and national law;

such a code should include, amongst other things, details about how the scanning process will be conducted and the safeguards in place to ensure that images will not be stored or connected with passengers’ personal details in any way — the interim code of practice already in place in the UK is an example of how this could be done;

there should be common EU technical standards for security scanners, to ensure that any scanners deployed meet minimum levels of detection capability — work to develop such standards at the EU level is already well advanced; and

consideration should be given to common EU training standards for scanner operators.

Conclusion

48.9 The Commission has yet to decide whether to present a legislative proposal on the use of security scanners at airports. However, whilst clearing this present document, we draw it to the attention of the House as a possible precursor of legislation which will need to be examined carefully for balance between security needs and fundamental rights.

49 Aviation safety

| (31765) | Report on the actions undertaken in the context of the impact of the volcanic ash cloud crisis on the air transport industry |

Legal base —
Deposited in Parliament 5 July 2010
Department Transport
Basis of consideration EM of 19 July 2010
Previous Committee Report None
Discussion in Council 24 June 2010
Committee’s assessment Politically important
Committee’s decision Cleared

Background

49.1 At an extraordinary session of the Transport Council on 4 May 2010 Ministers agreed on a joint EU response to the volcanic ash cloud crisis and invited the Commission to present a report on the EU response to the consequences of the ash cloud on air transport.193

The document

49.2 The Commission presented the report, this document, to the Transport Council on 24 June 2010194 and it was subsequently deposited in Parliament by the Government.195 In the report the Commission provides an overview of the technical work that has been taking place at national, EU and the global level to increase the understanding of safe flying in areas affected by ash and to examine how the rules and guidance might be improved. It says that in the field of air traffic management action has been taken to clarify procedures

195 Deposited in accordance with paragraph 1 (vi) of Standing Order 143.
for flights in areas affected by ash, to improve coordination between Member States and to prepare for a crisis. This includes:

- establishing three levels of predicted ash concentration;
- interim guidance in the absence of binding limits;
- creation of the European Aviation Crisis Co-ordination Cell to ensure better coordination; and
- nomination of a Functional Airspace Blocks (FABs, which are airspace blocks that cross national borders and are designed to improve integration and operation of air navigation services) System Coordinator and accelerated implementation of FABs.

49.3 The Commission identifies a number of continuing activities, which include:

- developing an EU methodology for risk assessment and risk management in cooperation with Eurocontrol\(^{196}\) and Member States;
- definition by relevant safety authorities of binding limit values at EU level for the impact of ash concentration on engines;
- preparation, for the International Civil Aviation Organisation General Assembly in September 2010, of a coordinated draft EU position on methodological tools for risk assessment and management in case of volcanic eruptions;
- accelerating implementation of the Single European Sky;\(^{197}\)
- appointment of a network manager to improve the coordinated use of European airspace;
- adoption of the Single European Sky performance scheme;
- accelerating implementation of the European Aviation Safety Agency’s new competencies for air traffic management;
- adoption of the SESAR (Single European Sky Air Traffic Management Research) deployment strategy;\(^{198}\)
- evaluation of the Denied Boarding and Cancellation Regulation and of lessons learned during the crisis — the Commission plans a Communication on implementation and possible review of the Regulation in the autumn;
- assessment of potential shortcomings in cooperation between Member States and different modes of transport in emergency situations — the Commission will prepare a report on short and medium term improvements towards a pan-EU mobility action plan, to be presented in the autumn; and


\(^{198}\) SESAR is the research element of the Single European Sky package under which future air traffic management systems are being developed.
setting up an “Aviation Platform” gathering all aviation stakeholders at EU level.

49.4 In the report the Commission also says that it:

- has established that the ash disruption should not affect the fixing of the overall cap on emissions under the EU Emissions Trading System, although it may affect the distribution between operators;
- has met airport slot coordinators from across the EU and agreed that cancellations due to ash will not count against the “use it or lose it” rule, under which airlines must hand back slots that they fail to use for more than 80% of the time;
- has not, in relation to potential financial assistance provided by Member States, received any state aid notifications;
- has concluded that there is no appropriate EU source of funding to compensate the aviation industry for its losses due to the volcanic ash disruption;
- has started to consult Member States on the problems encountered when other modes of transport had to take the strain during the disruption to aviation and will look at what contingency measures are needed to facilitate repatriation and re-routing of passengers and freight; and
- will continue to monitor the situation and will keep the Council and the European Parliament informed.

The Government’s view

49.5 The Minister of State, Department for Transport (Mrs Theresa Villiers) says that the Government welcomes the coordinated EU action presented in the Commission’s report, as it considers a joint approach to be the most effective way to manage a response to the volcanic ash cloud crisis. She continues that the Government:

- supports the Commission’s initiatives to improve safety risk analysis and management, to develop binding limit values and to improve coordination through the creation of the European Aviation Crisis Co-ordination Cell;
- has continued, since the time of the first eruption, to undertake considerable work at national and international levels with the Met Office (in its role as Volcanic Ash Advisory Centre), the airlines, manufacturers, and regulators;
- is ensuring that this work feeds into EU and international discussions;
- looks forward to contributing to a coordinated EU position in preparation for the International Civil Aviation Organisation General Assembly in September 2010; and
- supports a number of the ongoing initiatives identified by the Commission — designation of a network manager, establishing an Aviation Platform,
consideration of a potential pan-EU mobility action plan and implementation of European Aviation Safety Agency’s air traffic management responsibilities.

49.6 In more detailed comments the Minister says that:

- aircraft and engine manufacturers must continue to establish what level of ash their products can safely tolerate and the Government and the Civil Aviation Authority continue to work with the industry to facilitate this work;

- the tolerance level for continuous flying in areas affected by ash has been increased once already and work is continuing with the manufacturers of aircraft and engines to see what further steps can be taken;

- the no-fly zone is under constant review, based on scientifically reliable data available to the Civil Aviation Authority, from industry, other regulatory and Government agencies;

- NATS (the UK’s air navigation service provider), in collaboration with the Civil Aviation Authority and UK operators, is developing the feasibility of a revised safety risk management approach with the potential to provide operators with the capability to assess whether and where it would be safe to fly in low ash concentration contaminated airspace;

- until such time as any revised safety risk assessment methods are developed, the existing zonal procedures (no-fly — black, time-limited — grey and enhanced procedures — red) to protect flight safety remain;

- the Met Office is trying to arrange a permanent airborne testing capability;

- to this end, tenders are being evaluated for the provision of a new test aircraft to be at permanent readiness to assist in the work of the Met Office — the expectation is that this aircraft will be operational in the autumn;

- the Government notes, on the issue of financial compensation, that to date no Member State has made a formal request for state aid clearance to the Commission nor have any draft proposals been presented to it;

- the Government understands that governments across the EU may have some sympathy for the position of the industry, but face considerable pressures in public finances that make support difficult — the UK is no different in that respect;

- the Government acknowledges the Commission’s conclusion that there is no appropriate EU source of funding for compensation;

- the Government is actively engaged in a number of the ongoing air traffic management initiatives identified in the report and it is generally supportive of the Commission’s continued work on these programmes;

- in relation to the Commission’s suggested accelerated implementation of the Single European Sky, the Government will continue to work with other Member States
and the Commission to make progress on this wide-ranging programme involving complex regulatory and technical issues;

- in relation of the Denied Boarding and Cancellation Regulation, the Government, which supports the Regulation, has asked that, as part of any review, the Commission look specifically at payments of compensation in relation to flight delays in light of the ruling of the Court of Justice that passengers whose flights are delayed by three hours or more may be entitled to compensation from the airline, unless the delay is caused by extraordinary circumstances;\(^{199}\)

- the Commission says that the volcanic ash disruption will have no effect on the emissions cap under the EU Emissions Trading System, because the cap is set based on average emissions in 2004–06 rather than 2010;

- although it accepts that the reduced activity could in principle affect the distribution of free allowances between aircraft operators the Commission considers that the relative distributional impacts are likely to be small;

- if all aircraft operators covered by the system had been equally affected by the airspace closure this would be the case, however the Government is aware of evidence suggesting that those airlines flying to the airspace most affected by the disruption performed less tonne-kilometre activity in April 2010 than they would have normally;

- they will, therefore, receive a smaller share of the free allowances than they would have otherwise, and operators operating primarily in areas least affected by disruption will consequently receive a larger share of free allowances than they would have otherwise;

- the Government understands that this is fundamentally a matter for the Commission and that there is currently no provision in the legislation for modifying tonne-kilometre data or the benchmarking process;

- the Government, however, supports efforts by the Commission to collect data in order to establish the extent and distribution of any distortion and encourages it to consider how the differentiated impact of the ash disruption on aircraft operators could be taken into account in the benchmarking process;

- in relation to airport slots not used as a consequence of the restrictions not counting towards the 80% “use it or lose it” rule, the UK coordinator is interpreting this to include services cancelled in the immediate aftermath of the closures; and

- the Government considers this approach appropriate — it should ensure that airlines do not lose slots as a consequence of the airspace restrictions.

\(^{199}\) The ruling was in relation to the case of in the case of Christopher Sturgeon, Gabriel Sturgeon and Alana Sturgeon v Condor Flugdienst GmbH (C-402/07) and Stefan Böck and Cornelia Lepuschitz v Air France SA (C-432/07).
Conclusion

49.7 Whilst clearing this document we draw it to the attention of the House as a useful summary of EU actions to mitigate the consequences of volcanic ash for the aviation sector and its customers.

50 Air services agreements

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<tr>
<td>(a)</td>
<td>Draft Council Decision, and decision of the representatives of the Governments of the Member States of the European Union, meeting within the Council, on the conclusion of the protocol to amend the Air Transport Agreement between the European Community and its Member States, of the one part, and the United States of America, of the other part</td>
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<td>(31582)</td>
<td>9435/1/10 + ADDs 1–2 COM(10) 208</td>
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<td>(b)</td>
<td>Draft Council Decision, and decision of the representatives of the Governments of the Member States of the European Union, meeting within the Council, on the signature and provisional application of the protocol to amend the Air Transport Agreement between the European Community and its Member States, of the one part, and the United States of America, of the other part</td>
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<td>(31639)</td>
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Legal base
- Articles 100(2) and 218 TFEU; consent; QMV

Document originated
- (a) 4 May 2010
- (b) 3 May 2010

Deposited in Parliament
- 25 May 2010

Department
- Transport

Basis of consideration
- EM and Minister’s letter of 22 June 2010

Previous Committee Report
- None

Discussion in Council
- 24 June 2010

Committee’s assessment
- Politically important

Committee’s decision
- Cleared

Background

50.1 On 30 March 2008 the 2007 EU-US Air Transport Agreement entered into provisional application. The agreement was a significant change to transatlantic aviation relations, providing broad new commercial freedoms for airlines and a comprehensive framework for regulatory cooperation with the US on a wide range of issues, including the opening of transatlantic markets and associated commercial freedoms, safety, security, competition, environmental protection, customs and taxation issues, pricing and subsidies.
It set up a Joint Committee with the aim of increasing cooperation between the US and EU on a range of regulatory issues.

50.2 The agreement provided for a second stage of negotiations to consider agreement on a range of further matters. Those negotiations began in May 2008 and after eight rounds closed in March 2010.

**The documents**

50.3 The negotiators have reached agreement on a draft protocol to amend the original Air Transport Agreement. These draft Council Decisions would authorise respectively the signature and provisional application by the EU of that protocol and the conclusion of the protocol. They also clarify how certain decisions or actions under the protocol would be taken by the EU side in accordance with the EU treaties.

50.4 The draft protocol:

- focuses mainly on the areas identified for further negotiation in the original Agreement, including the expansion of opportunities for market access and for investment in airlines;
- significantly strengthens cooperation on actions to combat the environmental impacts of aviation (together with the associated Joint Statement on Environmental Cooperation);
- includes some further relaxation of the so-called “Fly America” policy that would allow those employed on US Government civilian contracts to book on EU carriers;
- enhances the remit of the Joint Committee with a view to enhancing the compatibility of the different regulatory systems; and
- introduces new provisions on reciprocal recognition of certain regulatory decisions and on labour standards.

**The Government’s view**

50.5 The Minister of State, Department for Transport (Mr Theresa Villiers) says that the Government and the UK aviation industry strongly supported the negotiation of a second stage agreement with the aim of securing further market opening, and in particular relaxing the existing tight limits on foreign investment in airlines. She comments that:

- whilst the draft protocol does not go as far in this area as it would have wished, the Government recognises that relaxation of the restrictions cannot be achieved without legislative change in the US;
- during the second stage negotiations it became clear that internal political opposition within the US to relaxing controls on foreign ownership had, if anything, hardened and that there was no prospect of securing the necessary changes to US law in the near term;
therefore the EU has focused on the construction of an agreement that would encourage the US to change its foreign ownership rules in the longer term and on a general recognition that relaxation of foreign ownership and control requirements should be an end-goal; and

these objectives have largely been attained in the negotiations — the draft protocol establishes a shared goal of further removing barriers to market access and investment, envisages an end state where each Party permits majority ownership and control of its airlines by nationals of the other party and sets out further commercial benefits that may be drawn down once the necessary changes to the internal laws and regulations of each Party have been implemented.

50.6 The Minister also tells us that:

• in a revised environment article the Parties recognise the importance of protecting the environment and undertake to work together to reduce the impacts of aviation;

• notably, the article provides a mechanism for ensuring consistency between market-based measures — this would provide a means of working out how any future American emissions trading system could be joined-up with the EU scheme for aviation;

• the associated Joint Statement on Environmental Cooperation affirms the commitment of both sides to work together, both bilaterally and in international fora, in this field — it recognises the importance of the “2 degree Celsius” goal, confirms the commitment to new work on setting a global aircraft standards on carbon dioxide, noise and air quality and sets out the areas of technical cooperation between the EU and US for matters such as air traffic control, bio-fuels and aerospace technology;

• while the “Fly America” policy still leaves valuable traffic by US government employees and defence-related contractors out of the reach of EU airlines, the inclusion of some further relaxation of the civilian contractor “Fly America” traffic is considered a valuable benefit by UK airlines; and

• other amendments made through the draft protocol will help increase the cooperation between, and therefore the mutual compatibility of, the regulatory regimes on either side of the Atlantic in areas such as competition, security, consumer protection, and air traffic management — something that the aviation industry has strongly advocated.

50.7 The Minister concludes, in her Explanatory Memorandum, that:

• there appears to be little further to be gained from seeking to prolong the negotiations at this stage;

• the option to withdraw new traffic rights gained under the first stage agreement has been considered, but the Government considers this would be against the interests of UK consumers, airlines and airports and it can discern little or no support amongst UK interests for that course of action; and
in light of the progress made, the Government considers that the draft protocol represents a worthwhile improvement of the current agreement, incorporating both a clear direction of travel and incentives towards further change — it would enable the UK aviation industry and consumers to continue to profit from the significant benefits available under the original agreement, whilst delivering worthwhile additional benefits and maintaining the pressure for further liberalisation.

50.8 In her letter the Minister says that:

- these documents only emerged after the Dissolution of the last Parliament and would be considered by the Council before the we (and the Lords’ European Union Committee) would be in place and able to scrutinise them;

- the Government takes its scrutiny obligations very seriously and would not lightly agree to a measure before completion of scrutiny; and

- given, however, the substantial support that exists for early signature, the Government feels that the UK should join other Member States in supporting the draft protocol and approving its signature at the Transport Council of 24 June 2010.

**Conclusion**

50.9 We note the Government’s assessment that at the moment more could not be achieved to improve the present EU-US Air Transport Agreement but that, nevertheless, the amending draft protocol brings sufficient benefit to justify supporting these draft Decisions. We have no questions to raise about this assessment and the draft Decisions and clear the documents. We also note and understand the Government’s support in Council for the draft Decisions before completion of scrutiny.
51 EU Special Representative for Afghanistan

<table>
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<tr>
<th>(31425)</th>
<th>Council Decision appointing the European Union Special Representative for Afghanistan</th>
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**Legal base**

Articles 28, 31(2) and 33 TEU; QMV

**Department**

Foreign and Commonwealth Office

**Basis of consideration**

Then Minister’s letter of 16 April 2010

**Previous Committee Report**

HC 5–xv (2009–10), chapter 7 (24 March 2010); also see (30674) —: HC 19–xix (2008–09), chapter 14 (10 June 2009) and HC 19–xxiii (2008–09), chapter 7 (8 July 2009); and (31296) —: HC 5–x (2009–10), chapter 8 (9 February 2010)

**Discussed in Council**

22 March 2010 Foreign Affairs Council

**Committee’s assessment**

Politically important

**Committee’s decision**

Cleared; further information requested

**Background**

51.1 EU Special Representatives (EUSRs) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They were established under Article 1 of the 1997 Amsterdam Treaty and are appointed by the Council. The aim of the EUSRs is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

51.2 An EUSR is appointed by Council through the legal act of a Council Decision (formerly a Joint Action). The substance of his or her mandate depends on the political context of the deployment. Some provide, *inter alia*, a political backing to an ESDP operation, others focus on carrying out or contribute to developing an EU policy. All EUSRs carry out their duties under the authority and operational direction of the High Representative of the Union for Foreign Affairs and Security Policy (HR; Catherine Ashton). Each is financed out of the CFSP budget implemented by the Commission. Member States contribute regularly e.g. through seconding some of the EUSR’s staff members.

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

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

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

Earlier consideration

51.6 On 9 February 2010 the previous Committee considered a number of draft Council Decisions extending their mandates. In his accompanying Explanatory Memorandum, the then Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) explained that, the earlier decision of the PSC notwithstanding, on this occasion the mandates were to be extended, not for the usual 12 months, but only until 31 August 2010, or until the establishment of the European External Action Service (EEAS), whichever was the earlier; and that the HR intended to revert to the matter in the light of further work on the EEAS.

Afghanistan

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

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

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

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

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

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

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

— the Afghan government and international partners, particularly the UN, continued to insist upon the need for greater international coordination in Afghanistan; and
— in view of the many challenges facing the country in 2009, particularly the Presidential elections and the difficult security situation in the south and east of the country, the need for effective international engagement was even greater.

51.9 Then, in June and July 2009, the previous Committee considered a further proposal to amend the mandate to include Pakistan. In her Explanatory Memorandum of 3 June 2009, the then Minister for Europe said that the decision to extend EUSR Sequi’s mandate to include Pakistan “reflects the direction of international debate on Afghanistan and broader regional challenges, particularly on Pakistan”, and “also chimes with a message that the UK has been consistently delivering in the EU, that we need to be better equipped to address the regional dimension of policy on Afghanistan, particularly Pakistan.” The then Minister supported the extension of the mandate to include Pakistan on the grounds that the Government had been “pushing the EU to increase its engagement in both Afghanistan and Pakistan and to see the problems in both countries as interlinked”, in line with the new US strategy, which had similarly refocused its Afghanistan policy to include Pakistan, and included the appointment of Richard Holbrooke as US Special Envoy to Afghanistan and Pakistan, and subsequent appointments of various other ‘Af/Pak’ Special Envoys, “all of which highlight the international communities [sic] focus on the links between instability in both countries.”

The previous Committee’s assessment

51.10 The previous Committee had no wish to hold up this amendment, and accordingly cleared the document, which it reported to the House because of the widespread interest in the subject matter. But it had a number of questions for the then Minister, to which she responded in a letter of 30 June 2009, and which was reported to the House in its Report of 8 July 2009.200

The latest mandate extension

51.11 In commenting on this latest extension of EUSR Sequi’s mandate, the then Minister for Europe (Chris Bryant) noted that there might be a change in the candidate for this role. He then commented as follows:

“The Government supports the extension of this mandate because of the important role of the EU in Afghanistan. The EU and Afghanistan’s partnership, defined by the Strasbourg Declaration of 16 November 2005, means that EU commitments are kept under review by periodic meetings between the Afghan government and the EU. The EU is a major partner in Afghanistan, having disbursed or pledged $7.5bn between 2002 and 2011. EU member states also provide approximately 16,000 troops to the International Security Assistance Force and the EU has launched an ongoing Police Mission to Afghanistan (EUPOL) since June 2007.

“The EUSR will continue to play an important role in focusing the EU efforts described above, and ensuring that it dovetails with the work of other bilateral and

multilateral partners. The Afghan government and international partners, particularly the UN, continue to place an emphasis upon the need for greater international coordination in Afghanistan, the EUSR is a key part of fostering this cooperation.”

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

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

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

51.15 Looking further ahead, the then Committee reminded the Minister that it would expect full and timely financial and other relevant information when all the mandates next came up for renewal, particularly about the way in which the EUSRs would interact with the prospective EEAS.²⁰¹

51.16 It was announced on 22 February 2010 that Vygaudas Ušackas — the foreign minister of Lithuania until his resignation in January — had been appointed as the European Union’s next special representative for Afghanistan and head of its delegation in Kabul.

The further draft Council Decision

51.17 In his Explanatory Memorandum of 22 March 2010, the then Minister for Europe said that the Foreign Affairs Council on 22 March would confirm the appointment of Mr Ušackas as EUSR for Afghanistan from 1 April 2010. He also noted that the mandate for the current EUSR, Ettore Sequi, expired on 31 March 2010.

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

²⁰¹ See headnote: (31296) —: HC 5–x (2009–10), chapter 8 (9 February 2010).
51.19 After briefly rehearsing some of the context, the then Minister said that the Government supported the appointment of Vygaudas Ušackas:

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

The previous Committee’s assessment

51.20 The previous Committee cleared the document.

51.21 In so doing, it noted that, although Mr Ušackas’ appointment was announced by the High Representative on 22 February, there was no mention of it in the Foreign Affairs Council Conclusions of that same day, or of Afghanistan at all. Moreover, the HR’s letter to the Council of 22 February mentioned, en passant, the prolongation of the mandate of a further EUSR, to Burma/Myanmar, on the same basis as the others, i.e., until 31 August 2010, or until the establishment of the European External Action Service (EEAS), whichever was the earlier; the previous Committee asked when this would be submitted for scrutiny.

51.22 The previous Committee asked the Minister to explain more about this present process, noting that, under Article 33 TEU, it was for the HR to propose and for the Council to decide; here, however, it would seem that an appointment had been made, and announced to the world, with no sign of discussion in the Council; and that the Council — and thus this Committee’s role — was now to rubber stamp it.

51.23 The previous Committee also noted that, contrary to what he said in his 3 February Explanatory Memorandum, the then Minister now said that Mr Sequi’s mandate was extended only until 31 March, but nothing about how and when this decision was taken. The previous Committee asked the Minister to clarify this. Nor did the then Minister say anything about Mr Sequi’s successor; the previous Committee asked to know more about his qualifications for this crucially important job.

51.24 The previous Committee also asked to know more about the job itself. The then Minister did not mention that it was to be “double-hatted”, i.e., that he was to be not only the voice of the Council but also the head of the Commission’s technical assistance operations. The then Committee asked:

— what this would entail;
— what annual budget he would control;
— what main programmes he would be in charge of implementing;

— how they related to other bilateral and international activities; and

— in his EUSR capacity, what his 1 April to 31 August 2010 budget of €2,500,000 would be spent on.

51.25 Moreover, although the previous Committee’s understanding was that the EUSR’s mandate was to be significantly upgraded, it seemed instead to have been diminished, in that there is no mention of his predecessor’s role regarding Pakistan. It asked the then Minister to explain this.

51.26 In addition to be asked to clear a fait accompli, the previous Committee noted that it was also being asked to do so after a further administrative error by the Minister’s Department — this despite several assurances that this type of administrative oversight would be a thing of the past. So it asked the Minister to explain, in detail, the nature of this oversight and how, despite his assurances, it came to pass.

The then Minister’s letter of 16 April 2010

51.27 The then Minister responds as follows.

Appointing the EUSR

51.28 The then Minister says that, in accordance with Article 33 TEU, the High Representative proposed the appointment of Mr Ušackas through her letter to the Foreign Affairs Council of 22 February. A Council Decision appointing Ušackas was adopted by the Foreign Affairs Council on 22 March. The Council remains an essential part of the process of selecting an EUSR. It is the Council which appoints, or rejects, the candidate proposed by the High Representative.

The extension of the previous EUSR’s mandate

51.29 The then Minister reminds the Committee that a draft version of the Council Decision extending the mandate was cleared on 9 February 2010 and replaced by the Council Decision agreed at the March FAC appointing Mr Ušackas.

Further information on Mr Vygaudas Ušackas and his job

51.30 The then Minister says that, between 2008 — 2010, Mr Ušackas was the Lithuanian Minister of Foreign Affairs, and that during this time he visited Afghanistan a number of times to oversee the Lithuanian Provincial Reconstruction Team (PRT) in Ghor Province and the 200 Lithuanian troops based there. Prior to that, Mr Ušackas was the Lithuanian Ambassador to the United States of America and Mexico between 2001—2006, the Ambassador to the United Kingdom between 2006–2008 and represented Lithuania at its mission to the European Union and NATO between 1992–1996.

51.31 The then Minister goes on to say that the EUSR’s role will unite the former EUSR and Head of the European Commission delegation positions, “resulting in a stronger, unified CFSP/Commission delegation.” He continues as follows:
“The appointment of Vygaudas Ušackas, a senior political figure, will add weight to this position and is a welcome signal of enhanced EU engagement at this crucial time. The primary role will be to represent the EU in country and promote EU policy objectives in Afghanistan. This will entail contributing to the implementation of the EU-Afghanistan Joint Declaration and lead the implementation of the EU Action Plan in Afghanistan. It will also involve working in close cooperation with the UN Special Representative of the Secretary General, Staffan De Mistura and the NATO Senior Civilian Representative, Mark Sedwill, to enhance coordinated civilian effort in Afghanistan. No decision has yet been taken on how the Pakistan aspect of the EUSR position could be undertaken most effectively. I will keep the committee informed as this debate evolves.

“You rightly note that EUSR will have a budget of €2,500,000 from 1 April to 31 August. This is the administrative budget to be spent on running the EU mission in Kabul, including salaries, accommodation, transport, running expenditure and capital costs.

51.32 Turning to the matter of how the oversight referred to above happened, the then Minister says:

“In essence, this was a miscommunication between Afghan Group and Europe Global Group in my department, resulted in a delay in sending the Explanatory Memorandum (EM) on the appointment in time for it to clear scrutiny before the March Foreign Affairs Council. I met with representatives from both departments on 22 March to discuss what had caused the error and agreed steps to ensure this did not happen again, including an additional resource for improving internal communications and, in particular spreading the message of the vital importance of Parliamentary Scrutiny.”

The EU Special Envoy to Burma/Myanmar

51.33 Finally, the then Minister says that the EU Special Envoy is an informal role, appointed by the High Representative and not subject to agreement at Council, and therefore not subject to scrutiny. In addition, the then Minister notes that the present incumbent’s position is funded directly by the Italian government and not from the Common Foreign and Security Policy budget.

Conclusion

51.34 We are reporting this further information to the House because of the widespread interest in the subject matter.

51.35 But we note that the then Minister not only has nothing to say about how the Pakistan aspect of the EUSR position could be undertaken most effectively: he also fails to respond to the previous Committee’s questions about the non-EUSR component of Mr Ušackas’ job (c.f. tirets one to four of paragraph 51.24 above).

51.36 There is now a new Minister for Europe. We ask him to provide the information requested by the previous Committee that his predecessor did not furnish.
51.37 We also ask the Minister to confirm the Treaty basis for the informal appointment of an EU Special Envoy; to explain why the agreement of the Council is not needed; and to explain whether an EU Special Envoy can be funded from the CFSP budget.

52 Commission Work Programme

| (31485) | Commission Communication: Commission Work Programme 2010 |
| 8388/10 | — Time to Act |
| + ADD 1 | COM(10) 135 |

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**Legal base**

**Document originated** 31 March 2010

**Deposited in Parliament** 25 May 210

**Department** Foreign and Commonwealth Office

**Basis of consideration** EM of 29 June 2010

**Previous Committee Report** None

**To be discussed in Council** No date set

**Committee’s assessment** Legally and politically important

**Committee’s decision** Cleared

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**Background**

52.1 At the end of each year, the Commission publishes a Work Programme (CWP). The publication of this year’s CWP was delayed by the establishment of a new Commission. This document provides some indication of the priorities of the Commission for the forthcoming year and the major legislative and non-legislative proposals it intends to pursue. In addition it gives a list of other initiatives that the new Commission is considering adopting. During 2010 the Commission aims to focus its activity on: “tackling the crisis and sustaining Europe’s social market economy” (particularly in light of the economic crisis); building a “citizens’ agenda”; developing an “ambitious and coherent external agenda with global outreach”; and finally, modernising EU instruments and “ways of working”.

52.2 The CWP is the last stage of the process which begins with the publication of the Annual Policy Strategy (APS) in the Spring. The Annual Policy Strategy forms the basis of a dialogue between the EU Institutions and with the national parliaments over where the Commission’s priorities lie.

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203 Commission Work Programme, p3.
52.3 The Committee conducted an inquiry into the APS in 2007 but in the years since it has concluded that the high level of generality of the APS and its lack of detail on specific policy measures do not make the document an appropriate subject for a formal inquiry. Its chief value is that it alerts Members of the Committee to the issues developing in the Commission’s policy agenda. The previous Committee forwarded the Annual Policy Strategy to Departmental Select Committees in the hope that they would benefit from an insight into the future plans of the Commission. The APS is a document more suited for debate than scrutiny; the previous Government committed to debating the APS in Westminster Hall and the 2010 APS was debated on 2 July 2009.

52.4 Since the last APS was published a new Commission has been established and the CWP reflects the priorities of the new Commissioners. However, many themes articulated from the APS remain priority areas of action including “Economic and Social Recovery”, “Putting the Citizen First” and “Europe as a World Partner”.

**Commission Communication**

52.5 The CWP outlines the Commission’s plans for, what it describes as, “a new era” for the European Union. Stating that “‘Business as usual’ is not an option” after the financial crisis the Communication suggests that 2010 will see the Commission focus its activity in the following areas:

- Tackling the crisis and sustaining Europe’s social market economy;
- Building a citizens’ agenda which puts people at the heart of European action;
- Developing an ambitious and coherent external agenda with global outreach; and
- Modernising EU instruments and ways of working.

With the entry into force of the Libson Treaty, election of a new European Parliament and appointment of a new College of Commissioners the Commission believes that the EU is “equipped with the necessary tools” to address these issues.

52.6 To achieve these goals, many of which were mentioned in the previous APS, the Commission proposes 34 strategic initiatives, it has also listed 33 additional strategic initiatives and 253 priority initiatives under consideration for adoption which “cover 2010 and beyond”. It also contains 46 “simplification initiatives” and plans to withdraw 56 proposals, all of which have become obsolete. Our predecessor Committee repeatedly called on the Commission to reduce the legislative burden and therefore noted with regret that the projected programme represented a significant increase in proposed action from the Commission in 2010 compared to previous years. However, circumstances may partly explain this reduction in proposed output, in particular the appointment of a new Commission and the fact that some proposed initiatives may not be adopted this year.

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204 Ibid.
205 Ibid.
206 Ibid, Addendum.
207 There were 12 strategic initiatives in 2009, 26 in 2008, 21 in 2007 and 31 in 2006.
52.7 A large proportion of the measures concern the EU single market and reform of the financial sector. This includes proposals to “strengthen economic surveillance and coordination and improve governance in the euro area,” with the Commission planning to present proposals for enhancing policy coordination to strengthen the fiscal surveillance frameworks. The Communication also emphasises that the Commission is working with other EU institutions to ensure that the new European supervisory architecture for the financial sector is in place “by early 2011”, as well as options for the establishment of a bank rescue fund.

52.8 The second strand of tackling the crisis and sustaining the European social market focuses on initiatives that will “flesh out” the Europe 2020 agenda, which aims to make Europe the world’s most dynamic and competitive knowledge-based society by 2020. These group of initiatives include: a digital agenda for Europe; industrial policy for a globalised era, with a focus on improving the business environment for SME; a research and innovation plan; youth mobility strategy; an agenda for new skills and jobs; and a European Platform to combat poverty.

52.9 The key proposal under the heading “citizens’ agenda” is the implementation of the Stockholm Programme for an open and secure Europe serving and protecting the citizen” which was adopted by the European Council in December 2009. The Commission intends to present a “comprehensive Action Plan for its implementation […] with a view to ensuring that the benefits of the area of freedom, security and justice become more tangible to the citizens.” Other policy initiatives falling under title of “citizens’ agenda” include: improving the recognition of judicial decisions across borders, revising the working time directive and the protection of personal data.

52.10 Efforts around the creation of an “ambitious and coherent external action agenda” focus on the role of the High Representative and the establishment of the European External Action Service. The Commission argues that a “high degree of ambition, coordination and discipline is necessary” for the EU to speak with one voice and be heard on the global stage, and states that it believes that the Lisbon Treaty has given the Union the tools it need better advance European interests on the international negotiations.

52.11 Outside the new institutional arrangements the Commission’s foreign policy priorities will include: the production of a trade strategy for Europe 2020 which will focus on concluding the ongoing multi-lateral and bi-lateral negotiations as well as better enforcement of existing agreements; continuing the enlargement process with progress being linked to steps taken by candidate countries on internal reform, with particular emphasis on the rule of law; and international development with the Commission.

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210 Ibid, p5.
211 Ibid, p7.
proposing an EU action plan leading up to the 2015 Millennium Development Goals Summit.\footnote{213}

52.12 The Communication states that while the CWP highlights a number of new initiatives “a key focus of the Commission’s work in 2010 will be about making effective use of existing policy instruments and paving the way for their modernisation.”\footnote{214} The most significant issue raised under this heading is the Commission’s proposed review of the EU budget. The Commission says that “the budget of the EU must serve to address the main challenges facing Europe and provide real value added in promoting the Union’s key policy objectives.” To this end it intends to put forward a review of the budget this year and has undertaken to conduct in-depth consultations with stakeholders on the future of key EU spending priorities including the common agricultural policy, cohesion policy and research policy. The work programme section on reform also reiterates the Commission’s aim to reduce the overall regulatory burden by 25% by 2012.\footnote{215}

The Government’s view

52.13 As the Minister for Europe (David Lidington) notes in the Explanatory Memorandum of 29 June 2010, the CWP covers a broad range of issues and the Government will provide detailed responses to the policy initiatives that the Commissions has outlined in this document when legislative proposals are put forward. However, there are several areas where the Government has indicated its broad support for the direction in which the Commission is moving. For example in the area of finance, business and trade the Government says that it “welcomes the Commission’s aim to focus the EU budget so it can provide real EU value.”\footnote{216} It also supports the increased emphasis being placed on trade negotiations and the renewed focus the Europe 2020 strategy bring on promoting jobs and growth. Similar broad support is offered from the Commission approach to energy and climate change and foreign affairs and international development.\footnote{217}

52.14 The Government also welcomes the review of the Agriculture Policy, noting that it provides the opportunity for genuine reform to develop a policy that delivers “good value for farmers, taxpayers, consumers and the environment alike.”\footnote{218} The Minister says that the Government will seek to ensure that “EU spending on agriculture focuses on the right areas, and delivers clear, visible and measurable outputs that offer real value for money.” The EM states that the Government does not think that the Common Agriculture Policy should be used to “address socio-economic issues, which are better targeted by other rural development measures.”\footnote{219}

52.15 There are two notable areas where the Minister says that the Government is not able to support the Commission’s proposals. The first is the working time directive on which the Government says that it will not agree to any removal of the opt-out “which gives
people choice over their working hours.” The second area is Justice and Home Affairs. The Government will not participate in the establishment of any European Public Prosecutor, nor will it endorse the “Action Plan Implementing the Stockholm Programme.” The reason given is that the Government believes that there are “a number of respects in which it does not reflect the Stockholm Programme or the views of the Government.” The Minister says that other matters in EU criminal legislation will be reviewed on a case-by-case basis “with a view to maximising security, protecting civil liberties and preserving the integrity of our criminal justice system.”

52.16 The Minister also says that the Government is seeking to set aside time in Westminster Hall for a debate on the Commission Work Plan.

**Conclusion**

52.17 As in previous years, we consider that the Work Programme provides a useful summary of the Commission’s priorities for the next 12 months. We therefore recommend it to the relevant Departmental Select Committees for their information and to indicate possible future areas for inquiry. The list of strategic proposals to be adopted by the Commission in 2010 is attached as an Annex to this chapter.

52.18 We welcome the Government’s decision to set aside time to debate the Commission’s Work Programme in Westminster Hall. In previous years the Government has made time to debate the Annual Policy Strategy. However, we consider the Work Programme to be a better document on which to debate Commission’s future programme as it contains more information on which initiatives are likely to be taken forward.

52.19 Our predecessor Committee frequently called on the Commission to reduce the volume of legislation and we therefore welcome the plans to reduce the legislative burden by 25% by 2015. However, this commitment seems at odds with the large number of new strategic and priority initiatives outlined in this work programme. While we acknowledge that the new College of Commissioners wishes to set out its agenda, indiscriminately listing all possible policy areas in which they are considering action is not a helpful way to achieve this.

52.20 As each proposal comes forward it will be subject to scrutiny by the Committee in the normal way. In the meantime, we are content to clear the document.

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220 Ibid, para 28.
221 Ibid, para 30.
222 Ibid, para 30.
223 Ibid, para 47.
Annex: Summary of the strategic initiatives scheduled for adoption by the Commission under the Work Programme for 2010 and those under consideration for adoption

Note: The measures are arranged according to our assessment of which Government Department is likely to be given responsibility for them, based on our experience with similar proposals. This assessment may not always be correct and may change with circumstance.

The document also contains a longer, indicative list, of possible priority initiatives under consideration for 2010 and beyond. That information is not reproduced here.

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53 Restrictive measures against the regime in Burma


Legal base: Article 215 TFEU; QMV
Department: Foreign and Commonwealth Office
Basis of consideration: EM of 2 June 2010

To be discussed in Council: 26 April 2010 Foreign Affairs Council
Committee’s assessment: Politically important
Committee’s decision: Cleared

Background

53.1 Starting with Common Position 1996/635/CFSP, the EU has adapted and strengthened its sanctions regime against Burma over the years in response to deteriorating circumstances on the ground and the continuing failure by the government of Burma to make progress on human rights and national reconciliation. In line with EU sanctions policy the EU has worked to achieve change in Burma by placing pressure on those responsible for its policies, whilst minimising any adverse impact on the general population.

53.2 In 2006, EU Common Position 2006/340/CFSP imposed the following measures:

— a visa ban and assets freeze against named members of the military regime, the military and security forces, the military regime’s economic interests and other individuals, groups, undertakings or entities associated with the military regime and their families;

— a visa ban against serving members of the military of the rank of Brigadier-General and above;

— a comprehensive embargo on arms and equipment that might be used for internal repression and ban on military personnel being attached to diplomatic representations in and from Burma;
— a ban on high-level bilateral government visits at the level of Political Director and above;

— a suspension of most non-humanitarian aid; and

— prohibition on EU companies making finance available to, or extending participation in, named Burmese state-owned companies, their joint ventures and subsidiaries.

53.3 In view of further deterioration of the situation in Burma, the EU adopted Common Position 2007/750/CFSP on 19 November 2007 (which the previous Committee cleared on 14 November 2007). This provided for new restrictive measures concerning certain imports from, exports to and investments in Burma/Myanmar, targeting its timber and extractive industries, which provide sources of revenue for the military regime. It also broadened the scope of the existing restrictions on investment by applying them also in respect of investment in enterprises owned or controlled by persons or entities associated with the military regime, and broadened the categories of persons targeted by the freezing of funds and economic resources.224

53.4 Then, on 6 February 2008, the previous Committee cleared a revised Council Regulation which

• extended the current restrictive measures which provide sources of revenue for the military regime of Burma/Myanmar in respect of;
  
  — extending and updating persons subject to a travel ban;

  — the freezing of their assets; and

  — extending and updating the list of enterprises in Burma subject to an investment ban.

• proposed additional restrictive measures;

  — an export ban on the industrial sectors of logs and timber and defined metals, minerals, precious and semiprecious stones; to include diamonds, rubies, sapphires, jade and emeralds (the Regulation will now include finished products with an exemption for personal items of jewellery);

  — an import ban on products from the above mentioned sectors;

  — an investment ban on new trade in the above mentioned sectors; and

  — the provision of technical assistance or training related to relevant equipment and technology destined for enterprises in the above industries in Burma/Myanmar.

53.5 This was subsequently adopted as Council Regulation 194/2008.

53.6 Later, on 21 April 2008, the previous Committee cleared Common Position 2008/349/CFSP, which renewed the current restrictive measures on sources of revenue for the military regime for a further 12 months and amended the Annexes in respect of:

224 See headnote.
— updating persons subject to a travel ban (with the inclusion of members of the judiciary) who are responsible for implementing acts of repression by the regime;

— the freezing of their assets; and

— updating the list of enterprises in Burma subject to an investment ban by adding a further 30 names to the list.

53.7 The Common Position that the previous Committee considered on 23 April 2009 essentially extended the existing Common Position for a further 12 months. Both the list of entities subject to an asset freeze and the list of persons subject to an asset freeze/travel ban were updated (e.g. to take account of changes within the government). Apart from these changes, the restrictive measures were renewed as they were for a further 12 months.

53.8 In her supporting Explanatory Memorandum of 16 April 2009, the then Minister (Caroline Flint) recalled that the Council adopted these restrictive measures after the violent suppression of peaceful protesters in November 2007 — the so-called “Saffron Revolution” — as well as the continued human rights abuses in Burma and detention of over 1100 political prisoners. This was, she again said, consistent with EU policy to increase pressure on the military regime to enter into a meaningful and genuine dialogue with the democratic opposition, whose ultimate aim is the eventual transition to civilian rule and full respect of human rights, including the release of political prisoners and recognition of the rights of ethnic communities.

53.9 The then Minister strongly supported renewal “as it binds the 27 Member States to a robust policy in support of political change in Burma”; extension for a further 12 months was warranted by the lack of improvement of the human rights situation and the lack of substantive progress towards an inclusive democratisation process: “the Burmese military have failed to meet the demands of the international community and continue to violate human rights, including by continuing to detain and sentence democracy campaigners”, and that “there are now estimated to be over 2200 political prisoners.”

53.10 Then, in his Explanatory Memorandum of 12 August 2009, the then Minister of State at the Foreign and Commonwealth Office (Mr Ivan Lewis) explained that on 13 May 2009 Aung San Suu Kyi (thereafter referred to as ASSK) was arrested for violating the terms of her house arrest:

“This violation was as a result of an American man who swam across the lake surrounding her house, he says, to warn her that her life was in danger. ASSK’s house arrest was due to expire at the end of the month and it is widely accepted that the Burmese authorities are using the opportunity offered by this event to ensure ASSK cannot participate in elections due in Burma early next year.”

53.11 The then Minister recalled that in June and July the previous Committee was forewarned that:

— should ASSK be found guilty the EU, with the UK’s full support, would seek to impose further sanctions upon the Burmese regime;

— after much delaying, a guilty verdict was delivered on 11 August; and
—— under the proposed new measures, the four individuals overseeing ASSK’s trial would be added to the list of those subject to a travel ban and asset freeze within the EU; several new entities, most notably the media organisations responsible for the Burmese junta’s propaganda, would be subject to an asset freeze; and 48 other entities currently subject to an investment ban had also been identified to have any assets held within the EU frozen.

53.12 Having explained how the procedures for designating individuals were fully compliant with fundamental rights and noted the consistency of these measures with EU policy, often led by the UK, to increase pressure on the military regime in Burma to enter into a meaningful and genuine dialogue with the democratic opposition, with the ultimate aim of the eventual transition to civilian rule and full respect of human rights, including the release of political prisoners and recognition of the rights of ethnic communities, the then Minister concluded by saying that the Common Position would be adopted on 13 August 2009.

The previous Committee’s assessment

53.13 At its meeting on 10 September 2009, the previous Committee acknowledged the endeavours of the Minister for Europe to forewarn the Committee, accepted the particular circumstances that had led to this breach of scrutiny, and cleared the document.

53.14 It also reported these further proposals because of the widespread interest in the situation in Burma in the House.

53.15 With that interest in mind, the previous Committee also once again reminded the then Minister that such Explanatory Memoranda should also outline the wider context, and any action that had been and was being taken by the government, the EU or other countries — in this instance, in relation to China, without whose support it was difficult to see these further measures making any more impact than had the previous ones. The previous Committee noted that it would have liked to know, for example, if the situation in Burma had been discussed during the most recent EU-China Summit; and if so, what the Chinese response was.

53.16 In the meantime, the previous Committee left it to others to judge what the likely impact of these additional measures would be, though found it difficult to be optimistic in the light of a recent US$5.6 billion deal between China and Burma, with the help of Indian and South Korean companies, to supply China National Petroleum Corporation (CNPC) with gas for 30 years.225226

The then Minister for Europe’s letter 25 February 2010

53.17 On 25 February 2010, the then Minister for Europe (Chris Bryant) wrote to inform the Committee that, with the current EU Common Position on Burma and the restrictive

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225 See http://www.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article6809986.ece for further information.
measures it contains due to expire on 30 April 2010, negotiations to secure the rollover of these restrictive measures were about to begin.

53.18 After reiterating the circumstances that led to their imposition in 1996 and recalling the most recent changes to the EU’s Common Position in August 2009, he went on to say that in late 2009, the Burmese authorities “showed some willingness to engage with Aung Sang Suu Kyi and the international community”, e.g. in October, Aung San Suu Kyi was permitted to meet the British Ambassador, in his capacity as the EU representative, for the first time in six years, and to discuss western sanctions along with American and Australian officials; and also allowed to meet US Assistant Secretary of State Kurt Campbell in early November. These “small but welcome developments” were followed up in December, when Swedish Foreign Minister Carl Bildt, representing the EU Presidency, met his Burmese counterpart in the margins of the Copenhagen conference, and preparations were underway for a senior officials visit to Burma:

“However dialogue with Aung San Suu Kyi has since stalled and the regime has failed to engage with the US or EU on any issues of substance. The recent release of National League for Democracy Vice-Chairman U Tin Oo, whilst welcome, does not change the fact that we have seen minimal progress towards the changes that we are looking for.”

53.19 Given that HMG’s position was, the then Minister said, that there should be no easing of sanctions in the absence of tangible progress, the Government would therefore look for a renewal of the Common Position for a further 12 months — a position upon which, although formal discussion of the issue had not yet begun, he said there appeared to be a broad consensus amongst Member States.

53.20 Responding to the previous Committee’s expressed interest in its earlier reports in UK and EU engagement with other parties, particularly China, to try and secure change within Burma, the then Minister also said:

“We continue to actively encourage Burma’s regional neighbours, including China, Japan and members of the Association of South East Asian Nations (ASEAN) to press for a transition to democracy. As previously noted, the Foreign Secretary attended the meeting of the UN Secretary General’s Group of Friends on Burma in September 2009, where he stressed that all members, including China, must continue to use their influence to encourage the regime to commit to a path of reconciliation and change. The Prime Minister subsequently raised Burma with Prime Minister Hatayoma of Japan on 26 November 2009, and he and PM Hatoyama agreed on the importance of Aung San Suu Kyi’s release and full participation in the democratic process.

“The Government has repeatedly raised the issue of Burma with ASEAN members. We engaged the Vietnamese government both before and as it took over the chairmanship of ASEAN for 2010, making clear how important its robust leadership on Burma is, and highlighting the need for ASEAN to sustain its calls for the release of political prisoners and credible elections. The Foreign Secretary raised Burma with Vietnamese Deputy Prime Minister Hai in London on 21 October 2009, and in a letter to the Deputy Prime Minister for Foreign Affairs in January 2010 as Vietnam
assumed the ASEAN chairmanship. Most recently, the Foreign Secretary raised Burma with the new Indonesian Foreign Minister during a telephone conversation on 8 January 2010. Burma remains a key foreign policy area for the UK Government and we will continue to do all we can, including through Burma’s neighbours, to secure a transition to democracy.”

53.21 The previous Committee thanked the then Minister for this information and looked forward to hearing about the outcome of the negotiations, and also updates on supporting actions in the wider context, particularly regarding China, and the responses of those approached for support.

53.22 In the meantime, the previous Committee drew all this to the attention of the House because of the widespread interest in this matter.

The Council Decision

53.23 In his Explanatory Memorandum of 2 June 2010, the Minister for Europe at the Foreign and Commonwealth Office (David Lidington) now says that, despite the signs in late 2009 that the Burmese authorities were more willing to engage with ASSK and the international community, the recently-released new electoral laws, designed to prevent credible opposition in the upcoming elections, suggest that nothing has changed. The Government’s position was, he further says, therefore that there should be no easing of sanctions in the absence of tangible progress and a renewal of the Common Position (now a Decision) for a further 12 months, which found a broad consensus amongst Member States and was adopted on 26 April.

53.24 The Minister also notes that the only changes will be updating the language to reflect the adoption of the Lisbon Treaty and the list of those individuals/entities subject to these measures to reflect changes that have occurred in Burma over the last year. He goes on to say that these measures are consistent with EU policy, often led by the UK, to increase pressure on the military regime to enter into a meaningful and genuine dialogue with the democratic opposition — the ultimate aim being the eventual transition to civilian rule and full respect of human rights, including the release of political prisoners and recognition of the rights of ethnic communities.

53.25 The Minister then recalls the previous Committee’s interest in the Government’s engagement with others, principally China, on this matter, and says:

“...The Foreign Secretary raised Burma with Chinese Foreign Minister Yang during his recent visit to Beijing. In addition, officials at the British Embassy met in March with Chinese counterparts to discuss the recently announced Burmese election laws. We continue to encourage China to use its influence to press for genuine political reform in Burma. China maintains its policy of non-interference in Burma’s affairs, but did agree to a UK instigated Security Council discussion on recent developments on 24 March. China also participated in a meeting of the UN Secretary General’s Group of Friends of Burma the following day, allowing Ban Ki-moon to make a strong statement of concern about the prospects for free and fair elections in Burma. The Government has also repeatedly raised the issue of Burma with ASEAN members. For example, we engaged the Vietnamese government both before and as it took over
the chairmanship of ASEAN for 2010, making clear how important its robust leadership on Burma is, and highlighting the need for ASEAN to sustain its calls for the release of political prisoners and credible elections.”

**Conclusion**

53.26 The previous Committee has normally not regarded the straightforward extension of existing measures in response to well-known circumstances as warranting a substantive Report to the House. But, given the traditionally high level of interest in the House in developments in Burma, we felt that the Minister’s remarks about the new governments’ maintenance of representations to China and ASEAN warrant one in this instance.

53.27 We now clear the document. In so doing, we recognise that the Dissolution and consequent lack of a Scrutiny Committee militated against the Minister withholding agreement to this Decision until it had been scrutinised by the Committee, and do not object, on this occasion and in these circumstances, to the action that he took in agreeing to its adoption prior to scrutiny.

### 54 Breach of Cotonou Agreement by Madagascar

| (31532) | Draft Council Decision concerning the conclusion of consultations with the Republic of Madagascar under Article 96 of the ACP-EC Partnership Agreement |
| 9014/10 |  |
| COM(10) 181 |  |

**Legal base**

Articles 8, 9 and 96 of the Cotonou Agreement; QMV

**Document originated**

26 April 2010

**Deposited in Parliament**

25 May 2010

**Department**

Foreign and Commonwealth Office

**Basis of consideration**

EM of 24 May 2010

**Previous Committee Report**

None; but see (30637) 9790/09: HC 19–xviii (2008–09), chapter 19 (3 June 2009); (26227) 16041/04 and (29544) 7499/08: HC 19–x (2008–09), chapter 7 (11 March 2009) and (30446) 6543/09: HC 19–x (2008–09), chapter 8 (11 March 2009)

**To be discussed in Council**

25 May 2010

**Committee’s assessment**

Politically important

**Committee’s decision**

Cleared; relevant to debate in European Committee B on the latest revision of the Cotonou Agreement
**Background**

54.1 The Cotonou Agreement provides the framework for relations between the EU and 77 countries of Africa, the Caribbean and the Pacific (ACP). It is based on five interdependent pillars:

— a comprehensive political dimension;[227]

— participatory approaches;

— a strengthened focus on poverty reduction;

— a new framework for economic and trade cooperation; and

— a reform of financial cooperation.

54.2 Article 96 provides for consultations between the EU and an ACP State if the ACP State is considered to be in breach of an “essential element” of the agreement (respect for human rights, democratic principles and the rule of law, as set out in Article 9 of the Agreement). If no remedy is found, “appropriate measures” may be taken including, as a last resort, total or partial suspension of the Agreement.

54.3 The revised Agreement of 2005 makes provision for what the Commission describes as “a more systematic and formal dialogue under article 8 in relation to the three essential elements [which] must now be held before the consultation procedure under Article 96 can be launched — except in cases of special urgency.”[228]

54.4 Following the unconstitutional transfer of power in Madagascar on 17 March 2009, the Commission proposed that the Commission and the Council send a joint letter inviting the Republic of Madagascar to hold consultations under Article 96 of the Cotonou Agreement, and asked the Council to agree a draft letter.[229]

54.5 The then Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) set out the background in her Explanatory Memorandum and letter of 22 May 2009. She noted that, in less than a year, Africa had seen unconstitutional transfers of power in Guinea, Mauritania and, now, Madagascar, as well as the irregular transfer of power in Guinea Bissau. She explained that the coup in Madagascar resulted from tensions between President Ravalomanana and the opposition, led by the former Mayor of Antananarivo (the capital) Andry Rajoelina; and that, after involving the military and the Malagasy Constitutional Court, Rajoelina had set himself up as leader of the “High Transitional Authority” (HTA).

54.6 All of this was immediately condemned by the international community, including the African Union (AU), Southern African Development Community (SADC), the US and the EU. An International Contact Group (ICG) was formed (with UK participation, as a P5 member) to try and agree a political roadmap for the way forward. In parallel, EU Member

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227 Reproduced as the Annex of this chapter of our report.

228 See http://ec.europa.eu/development/icenter/repository/Cotonou_EN_2006_en.pdf for the full background to and text of the Cotonou Agreement.

229 Reproduced at Annex 3 of chapter 19 of the then Committee’s Report of 3 June 2009; see headnote.
States had agreed to open Cotonou Agreement Article 96 consultations and temporarily suspend all budgetary aid provided for in the national indicative programmes of the 9th and 10th European Development Fund (EDF).

54.7 The Article 96 consultations would be consistent with the ICG approach, to which there was an explicit reference in the draft Article 96 letter. The consultations would “offer the opportunity to promote democratic principles in Madagascar and to demonstrate the importance the EU attaches to the ‘essential elements’ of the Cotonou Agreement”. The unconstitutional transfer of power “demanded a swift and coordinated international response, with the EU co-ordinating with other international pressure on the coup leaders.” In Madagascar, there was “currently a sense of drift”, with the lives and livelihoods of ordinary people disrupted by the lack of effective government, unrest on the streets and the threat of renewed violence. It was important that the international community responded speedily and robustly to ease the situation of some of the poorest people in the world. Issuing the letter announcing the start of Article 96 consultations at the earliest opportunity “would help to break the current stalemate and send a strong signal of the seriousness of the EU’s intent to help Madagascar back to constitutional democracy and the rule of law.”

**The previous Committee’s assessment**

54.8 The previous Committee pointed out that the Cotonou Agreement is clear — respect for human rights, democratic principles and the rule of law are essential elements of the partnership — and that, on the Agreement website, the Commission characterised the revision of the political components in 2005 as “strengthening the political dimension by placing greater emphasis on effective dialogue and results”.

54.9 It went on to note discussion in March with the then Minister about developments in Guinea commenting that, against the yardstick set out in those last four words, and despite her valiant efforts to the contrary, it found it difficult to find much persuasive evidence that the Article 96 process had had much significant success in facilitating sustained democratic development. On the contrary: after over five years engagement, Guinea seemed to be no nearer to becoming a functioning democratic and law-based society; the first round of consultations, begun in response to the events of 2003, had produced a host of commitments on restoring democracy and the rule of law, notwithstanding which fresh Article 96 consultations had been initiated in response to the latest military coup.230

54.10 Against that unhappy background, it concluded by expressing the hope that Madagascar would be able to demonstrate that the Article 96 process could be made to work, and in the meantime cleared the document.231

**The Council Decision**

54.11 This Council Decision proposes to end the consultations and to suspend all development funds under the 9th and 10th EDF.
54.12 As the Minister for Europe at the Foreign and Commonwealth Office (Mr David Lidington) explains in his Explanatory Memorandum of 24 May 2010, although the 120 day deadline for the closure of consultations expired in November 2009, the EU agreed to allow negotiations to remain open while it looked as if progress was being made; however, since then there has been no political agreement between the parties, mainly due to opposition from the HTA (the coup regime). Consequently, the Commission has put forward a proposal to close the consultations and to adopt appropriate measures. This would formalise the temporary suspension of the EU’s budgetary support. Humanitarian and emergency aid would not be affected. The European Commission would also be able to implement certain projects and programmes that directly benefit the population. The normal political dialogue between Madagascar and the EU provided for in Article 8 of the Cotonou Agreement will be maintained and conducted as far as possible in co-ordination with the ICG.

54.13 The Minister points out that the Annex to the Decision sets out “clear steps that need to have been taken to step up Article 8 of the Cotonou Agreement, and to consider reversing the appropriate measures, e.g. resuming EU development funding”, including:

— a consensual agreement for a transitional government;

— the setting of a clear roadmap towards elections, which is acceptable to the parties involved and which allows for a free and fair election campaign; and

— fair elections, recognised as such by the international community, and which can provide democratic legitimacy to a new government.

54.14 The Commission proposes that these measures should be adopted for an initial period of twelve months, but reserves the right to examine and revise them in the light of any developments, positive or negative, in Madagascar.

54.15 The Minister also says that he expects the Commission shortly to submit a proposal for Member States at the EDF Management Committee to identify which projects and programmes the EC will undertake that directly benefit the population and how this would be funded from the EU budget.

54.16 Finally, the Commission’s proposal having been discussed at the African, Caribbean and Pacific (ACP) working groups in Brussels on 27 April and 4 May 2009, the Minister says that he expects it be passed to the Council on 25 May 2010.

The Government’s view

54.17 The Minister goes on to recall that, Rajoelina having announced that he would amend the constitution (at 34 he was six years too young to run for president) and hold elections within 18–24 months, and having unilaterally set up his HTA, the HTA has governed as a de facto authority ever since, despite being unrecognised by the international community. He says that the situation in Madagascar remains bleak: already with some of the lowest Human Development Index indicators in the world (overall 145th from 177 countries); social and economic indicators are continuing to decline. He also notes that, on several occasions, the ICG has brought together Rajoelina and Ravalomanana, as well as
two other former Malagasy Presidents Ratsiraka and Zafy (each of whom leads a political movement in Madagascar), leading to the Maputo agreements of August 2009, and the Addis Ababa Additional Act of November 2009, which set out a roadmap for a consensual transitional government leading to inclusive and transparent elections monitored by the international community. He continues as follows:

“But in December 2009 Rajoelina unilaterally abandoned those agreements, and set out plans for the HAT to arrange elections in March 2010 without the involvement of the other parties.

“Due to a continued lack of progress, largely due to opposition from the HAT, on 17 March 2010, the AU announced sanctions against 109 Malagasy political figures, including all of the HAT and others close to Rajoelina.

“Sanctions include a travel ban within the AU, the freezing of assets in African banks, and diplomatic isolation. The AU has urged international partners to support the decision and refrain from any activity which would undermine its actions.

“The French and South Africans hosted the leaders of the four Malagasy parties in Pretoria from 26–28 April 2010. Three days of meetings appear to have produced few results, but it is possible the parties may return to Pretoria later in May.”

54.18 Against this background, the Minister judges that closure of Article 96 consultations is the right next step for the EU, so as “to increase pressure on the Malagasy parties to reach a consensual and transparent solution … [and] also send a signal to other ACP states that the EU will act in response to coups and that the EU will use the Cotonou Agreement to demonstrate its commitment to democracy in Africa.” He notes that the closure of Article 96 consultations does not prevent the EU from engaging with the parties in Madagascar, and the decision on suspension of development aid can be reviewed if there is progress towards a solution (viz., the Commission’s benchmarks). He concludes thus:

“On 12 May 2010, Rajoelina announced he would not stand in the possible presidential elections in November. This move may open the way to a solution to the crisis. But Rajoelina has not honoured previous promises and it is too early to use his announcement as a reason not to close Article 96 consultations at this time.”

Conclusion

54.19 Our predecessors’ hope that Madagascar would in some way break the mould was, sadly, in vain.

54.20 On a number of occasions, usually involving military coups or violence by military regimes, development cooperation has been suspended, consultations have been entered into, benchmarks have been agreed, progress has been monitored — and the impact has been questionable. Even so, as noted elsewhere in this Report in our consideration of the latest quinquennial revision of the Cotonou Agreement, the then Minister at the Department for International Development (Mr Gareth Thomas) makes clear that the Commission found itself resisting requests for further changes by the ACP that would have weakened the effectiveness of Article 96 or prolonged the process. This is discouraging, to say the least.
54.21 We now clear the Council Decision, which we consider relevant to the debate in the European Committee on the revision of the Cotonou Agreement that we have recommended.232

54.22 In so doing, the Committee recognises that the general election and consequent lack of a European Scrutiny Committee militated against the Minister withholding agreement to this Decision until it had been scrutinised, and does not object, on this occasion and in these circumstances, to his agreeing to its adoption prior to scrutiny.

Annex: The political dimension of the Cotonou Agreement

“Emphasis on the key role of political dialogue

Dialogue should allow ACP and EC to address all issues of mutual concern and to ensure consistency and increased impact of development cooperation.

It will be conducted in a flexible manner: within and outside the institutional framework, at national, regional or ACP level.

Peace-building policies, conflict prevention and resolution

Dialogue and cooperation strategies will address peace-building policies and conflict prevention. The partnership will focus in particular on regional initiatives and the strengthening of local capacities.

Essential Elements

Respect for human rights, democratic principles and the rule of law are essential elements of the partnership.

A new procedure has been drawn up to deal with violations. It puts more emphasis on the responsibility of the State concerned and allows for greater flexibility in the consultation process. In cases of special urgency — serious violations of one of the essential elements — measures will be taken immediately and the other party notified.

Good governance

Commitment to good governance as a fundamental and positive element of the partnership, a subject for regular dialogue and an area for active Community support.

The EC and the ACP have also agreed on a new specific procedure to be launched in serious cases of corruption. This is a real innovation, both in the EC-ACP context and in international relations. It is not confined to EC activities. It will be applied in cases of corruption involving EDF money and more widely, in any country where the EC is

232 (31447); see chapter 1 of this Report.
financially involved and where corruption constitutes an obstacle to development. This is a very important aspect, as public finance constitutes a whole, regardless of the source of finance; corruption involving other sources of financing therefore indirectly affects EDF funding. The EC and the ACP States are together sending a clear and positive signal to European taxpayers and investors, and legitimate beneficiaries of aid.”

55 European Security and Defence Policy: Policing in Afghanistan


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Background

55.1 As recorded in the preamble to Joint Action 2007/369/CFSP, on 16 November 2005 the Council agreed on the Joint Declaration “Committing to a new EU Afghan Partnership”, which stated the commitment of the European Union and the Government of the Islamic Republic of Afghanistan “to a secure, stable, free, prosperous and democratic Afghanistan as laid out in the Afghan Constitution adopted on 4 January 2004 [14 Dalwa 1383]. Both parties wish to see Afghanistan play a full and active role in the international community and are committed to building a prosperous future free from the threats of terrorism, extremism and organised crime”.

55.2 Subsequently, on 31 January 2006, the Afghanistan Compact (London) affirmed the commitment of the Government of Afghanistan and the international community and established a mechanism for co-ordinating Afghan and international efforts over the next five years “to work towards conditions where the Afghan people can live in peace and
security under the rule of law, with good governance and human rights protection for all, and can enjoy sustainable economic and social development”.

55.3 Against this background, and following two assessment missions, the Council agreed to the establishment of the EU police mission to Afghanistan (EUPOL Afghanistan), which would “work towards an Afghan police force in local ownership that respects human rights and operates within the framework of the rule of law”; it should “build on current efforts and in doing so it should address issues of police reform at central, regional and provincial level”. This decision was subsequently endorsed in March 2007 in United Nations Security Council Resolution 1746 (2007), which welcomed the decision by the European Union “to establish a mission in the field of policing with linkages to the wider rule of law and counter-narcotics, to assist and enhance current efforts in the area of police reform at central and provincial levels”.

55.4 The mission’s detailed terms of reference and *modus operandi* were also set out in Joint Action 2007/369/CFSP, which the previous Committee cleared on 25 April 2007. In short, EUPOL Afghanistan was established on 30 May 2007 with a three-year mandate; its role is to increase the capacity of the Government of Afghanistan in the rule of law sector, including working closely with European Commission and US efforts in Afghanistan in the field of policing with linkages to the wider rule of law. The operational phase of EUPOL AFGHANISTAN started on 15 June 2007. Its main tasks are to:

— develop police reform strategy, including work towards a joint overall strategy of the international community;

— support the Government of Afghanistan in coherently implementing strategy;

— improve cohesion and co-ordination among international efforts;

— address linkages to the wider rule of law.

55.5 Although the Mission was launched with a three-year mandate, decisions on financing are taken annually. The most recent instance was a Joint Action extending the financing beyond 30 November 2009 until the end of the mission’s current mandate in May 2010 and providing for the establishment of a project cell to enable the mission to identify and implement small scale projects that support its overall mandate. This was considered by the previous Committee on 11 November 2009. The Report of that meeting sets out the rationale for the previous Government’s support for the mission and the history of the Committee’s consideration of the subject thus far, and includes the views on its performance by two previous Ministers for Europe (Caroline Flint and Baroness Kinnock), which respond to requests by the previous Committee for such an assessment when it cleared the previous such Joint Action a year earlier.

55.6 In his Explanatory Memorandum of 2 November 2009 concerning that most recent amendment to the Joint Action, the then Minister for Europe (Chris Bryant) said that EUPOL Afghanistan had “turned a corner” and was “now regarded by other international
players in country as providing a unique set of civilian policing expertise to help develop
the Afghan National Police (ANP).” The then Minister reported that there had been
“progress against all priorities and the Minister of Interior has expressed his satisfaction
with EUPOL’s work”. As well as continuing to mentor, train and advise Afghan
counterparts, the Minister listed some “notable recent successes”. In Brussels, Member
States were currently discussing the logistics and staffing requirements for the mission
to strengthen its presence in the provinces. Though still short of the 400 target, numbers were
increasing. But it remained “crucial that the mission reaches its mandated strength if it is to
be successful and is increasing the size of its contingent”; other Member States were being
encouraged to prioritise secondments to EUPOL, and the UK was supportive of increased
flexibility in EU recruitment rules to allow EUPOL to contract more staff directly. The
costs of five additional contracted positions funded by the Common Foreign and Security
Policy budget have been factored in to the mission’s new budget.”

55.7 The Minister then turns to the establishment a project cell in the mission at the cost of
€150,000. He supports the creation of project cells in some ESPD missions “to provide
limited programme funds to purchase assets in support of their mentoring and training
roles”, noting that such project cells are already established in the EU Security Sector
Reform missions in the Democratic Republic of Congo (EUSEC DRC and EUPOL DRC).

55.8 Finally, with regard to the Financial Implications, the then Minister said:
— the Joint Action provided €17.4 million for the period until 30 May 2010 when the
current EUPOL mandate would expire, which was in addition to the €64 million
already committed from 1 December 2008 to 30 November 2009, taking the total
financing for the period until 30 May 2010 to €81.4 million;

— the UK contribution to the additional financing would be approximately €3 million
euros (around £2.7 million);

— the UK currently had funding for 15 personnel in the Mission provided through the
cross-government Conflict Prevention Pool; and

— at the October 2009 GAERC, he had announced an uplift in UK numbers to 19
personnel from January 2010.

The previous Committee’s assessment

55.9 Though welcome, the signs of progress in leadership, in the local response and, after
much difficulty it seemed, in focussing on specific priorities had been a very long time
coming. And while the UK was pulling its weight, both with regard to EUPOL and
bilaterally, it was plain that not all Member States had yet responded sufficiently to enable
the mission to fulfil the tasks that the Council laid upon it. Only in May 2010, when the
present Joint Action expired, would it be possible to know if, as the then Minister put it,
EUPOL had indeed “turned a corner”. In the meantime, a further €81.4 million would take
the total expenditure to over €200 million. All in all, and notwithstanding what the then

235 ibid.
Minister said about recent progress, the previous Committee found it hard to see what had been achieved in relation to the expenditure thus far.

55.10 Moreover, the context in which this latest extension was to take place continued to be of intense domestic and international concern. The Conclusions adopted by the 27 October GAERC, along with the EU Action Plan for Afghanistan and Pakistan, thus assumed a particular significance. As the Action Plan noted:

“The situation in Afghanistan is deteriorating. We are not only faced with a critical security situation. Progress on political reform, governance and state-building is too slow, and in some parts of the country almost non-existent. In the absence of good governance, access to basic services, adequate justice and rule of law, the combined international and Afghan security efforts will not produce the necessary political stability needed for a secure and prosperous development.

“Afghanistan is now entering a decisive period. Much is at stake. The formation of a new Government in Kabul provides an opportunity to frame a new agenda and a contract with the Afghan people. That agenda should be supported by a renewed compact between the Government of Afghanistan and the international community. This requires above all strong Afghan leadership, as well as enhanced and better coordinated and concerted international support. Political and civilian efforts must go hand in hand with security measures and developments on the ground.”

55.11 All in all, though the Joint Action proposed only a relatively modest increase in the overall cost of EUPOL Afghanistan’s budget, the previous Committee judged that this wider background warranted it being debated in the European Committee.

55.12 That debate took place on 18 January 2010. At its conclusion, the Committee resolved that the mission was now “making an important contribution to the international effort to reform the Afghan National Police”.

The Council Decision

55.13 This Council Decision extends the mandate of EUPOL Afghanistan until 30 May 2013. Under this Decision, EUPOL Afghanistan will significantly contribute to the establishment under Afghan ownership of sustainable and effective civilian policing arrangements, ensuring appropriate interaction with the wider criminal justice system. It remains a non-executive mission, which aims to achieve its strategic goals by monitoring, mentoring and advising the Afghan police and rule of law structures in Kabul, at regional and provincial levels.

55.14 The Council Decision sets out revised objectives for the mission, which are to:

— assist the Government of Afghanistan in coherently implementing its strategy towards sustainable and effective civilian policing arrangements, especially with regard to the

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237 The record of the debate is available at http://www.publications.parliament.uk/pa/cm200910/cmgeneral/euro/100118/100118s01.htm.
Afghan Uniform (Civilian) Police and the Afghan Anti-Crime Police, as stipulated in the National Police Strategy;

— improve cohesion and coordination among international actors;

— work on strategy development, while placing an emphasis on work towards a joint overall strategy of the international community in police reform and enhance cooperation with key partners in police reform and training, including with the NATO-led mission ISAF and the NATO Training Mission and other contributors; and

— support linkages between the police and the wider rule of law.

The Government’s view

55.15 In his Explanatory Memorandum of 17 May 2010, the Minister for Europe at the Foreign and Commonwealth Office (David Lidington) says that, since its deployment in June 2007, the Government believes that EUPOL Afghanistan has not fulfilled its potential as the lead organisation amongst the International Community in pursuing strategic reform of the Afghan National Police (ANP). He describes what he calls “the initial stages of the mission” as being “characterised by a lack of focused strategic direction, a shortage of high quality staff, as well as logistics and security challenges.” He continues as follows:

“Despite this, in the last 18 months, the mission has delivered some important reforms and projects, although most of these have been centred on Kabul. This improvement has been brought about by better leadership, greater numbers of personnel — the mission is now at 283 staff — and a more reform minded Minister of the Interior, as well as refocusing the mandate on six clear priorities.

“As a result, the Government believes that EUPOL Afghanistan has an important role to play and should be extended for three years (the timescale generally agreed necessary to complete the next phase of implementation.) Amongst the International Community’s efforts in Afghanistan, the mission provides unique civilian policing skills which are essential if the proposed increase in the size of the Afghan National Police is to be accompanied by the quality improvement needed to create a responsive community police force. The UK’s vision for police reform in Afghanistan relies on both a top down and bottom up approach. The US and NATO police training efforts are focused at the district level and involve training large numbers of ANP officers in the very basics of policing. By contrast, the EU mission has the mandate to develop the framework for the civilian police, making links to the wider rule of law sector, under which all reform is conducted. This role has been recognised by the Afghan authorities — notably Minister of Interior Atmar — and cemented earlier this year through the five year Afghan National Police Strategy. EUPOL now has the lead on developing and supporting the implementation of the strategy for the Afghan Civilian Police and the Anti-Crime Police. Over the next three years this will be the core focus of the mission.”

55.16 The Minister then says that:

“the mission will only succeed if it has effective links with the other main international actors involved in Afghan police reform, especially the NATO Training
Mission. For that reason, the UK has seconded a police officer to be the Senior Civilian Policing Advisor to the NATO mission and the link into EUPOL. During negotiations over the new mandate, the UK also insisted on a strong requirement for EUPOL to enhance cooperation with NATO as contained in Article 3(1) of the Council Decision.”

55.17 He goes on to say that:

“in order to improve delivery outside of Kabul, the Operations Plan which underpins the Council Decision provides for a refocusing of EUPOL personnel into a smaller number of strategically important provinces.

“The full range of mission objectives will be implemented in the first tier of locations (Kabul, Mazar-e-Sharif, Herat, Bamyan and Kandahar). A second group of locations (Maimanah, Kunduz, Feyzabad, Tarin Kot, Chaghcharan, Puli Alam, Pol-e-Khumri and Lashkar Gah) will see certain elements of the mandate implemented depending on local circumstances, including security. The Government encourages all Provincial Reconstruction Team lead nations to work with the mission to follow up on the London Conference Communiqué and provide the logistics, accommodation and security support that the mission requires to operate effectively outside the capital.

“Under the new mandate, activity in the regions and provinces will be focused on urban centres and brought together under the umbrella of City Police and Justice Projects. This programme of work draws inspiration from the successful Kabul City Police Project, led by British police officers, and which helped to embed basic community policing practice whilst improving the capital’s security. The Government supports the intention behind the expansion of the police projects to include justice activities. The aim is to provide the mission with an overarching framework for reform in a given location that brings together coherently specific deliverables against the six strategic objectives. Experience from Kabul has shown that in order to cascade reforms throughout the police structures, EUPOL personnel sometimes need to work at the District level, and the revised mandate provides for this. In agreeing to this provision, the UK has been clear that this does not mean a blurring of focus for the mission and that personnel will only work in, and not be based at, the District level.

“If the mission is to capitalise on the structural reforms set in train by the Council Decision, it will require continued support from Member States and the central EU institutions. In particular, the EU must ensure that all its efforts in country pull in the same direction, especially with the establishment of the European External Action Service.”

55.18 With regard to the Financial Implications, the Minister says that:

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238 The Afghanistan conference took place in London at Lancaster House on 28 January 2010. According to its website, “the international community came together to fully align military and civilian resources behind an Afghan-led political strategy”, which “will engage the Afghan people in defence of their country to divide the insurgency and build regional cooperation.” See http://afghanistan.hmg.gov.uk/en/conference/ for full details.
— the Council Decision provides €54.6 million for the period from 1 June 2010 to 30 May 2011, at which point a new annual budget will be proposed;

— funding for the common costs of the mission (HQ, in-country transport, office equipment etc) is met from the Common Foreign and Security Policy budget, of which the UK share, via its contribution to the overall EU Budget, is around 13.5%;

— the UK currently provides funding for 20 personnel in the Mission; 15 based in Kabul, five based in Helmand.

55.19 Finally, the Minister notes that this Council Decision is due to be adopted at the AGRIFISH Council on 17 May 2010.

Conclusion

55.20 It would seem that the mission has indeed turned a corner. But it will be some time before it is clear to what extent it is now on the right road. The first opportunity for assessing this will be in a year’s time, when the next annual budget is proposed. On that occasion, we ask the Minister to provide an assessment. We shall be particularly interested in his views on, and illustrations of, the extent to which:

— the mission has delivered concrete outcomes with respect to the aims and considerations to which he draws attention in his Explanatory Memorandum;

— there has been continued support from Member States and the central EU institutions; and

— the EU has ensured that all its efforts in country pull in the same direction (c.f. paragraphs 55.15–55.17 above).

55.21 We should also like this assessment to include reference to the impact of the new EU Special Representative (EUSR) to Afghanistan, which we deal with elsewhere in this Report.239

55.22 In the meantime, we are reporting this latest development to the House because of the widespread interest in Afghanistan.

55.23 In so doing, we recognise that the general election and absence of this Committee militated against the Minister withholding agreement to this Decision until it had been scrutinised, and do not object, on this occasion and in these circumstances, to the action that he took in agreeing to its adoption prior to scrutiny.

239 (31425); see chapter 51 of this Report.
56 European Security and Defence Policy and Guinea-Bissau


**Legal base**
Article 28 and 43(2) TEU; unanimity

**Department**
Foreign and Commonwealth Office

**Basis of consideration**
EM of 21 May 2010

**Previous Committee Report**

**To be discussed in Council**
25 May 2010 Competitiveness Council

**Committee’s assessment**
Politically important

**Committee’s decision**
Cleared; further information requested

**Background**

56.1 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 presidential democracy which allows for multiparty politics and an elected national assembly).

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

56.3 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.

56.4 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.

56.5 It then notes that, following the March 2009 assassination of President Viera, the interim Head of State is the parliamentary speaker Raimundo Pereira; and that elections were due to occur in June 2009. The entry (which was last reviewed on 1 July 2010) closes as follows:

“In recent months several 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.”

Joint Action 2008/112/CFSP

56.6 The preamble set out the context for the proposal therein:

— the promotion of peace, security and stability in Africa and Europe is a key strategic priority of the Joint Africa-EU Strategy adopted by the EU-Africa Summit on 9 December 2007;

— security sector reform (SSR) in Guinea-Bissau is essential for the stability and sustainable development of the country;

— in November 2006, the Government of Guinea-Bissau presented a National Security Strategy underlining its commitment to implement security sector reform;

— the Council and the Commission carried out an initial joint information gathering mission in May 2007 in Guinea Bissau, in cooperation with the Bissauan authorities, to develop an overall EU approach to support for the national security sector reform process;

— an Action Plan for the Restructuring and Modernisation of the Security and Defence Sectors was presented by the Government of Guinea-Bissau in September 2007, and the institutional framework for the implementation of this Action Plan was established;

— in order to combat the increasing threat posed by organised criminal networks operating in the country, the Government of Guinea-Bissau, with the assistance of the United Nations Office on Drugs and Crime (UNODC), also announced an Emergency Plan to Fight Drug Trafficking in September 2007;

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a report by the UN Secretary-General of 28 September 2007(S/2007/576), whilst commending the Government of Guinea-Bissau for the positive measures taken so far to implement the security sector reform programme, also underlined the country’s inability to combat drug trafficking by itself and called for technical and financial support from regional and international partners;

— on 19 November 2007, the Council considered that an ESDP action in the field of security sector reform in Guinea Bissau would be appropriate, in coherence with and complementary to European Development Fund and other Community activity; and

— following a second EU fact-finding mission deployed in October 2007, the Council approved on 10 December 2007 the General Concept for potential ESDP action in support of Guinea-Bissau Security Sector Reform.

56.7 In his Explanatory Memorandum of 17 January 2008, the then Minister for Europe at the Foreign and Commonwealth Office (Mr Jim Murphy) explained that the Joint Action — to establish a European Security and Defence Policy (ESDP) security sector reform (SSR) Mission in Guinea Bissau (EUSSR Guinea Bissau) — followed a visit in 2007 by the Ministry of Defence’s Security Sector Defence Advisory Team, and would provide advice and assistance to the local authorities in Guinea Bissau on reform of the security sector, within the initial framework of the National Security Sector Reform Strategy, which now needed to be implemented. The Mission’s tasks would include:

— 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 the areas of command, control and logistic support, and mainstreaming the counter narcotics effort;

— supporting the development of detailed plans for the restructuring of police bodies into four services;

— advising on the planning and development of an effective criminal investigations capacity.

56.8 The Mission was to comprise approximately 15 experts in the various fields of the security sector; consist of a preparatory phase beginning in mid February, and an implementation phase beginning no later than 1 May 2008; and last for 12 months, with a review six months after the beginning of the implementation phase. Funding for common costs (in-country transport, office equipment etc) would be met from the Common Foreign and Security Policy Budget, to which the UK currently contributed approximately 17%; with an estimated cost of €5.75 million, the cost to the UK would be approximately £739,000.

56.9 The Minister explained that, with the country still dealing with the aftermath of civil war, and in the lead up to November 2008 elections, there was now a good opportunity to assist SSR in Guinea Bissau, and help to address its use as a transit point for drugs being trafficked from Latin America to Europe; there was strong support for the EU’s proposals from the authorities, who lacked the capacity and structures to deal with the problems
caused directly and indirectly by the influx of drugs and organised crime to the country, and from all political parties in the country, which meant that the outcome of the elections should not affect the reform process. He said that, although Guinea Bissau’s problems were large, the country was small, and enough political will existed to instigate reform.

56.10 The previous Committee felt that the justification was clear, the Mission had been well-prepared and the costs were relatively modest, and accordingly cleared the document at our meeting on 23 January 2008; the Joint Action was then agreed at the 28 January General Affairs and External Relations Council.

56.11 The previous Committee also said that only time would tell if the Minister’s hopes came to fruition. It noted that the mission was due to last for a year; that there would be a mid-point review; and that moves were afoot within the Council to develop formal assessment mechanisms for such ESDP missions. It therefore asked, when the mission ended, the Minister to let it have either the mission assessment and his views thereon or, if it had not yet been formally assessed, his own assessment of its outcomes and effectiveness (to include the conclusions of the mid-point review and steps taken to address them).

56.12 On 29 April 2009 the previous Committee considered an extension of the current mandate for a further six months until 30 November 2009. The then Minister for Europe (Caroline Flint) said that the EUSSR Mission had, so far, carried out important work under difficult circumstances, in particular in the police and prosecution services. However, overall progress on SSR had been slower than expected and the Mission had not yet accomplished its mandate. Political instability in the country had hampered the mission’s progress; the high profile assassination of Guinea Bissau’s Chief of the Armed Forces, General Tagme, along with President Vieira in March, combined with the difficulties involved by working with three different governments since June 2008 and the staging of legislative elections last November, had all distracted attention from the SSR process. Guinea Bissau’s limited access to SSR expertise and basic infrastructure, such as office space and equipment, had also contributed to delays.

56.13 However, the then Minister said, there was no doubt that Guinea Bissau continued to depend on international assistance to succeed in their SSR process and EU SSR Guinea Bissau was a crucial part in creating stability. Despite the recent assassinations and resulting political fragility, the new government continued “to provide a window of opportunity to implement meaningful reform, expressing a clear request for continued ESDP engagement beyond 31 May 2009 and underlining its commitment to the reform process”; this had been demonstrated by their appointment of a Special Counselor for the Prime Minister for SSR and the fight against drug trafficking, and their re-animation of the national SSR structures.

56.14 The then Minister also noted that other partners from the International Community, including the United Nations, ECOWAS and the European Commission, “also continued to express their willingness to step up their SSR related activities in Guinea Bissau and to cooperate with the ESDP mission”, and were considering “transferring its various actors in Bissau, including SSR work streams into a single ‘integrated mission’ from June 2009.”

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241 Area: 36,120 sq km; Population: 1.5 million (2005 United Nations estimate).
56.15 The then Minister explained that this would be a “no cost extension”: the Mission would use money left unspent from the €5.65m allocation under the existing mandate to pay for mission activities until 30 November 2009; it would provide the Mission a further six months to fully accomplish its current mandate, and an opportunity “to test the commitment and capability of the new Government of Guinea Bissau (G-BG) to implement SSR, particularly in light of the Presidential elections planned for June.”

The previous Committee’s assessment

56.16 The previous Committee cleared the document, again reporting it to the House because of the widespread interest in European Security and Defence Policy and its growing involvement in security sector reform in troubled areas of Africa.

56.17 In so doing, it drew the then Minister’s attention to its request of her predecessor (c.f. paragraph 56.11 above). It noted that what the then Minister described as “Other partners from the International Community”, including the United Nations, ECOWAS and the European Commission having expressed willingness to step up their SSR–related activities in Guinea Bissau and to cooperate with the ESDP mission, and asked her to ensure that the review included an assessment of the extent to which this happened and of its overall effectiveness.242

56.18 The Joint Action was extended for a further six months until 31 May 2010, with the majority of the costs covered by outstanding funding from the mission’s budget for the period up to 30 November 2009.

56.19 In his Explanatory Memorandum of 2 November 2009, the then Minister for Europe (Chris Bryant) commented in much the same terms as his ante-predecessor six months earlier. The assassinations had distracted the Guinea Bissau government’s attention away from the SSR process; officials were often unavailable to attend pre planned meetings with the Mission to discuss SSR; and there were a number of delays with getting Government approval for the proposed restructuring plans for the Armed Forces. The Mission had therefore not been able to fully achieve its mandate. But a new President had been elected and sworn in on 8 September 2009. The new government had subsequently expressed its intent to re-engage in the SSR process, which the then Minister took “as a sign that the Mission will receive the necessary political support over the next six months to complete the tasks set out in its current mandate.”

56.20 The then Minister went on to say that:

“as part of any extension there will be a strategic review on the future of EU engagement in Guinea Bissau that will be submitted to the Political and Security Committee (PSC) by the end of January 2010. The review will focus on where, amongst other International Community interventions, the EU can add most value to stabilisation efforts in Guinea Bissau in the future. This review will then 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.”

56.21 Turning to the review recent six-month extension, the Minister said that the report recommended that the Mission was extended for six months in order 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;
- “To conclude the mission’s existing work; and
- “To build bridges towards further implementation in the future.”

56.22 Finally, on the financial implications, the then Minister said that:

“Due to the political instability in Guinea Bissau over the previous eight months and slow progress on SSR so far the UK has pushed hard for any extension to be of minimal cost and would not support another extension of the Mission, in its current form, beyond the end of the proposed six month period. 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.”

56.23 Finally, the then Minister explained that the proposed budget for the six month extension was €1.53 million. But with the estimated amount left unspent from the current Mission budget at the end of November 2009 of €1.192 million, the net cost to the EU for extending the mission was estimated to be €338,000, including €290,000 to fund the costs of terminating the Mission should it close in six months time — so the additional funding for the Mission’s running costs would be €48,000.

The previous Committee’s further assessment

56.24 The previous Committee drew this latest extension to the attention of the House for the same reasons as hitherto. In so doing it:

— noted that, three years after the first commitment by the then G-BG to security sector reform, there was a strong sense of disillusionment running through the 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; and

— asked the then Minister to write with information about the outcome of the January 2010 review and the PSC’s assessment and recommendations, ahead of any final determination about what form any further EU involvement may or may not take.

The draft Council Decision

56.25 The attached Council Decision extends the mandate of EUSSR Guinea Bissau for a period of four months until 30 September 2010, and reduces the number of international staff for that period.

56.26 In his Explanatory Memorandum of 21 May 2010, the Minister for Europe at the Foreign and Commonwealth Office (David Lidington) says that this four-month extension
has been proposed in response to a military mutiny that took place in Guinea Bissau on 1 April, and:

“is 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.”

The Government’s view

The then Minister continues as follows:

“Security sector reform (SSR) is crucial to the development, security and stability of Guinea Bissau. Since gaining independence in 1973 the Guinea Bissau military has often interfered in political affairs, and, unfortunately, continues to do so; this undermines the authority of the civilian Government. Guinea Bissau is also a gateway for the illegal narcotics trade into Europe and there are fears that, without successful SSR, the country could slip into further instability. As such, a stable Guinea Bissau would be an important contribution to the fight against narcotics as well as for the stability of the wider West Africa region.

“Prior to the events of 1 April, there were hopeful signs of local engagement with the EU’s Security Sector Reform mission that is intended to support reform and greater stability. For example, the Prime Minister of Guinea Bissau sent a letter of intent to the previous EU High Representative for Foreign and Security Policy, Javier Solana. That is why the UK agreed, in principle, to support the launch of a new smaller EU mission from 1 June focused more clearly on reform of the armed forces.

“However, the deployment of this new Mission has been put on hold due to a military mutiny that took place on 1 April. The mutiny not only displayed a complete lack of regard and buy-in to the SSR process by the military, but it has also delayed the implementation of the security sector legal framework, for which EUSSR Guinea Bissau has pushed, and which would have been fundamental to the success of the future Mission. The President quickly declared that the situation was under control, yet the Armed Forces Chief remains incarcerated and no action has been taken against the mutineers, who remain in positions of power. It is apparent that the local authorities lack the capacity and structures to deal with the root causes of instability (international drugs trafficking and organised crime) themselves. To withdraw CSDP engagement completely now could further weaken them.

“Following the military mutiny the UK does not see the case for deploying a longer term mission because this may be taken as rewarding unconstitutional behaviour. At the same time, recognising the damage it would do to Guinea Bissau’s own development, security and stability if the Mission were pulled out immediately, the Government believes that there should 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. The Council Decision provides for a review of engagement two months into the proposed four month extension to consider whether the EU should launch a new mission after 30 September 2010. If conditions on the ground have not
improved and make serious SSR unlikely, then we believe the EU should consider closing the mission.”

56.28 The Minister then says that one measure of progress will be the extent to which the Guinea Bissau government has met the demands set out in an EU demarche issued in April, which were:

- 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.

56.29 However, he then says:

“It may be that not all of these demands can be met in full. Specifically, the immediate release of the detained Armed Forces Chief may not be possible politically. We will continue to monitor the situation closely, including analysing alternative solutions such as requesting that the Armed Forces Chief is either liberated or prosecuted under Guinea Bissau law. This would allow the President room to manoeuvre and the opportunity to appoint another, legitimately selected, individual.

56.30 As for the mission itself, the Minister says:

“Under the proposed four-month extension, the mandate of EUSSR Guinea Bissau would not change but the Mission’s activities and size would both be scaled down. This is an explicit acknowledgement that, until the current situation is resolved, there is little chance of the Mission achieving success, but this approach maintains a CSDP foothold in-country.”

56.31 With regard to the most recent extension, the Minister says:

“We recognise that this does not accord with the position set out by the then Minister for Europe in his letter of October 2009 which stated that the UK would not support another extension to EUSSR Guinea Bissau in its current format. However, in light of the events of 1 April we have had to revise our position as the circumstances in which the Mission has been operating have changed. To bind ourselves inflexibly to our previous position would be to the detriment of Guinea Bissau itself, and would hand a victory to the military mutineers.”

56.32 Finally, the Minister say that:

— the total cost to the EU to date has been €7.13 million;
— the amount required for the four-month extension is €630,000, with the first month of the mission’s extension covered by under-spends on the current budget;

— the UK’s contribution to the overall EU budget is 13.59% meaning that the UK’s share of the costs for this extension is approximately £85,600; and

— the Council Decision is expected to be agreed at the Competitiveness Council in Brussels on 25 May 2010.

**Conclusion**

56.33 It is for others to judge whether or not this is the right approach, given how much has been spent and how little has been achieved.

56.34 For our part, we note that the Committee has heard nothing from the Foreign and Commonwealth Office about developments since last November, despite its request to the previous Minister to write with information about the outcome of the January 2010 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.

56.35 A further review of engagement is now in prospect, two months into the proposed four-month extension, to consider whether the EU should launch a new mission after 30 September 2010. We ask the new Minister to let us know the outcome and his views, so that we are not again presented with scrutinising a *fait accompli*.

56.36 In the meantime, the Committee recognises that the general election and consequent lack of a Committee militated against the Minister withholding agreement until this Decision had been scrutinised, and does not object, on this occasion and in these circumstances.

56.37 We now clear the document.
57 European Neighbourhood Policy

| (31647) | Commission Communication: Taking stock of the European Neighbourhood Policy |
| 10070/10 + ADDs 1, 3–8, 10–13 | COM(10) 207 |
| | Commission Staff Working Document accompanying the Communication: Progress Reports on Armenia, Azerbaijan, Georgia, Moldova, Ukraine, Israel, Jordan, Lebanon, the occupied Palestinian Territory and Egypt. |

Legal base
Documents originated 12 May 2010
Deposited in Parliament 3 June 2010
Department Foreign and Commonwealth Office
Basis of consideration EM of 21 June 2010
Previous Committee Report None; but see (30615) 9029/09: HC 19– xviii (2008–09), chapter 17 (3 June 2009)
To be discussed in Council To be determined
Committee’s assessment Politically important
Committee’s decision Cleared

Background
57.1 The European Neighbourhood Policy (ENP) aims to promote security, stability and prosperity among the EU’s neighbours through implementation of political and economic reforms. It applies, in the East, to Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine, and, in the South, to Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, the Occupied Palestinian Authority, Syria and Tunisia. Bilateral Action Plans detail the planned reforms agreed between the EU and partner countries (Algeria, Belarus, Libya and Syria, while covered by ENP, do not participate fully in it and do not have agreed Action Plans). In addition to these bilateral components, ENP comprises a number of regional and multilateral initiatives including the Eastern Partnership and the Union for the Mediterranean.

The Commission Communication
57.2 In its introduction, the Commission says that the ENP has transformed relations between the EU and its neighbours. The picture is painted thus: that since its launch in 2004, political contacts have increased in profile and intensity; trade has increased at double digit rates, aided by a steady process of liberalisation and regulatory convergence; EU assistance has been tailored to partners’ reform needs; and its volume in the current Financial Framework has increased by 32 %.
57.3 However, the Commission says:

“[M]uch remains to be done if the ENP’s goals of shared stability, security and prosperity are to be achieved. The Lisbon Treaty recognises this by committing the EU to the development of a special relationship with neighbouring countries aiming at establishing an area of prosperity and good neighbourliness (Art. 8 TEU). The policy will also benefit from greater consistency, coherence and coordination of the Union’s external policy brought about by the appointment of the High Representative/Vice-President and establishment of the European External Action Service, as well as from the appointment of a Commissioner with a specific regional mandate allowing him to devote extra attention to the ENP and the countries it covers. Against this background, the Commission, at the outset of this new term, considered it useful to take stock of the progress achieved since the launch of the policy. The analysis presented here will serve to guide the further development of the ENP, to make best use of the new possibilities opened by the Lisbon Treaty and to optimize the ENP’s contribution to the EU’s longer-term objectives, including the 2020 agenda.”

57.4 The Communication takes stock under a number of two broad headings — Bilateral Cooperation and Multilateral Cooperation. Under the former, the Commission surveys developments and challenges in

— Improving governance and addressing protracted conflicts;
— Promoting mobility;
— Advancing economic integration;
— A shared responsibility for the environment;
— Working together to address climate change
— Sustainable energy for citizens and industry; and
— Financial instruments responding to policy objectives.

57.5 The Commission then briefly reviews related Multilateral Initiatives:

— the Euro-Mediterranean Partnership, which began in 1995;
— the Union for the Mediterranean, launched in 2008 to give it “a new impetus”;
— the Eastern Partnership, launched in May 2009, “in response to the interest of eastern partners to come closer to the EU and to create the necessary conditions to accelerate political association and further economic integration”; and
— the Black Sea Synergy, launched in 2008 and which “reflects the EU’s growing interest in promoting regional cooperation around the Black Sea”, incorporating Bulgaria, Greece and Romania and other regional partners.

57.6 The implementation of the ENP is supported by the European Neighbourhood and Partnership Instrument (ENPI) with a budget of some €11.5 billion (2007–13). The
Commission says that, after a mid-term review of ENPI programming documents — “conducted in cooperation with partner countries and taking into account the result of an unprecedentedly wide consultative process involving civil society, EU Member States and other donors” — country allocations better reflect the needs, the levels of ambition and progress and the absorption capacity of partners.

57.7 The Staff Working Documents annexed to this Communication set out in more detail the implementation of the ENP both sectorally, and with each partner, and areas that continue to require action.

The Government’s view

57.8 In his Explanatory Memorandum of 21 June 2010, the Minister for Europe (Mr David Lidington) considers the Communication and accompanying progress reports “crucial to the ENP process because they constitute an annual evaluation of the progress made against agreed commitments.” The Communication “helpfully sets ENP in the broader political context.”

57.9 The Minister notes that, in considering last year’s progress reports, the previous Committee commented on the need for effective resource allocation in support of the ENP’s policy priorities and for the ENP to be more effective in leveraging human rights and justice reforms, and says that he has “commented on these issues throughout the Explanatory Memorandum”. He does so as follows:

“We are pleased that while economic development has slowed down as a result of the global economic downturn, the economic reform agenda remains in place. Action Plan objectives designed to support growth, such as improving access to financial services important to enterprises, continue to be implemented. Progress on democracy, human rights and freedom of expression, however, was disappointing. Accession to human rights conventions advanced but implementation requires much improvement.

“We are pleased that, as last year, the Commission have included objective measures of progress to underpin their findings. Within the appendices to the Sectoral Progress Report are indices detailing performance on governance, macro-economic situation, mobility under youth and skilling programmes, twinning projects and investment operations.

“We will continue to work closely with colleagues in DfID and UKRep through fora such as the ENPI Management Committee and COEST working group, to support the Commission in ensuring that funding is directed towards encouraging political and institutional reform. We work with partners across government in ensuring UK policy is reflected in multilateral fora such as the Eastern Partnership thematic ‘platform’ meetings.

“We attach particular importance to the development of the regional initiatives (the Eastern Partnership and Union for the Mediterranean). We remain fully engaged in negotiations on Association Agreements with individual partner countries and successors to existing Actions Plans. We are also keen to support technically the
development of the Eastern Partnership’s new Comprehensive Institution Building (CIB) programme to deliver on approximation in, for example, justice system reforms, as a concrete way of integrating Eastern partners with the EU.

“We attach particular importance to the development of the regional initiatives (the Eastern Partnership and Union for the Mediterranean). We shall also be fully engaged in negotiations on Association Agreements and successor Actions Plans.”

57.10 The Minister then comments on the sectoral progress report:

**Trade**

“Progress on trade and economic integration was made in 2009, including negotiations on the Deep and Comprehensive Free Trade Agreement (DCFTA) with Ukraine and on the trade-related aspect of the framework agreement with Libya. A feasibility study on DCFTA negotiations with Moldova was completed in 2009 and preparatory work with Georgia and Armenia continued. Agreements on further liberalisation of trade in agricultural and fish products were entered into with Israel and Egypt. The Palestinian Authority adopted the Pan-Euro Mediterranean protocol on rules of origin. Israel, Morocco, Tunisia and Moldova have already implemented much of their Action Plans’ customs-related commitments. The implementation of World Trade Organisation-compatible customs valuations rules remains problematic. In particular Ukraine and Georgia need to strengthen capacity in that their customs administrations for verification of origin. Georgia has begun some work on this by involving customs in the issue of preferential origin certificates. Effective progress on an ambitious DCFTA with Ukraine is a key priority for the UK. Expanding potential for free trade and investment is a fundamental area in which we can work with countries on sustainable economic growth.

**Migration**

“Visa facilitation and readmission agreements with the EU with both Ukraine and Moldova were implemented successfully and underpin UK returns policy to these countries. UKBA has a good working relationship with both countries, and cooperation on returns is good. Work on a similar agreement with Georgia has begun with conclusion anticipated in 2010. UKBA view increased focus on capacity building for ENP partners’ border management capabilities as a priority, to help prevent illegal migration transiting through partner countries. We welcome forthcoming Eastern Partnership CIB work in continuing to tackle the issue. EU Schengen Area visa liberalisation remains a long-term goal for partners. A structured dialogue with Ukraine on this is taking place and may serve as a model for other partners. Progress will hinge on the realisation by Ukraine of necessary conditions.

**Justice, freedom and security issues**

“In many countries legislative frameworks for elections and their conduct do not comply with international standards. Exceptions to this include Ukraine and Moldova whose recent elections met most international standards. In the South,
Lebanon and the Occupied Palestinian Territory received EU Electoral Observations Missions but were the only Southern countries to do so. Investment was made in improving capacity and efficiency of the judiciary but judicial independence and effectiveness remain of concern in most countries. All countries with Action Plans completed ratification of the UN Convention against Corruption, but indicators show deterioration over the period in a number of countries. Most partners continued implementation of national strategies to combat money laundering and the financing of terrorism, incorporating the 40 + 9 Financial Action Task Force recommendations.

“But weaknesses remain in implementation and advising financial institutions on their due diligence obligations. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (the Warsaw Convention) has not been ratified by Ukraine and not signed or ratified by Azerbaijan and Georgia. Partners did not ratify the 1997 protocol to the Second Additional European Convention in Criminal Matters although Armenia has signed the protocol. Good progress was made in capacity building within relevant authorities and law enforcement agencies in the fight against drugs. We will continue to urge that efforts are focused in this area through, for example, Eastern Partnership multilateral work on fighting corruption and CIB. Encouraging good governance is a key UK objective as the foundation of political stability and economic growth, our core aims for the region.

**Energy security, climate change and environment**

“We support ENP as one of the EU’s important tools for ensuring better energy relations with our neighbours. Progress has been achieved. The Eastern Partnership began work under its Energy Security heading in 2009, promoting mutual support and security mechanisms as well as energy efficiency and an increased use of renewable resources. Work also focuses on partner harmonisation with the acquis with steps being taken towards convergence with energy market rules. In December 2009 the accession of Moldova and Ukraine to the Energy Community was approved, subject to certain conditions on Ukraine relating to reform of its gas sector and a satisfactory assessment of the level of nuclear safety in all its operating nuclear plants. Moldova became a full member of the Energy Community on 1 May 2010. In October 2009 Ukraine approved a plan for the modernization and reequipment of the gas transport system from 2009–2015. Partners in the region continued to support the development of a Southern gas corridor to bring gas and oil from the Caspian and Central Asia to Europe. In the South, work continued on regulatory convergence and on an Egypt-Libya gas pipe. Algeria pursued construction of a gas connection with Spain and a link with Italy. Continuing EU-level engagement is key to ensuring the EU’s, and therefore the UK’s, energy security. The Commission continued to support partners in implementing the Kyoto Protocol. Algeria, Armenia, Belarus, Georgia, Israel, Jordan, Moldova, Morocco, Tunisia and Ukraine associated themselves with the Copenhagen Accord. The Commission will continue to urge remaining partners to associate themselves with the Copenhagen Accord as soon as possible and to provide information on what actions they will implement and we welcome this focus.”
The Minister then turns to the Country Progress Reports, where he says that, in general, he shares the Commission’s broad analysis of progress, and has the following particular comments:

**Armenia**

“Work on furthering contractual relations with Armenia progressed in 2009, both bilaterally and multilaterally through the Eastern Partnership. Outside the period covered by the report but of pertinence, negotiating directives for an Association Agreement were adopted by the EU in 2010. Negotiations on a DCFTA will start once conditions have been met. The first meeting of the EU-Armenia Human Rights Dialogue took place in December 2009 and we hope this will provide a forum for future constructive engagement in this area.

“Armenia made general progress in their Action Plan objectives and took some steps to address the political crisis which followed the Presidential elections in February 2008, although we believe there remains a need to resolve the issue of those who remain in detention and for a proper investigation into the 10 deaths that occurred before the country can move on fully. The global economic situation led to economic regression in the country and although the country responded with measures to mitigate its effects the resulting reduction in state revenues has impacted negatively on the reform process. We shall continue to work closely with the Commission and EU to encourage Armenia to engage further on its ENP Action Plan reforms.

**Azerbaijan**

“Outside the period covered by its report but of pertinence, negotiating directives for an Association Agreement were adopted by the EU in May 2010. Azerbaijan achieved some progress in the implementation of its Action Plan, specifically in economic and social governance. The country was not impacted upon radically by the global economic crisis which meant it was able to increase social agenda spending and investment. However, we share the Commission’s view that further reform in the justice sector, strengthening of the rule of law and fighting corruption is required. Serious concerns remain over human rights, particularly freedom of expression and media freedom.

“The overall strengthening of EU-Azerbaijan relations was enhanced by Azerbaijan’s engagement through the bilateral aspect of the Eastern Partnership. In particular, good co-operation was made with the EU in the energy field including Azerbaijan’s support for development of the Southern gas corridor. However, progress on negotiations for Azerbaijan’s accession to the World Trade Organisation was limited. Without WTO accession, it will not be possible to begin negotiations on a DCFTA.

**Georgia**

“Outside the remit the period covered by the report but of pertinence, negotiating directives for an Association Agreement with Georgia were adopted by the EU in May 2010. During 2009 first drafts of DCFTA strategic reform plans were prepared.
The Commission note that by deploying additional efforts to complete, adopt and begin implementing the agreed reform plans Georgia will be ready to start DCFTA negotiations.

“Georgia made particular progress in rule of law, reform of the justice system, the fight against corruption and trade facilitation and business climate. The country will need to continue its democratic reform efforts if it is to achieve genuine political pluralism. Polarisation of political life in Georgia and concerns about media freedom remain obstacles to political reform. Work is also required on poverty reduction, employment and social policy and agricultural development including sanitary and phyto-sanitary issues.

“The report also covers the EU’s engagement with regard to the Georgian conflicts. The EU continues to play an active role as a co-chair, together with the UN and the OSCE, for the ‘Geneva talks’ process of dialogue aimed at eventual conflict resolution. The EU Monitoring Mission (EUMM) is the only international body monitoring the situation along the Administrative Boundary Lines with Abkhazia and South Ossetia (albeit only from one side) and plays an important role in reducing tensions and maintaining international attention on the conflict.

Moldova

“Elections in April 2009 were disputed. Street riots, including attacks on the Parliament building and Presidential Palace were met with significant violation of human rights and freedom of expression by government forces. Repeat elections in July resulted in the formation of a new parliamentary majority coalition but the parliament was not able to elect a president. This uncertainty affected EU-Moldova relations for much of the year. The appointment of a new government led to improved relations in the last quarter of 2009 and we note efforts to implement structural reforms identified in Moldova’s Action Plan in the latter part of 2009. Further commitment to Action Plan priorities is needed to prevent violations of human rights and freedoms. Proper implementation of legislation and reform of the judiciary and rule of law is also required. These are priority areas for the new government.

“Moldova carried out structural reforms to counter the negative impact of economic crisis which badly affected the country in late 2008 and a feasibility study of the future establishment of a DCFTA was finalised in July 2009. Outside the period covered by its report but of relevance, negotiation directives for a new EU-Moldova agreement were adopted in January 2010.

Ukraine

“The Commission rightly notes disappointingly slow implementation of reform during 2009. This was partly due to the difficult working relationship between President Yushchenko and Prime Minister Tymoshenko, and the pre-election period. Some progress was made on Association Agreement negotiations and this will be a priority for 2010. Co-operation on energy issues intensified following the
Ukraine-Russia gas dispute in January 2009, which disrupted the supply of gas to the EU via Ukraine.

“In December 2009 approval was given for Ukraine’s accession to the Energy Community Treaty subject to the adoption of a suitable domestic gas law. Ukraine continued to support the work of the EU Border Assistance Mission in Moldova. Ukraine also continued to align with the majority of the EU’s CFSP declarations.

**Egypt**

“As one of the big players in the Middle East, Egypt is of key strategic importance to the EU and the UK and is essential to any solution on many of our foreign policy priorities. Egypt is also an important partner on trade and energy security — the EU represents nearly 34% of Egypt’s total trade with the world and is Egypt’s first trading partner. The UK is the largest foreign direct investor in Egypt.

“We welcome Egypt’s commitment to enhancing relations with the EU and the progress indicated in the Commission’s report during 2009 in social, economic and sector reforms. However, further commitment to the implementation of reforms in democracy and human rights is fundamental to the fulfillment of the current Action Plan, which remains the basis of Egypt’s relationship with the EU. Fulfillment of the whole Action Plan is key to progress and any potential upgrade.

“Outside of the period of this report but of relevance, the government-imposed state of emergency in Egypt was extended from 1 June 2010 for a further 2 years, although it is now limited to fighting terrorism (and its financing) and drug-related crimes. We agree that the persisting state of emergency, which allows for the unwarranted derogation of some of Egypt’s human rights obligations, remains a cause for concern and disappointment. We continue to call for an end to the state of emergency and urge Egypt to ensure that any new counter-terrorism legislation complies with international standards on human rights and fundamental freedoms.

“We welcome the continued EU assistance in 2009, particularly for health care reforms. It is important that ENP funding directly focus on supporting Egypt in its reforms towards fulfillment of the Action Plan, particularly on human rights and good governance.

**Israel**

“Bilateral relations between EU-Israel remained strong in 2009. Israel remains active under the ENP framework and implemented a number of Action Plan priorities, including entering into agreement with the EU on agricultural and fish products in November 2009 and the implementation of four Twinning projects. However, upgrading of relations was affected by a worsening political context, in particular the Gaza conflict and a lack of progress in the Middle East Peace Process. Israel’s military operations have given rise to international humanitarian law violations. The Council concluded that the EU remained committed to upgrading relations with Israel through the ENP but the political situation was not conducive to this.
“By mutual consent the 2005 Action Plan remains the reference document for EU-Israel relations and its validity has been extended to 2010.

Jordan

“Jordan continues to be a constructive ENP partner. The report describes mixed progress: some progress was made on human rights and fundamental freedoms, including the fight against human trafficking. Good progress was made on justice reform and work progressed on penal reform, transparency, corruption, liberalising the economy in limited sectors. However, improvements in the business environment, trade and alleviating the growing poverty gap are required. We fully support Jordan’s aspiration for an enhanced relationship and an intensified dialogue with the EU on common political and security challenges.

Lebanon

“Progress was made in electoral reform and Lebanon was one of only 2 countries in the South to invite an EU Election Observation Mission to its parliamentary elections in June 2009. The elections were in general deemed peaceful and well-organised but the subsequent negotiations on the forming of a government took 5 months. The protracted period of discussions led to a standstill in reform. However, in October 2009 the Commission held a conference in Beirut with representatives of Government, civil society, the private sector and EU. The next step is to take this cooperation forward effectively.

Morocco

“The English version of the progress report is awaited. We agree broadly with the Commission’s assessment. Democracy and human rights reform plans are relatively unambitious but nevertheless some concrete progress was made within these constraints; a new electoral code reinforces the participation of women and work has begun in the fight against corruption.

“However, fundamental weaknesses in the legal system are likely to undermine the legislative reform work which has begun. On migration, work on readmission agreements did not progress as hoped. Reform of the justice system is therefore a key challenge as is the improvement of the climate for business. Obstacles in freedom of expression of the press remain and several demonstrations were dispersed violently. Poverty has been reduced slightly and advances in healthcare have been achieved but in general the social agenda remains a huge challenge.

“The Commission’s focus on improving Morocco’s poor social indicators and reducing poverty fits in well with HMG’s CT priority for North Africa. It is believed that poor social inclusion was one of the key factors behind the 2003 and 2007 home grown terrorist incidents in Casablanca.

243 The Minister explains that the progress reports on Morocco and Tunisia have not been deposited in parliament yet as only the French version exists, and says that he will provide an Addendum when the English texts become available.


**Occupied Palestinian Territory (OPTs)**

“The Occupied Palestinian Territories (OPTs) has made increasing use of the ENP in strengthening its state-building work. The EU supported its ‘Palestine, Ending the Occupation and Establishing the State’ 2-year programme, adopted in 2009, while giving priority to the institutional reform detailed in the Palestinian Reform and Development Plan for 2008–2010. Work has begun on a plan for 2011–2013, the ‘Palestinian National Plan’ which is expected to translate PM Fayyad’s state-building plan into concrete priorities and which will be the basis for a new ENP Action Plan and is evidence of progress on reform and political dialogue with the EU.

“In general, nonetheless, we agree with the Commission that the ability of the OPT to implement reforms remains seriously limited as a result of the on-going Israeli occupation. The Gaza conflict between December 2008 and January 2009 destroyed its economic and institutional structures and worsened divisions in the Palestinian factions. Despite calls from the international community for full opening of crossings for humanitarian and commercial traffic the situation has continued. We share the EU objective of the creation of an independent, democratic and viable Palestinian state.

**Tunisia**

“The English version of the progress report is still awaited. We broadly agree with the Commission’s assessment that progress has been made, but more work is needed. Economic and legislative reform helped the Tunisian economy achieve 3% growth, despite the global economic situation. The country continued its social agenda efforts and achieved good progress in social benefits, education, the fight against poverty and the protection of women’s rights.

“However, the report highlights that problems regarding freedom of association persist. Presidential elections took place during 2009 and candidates from the opposition were not given full rights of visibility and public debate. Action Plan objectives were not achieved and there is a need for strengthened dialogue with the EU. Discussions will continue in the relevant committees.”

57.12 The Minister concludes by noting that these documents have no financial implications, and that there may be ENP conclusions at July’s Foreign Affairs Council meeting.

**Conclusion**

57.13 In the strictest sense, the Minister is correct in saying that these documents themselves have no financial implications. But the ENP itself certainly does: some €11.5 billion of European taxpayers’ money in the current financial perspective.

57.14 Though launched two years ago as (in the then Minister for Europe’s words) a “strategic refresh” of the moribund Euro-Med process, the Union for the Mediterranean has spent the subsequent two years bogged down in bureaucratic wrangling and the wider Middle East conflict. Though only a year old, the Eastern
Partnership was one partner short from the outset due to the democratic failings of the regime in Belarus.244

57.15 While in introducing this “stock take”, the Enlargement Commissioner talked of the EU’s “transformative soft power spreading stability and prosperity beyond the enlargement area”, the jury is still out on the extent to which the incentives offered under the ENP do and will drive reform in places where the local political elites are not already committed to it. As the Commission itself observes when it sums up its stock take, “the pace of progress is determined by the degree to which partners have been willing to undertake the necessary reforms, and more has been achieved in the economic sphere, notably trade and regulatory approximation, than in the area of democratic governance. However, the pace of progress also depends on the benefits that partners can expect within a reasonable time frame. Here the extent to which the EU has been willing to engage itself with the partnership has also had, and will continue to have, a significant effect.”

57.16 At the end of the July Foreign Affairs Council Conclusions on the ENP, the Council invited the High Representative and the Commission, on the basis of the Commission Communication, “to initiate a reflection on the future implementation of the ENP and conduct consultations to this end inside the Union and with ENP partners, in view of a comprehensive discussion by the Council in the first half of 2011.” We ask that the Minister deposits whatever document is presented to the Council prior to this discussion, with his views on it.245

57.17 In the meantime, we now clear the documents.

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244 For the Committee’s consideration of the Eastern Partnership, see chapter 62 of this Report.

Common Foreign and Security Policy

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European Scrutiny Committee, 1st Report, Session 2010–11


Legal base Article 36 TEU; —
Department Foreign and Commonwealth Office
Document originated 8 June 2010
Date deposited 10 June 2010
Basis of consideration EM of 15 June 2010

Discussed in Council 14 June 2010 Foreign Affairs Council
Committee’s assessment Politically important
Committee’s decision Cleared

Background

58.1 Under Article 36 TEU (previously Article 21 TEU), the European Parliament (EP) is to be consulted regularly by the High Representative of the Union for Foreign Affairs and Security Policy (HR) on the main aspects and basic choices of the EU’s Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP), kept informed of how these policies evolve and have its views “duly taken into account”. In line with these requirements, the Council submits an annual report to the European Parliament.

58.2 This report is presented to the EP in conformity with point G, paragraph 43 of the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management. Its scope is limited to a description of CFSP activities. The General Secretariat of the Council (GSC) also says that, where appropriate and necessary in order to provide a comprehensive overview of activities, reference is made to actions falling outside the scope of Title V of the Treaty on European Union.

The 2009 Annual Report

58.3 The 80-page 2009 annual report covers the main aspects and basic choices of the CFSP under the Czech and Swedish Presidencies and looks ahead to the future challenges of 2010. In its preface, the GSC sums up developments thus:
'International affairs in 2009 were dominated by the international community’s response to the economic and financial crisis. Energy security continued to underpin many of the geo-strategic challenges facing the European Union. Regional conflicts in the Middle East, Yemen, Afghanistan/Pakistan, Somalia and in the European neighbourhood were also high on the EU’s foreign policy agenda. The EU continued to build on the European perspective as an anchor of stability through enhanced cooperation with neighbours in the framework of the European Neighbourhood Policy. This was given shape with the launch of the Eastern Partnership and further work on the Union for the Mediterranean. The year ended with a muted response to multilateral efforts on climate change.

“As regards Common Security and Defence Policy (CSDP) activities, the EU continued to deploy three military operations and nine civilian missions across the globe, in the interest of the wider international community. EULEX Kosovo, the EU’s largest rule of law mission to date, established by JA 2008/124/CFSP, reached its full operational capability with some 1700 international police officers, judges, prosecutors and customs officials and approximately 1000 local staff deployed throughout Kosovo.

“With the entry into force of the Lisbon Treaty on 1st December, the closing month of 2009 marked a new beginning for the way the EU conducts its foreign relations. By combining policy and delivery tools under the single authority of a High Representative, Europe has enhanced its capacity to work towards its foreign policy objectives.”

58.4 The GSC says that throughout 2009 the EP was regularly consulted and informed on CFSP activities by the Presidency as well the High Representative, and at the working level by senior officials of the GSC. The report continues as follows:

“Under the new institutional arrangement, the EP will continue to play its full role in the external action of the Union. In line with the provisions of Article 36, the High Representative, who now replaces the Presidency as the lead actor on CFSP/CSDP, will consult regularly with the EP on the main aspects and the basic choices of the CFSP and the CSDP and inform it of how those policies evolve. Furthermore the High Representative will ensure that the views of the EP are duly taken into consideration. Twice a year the EP will hold a debate on progress in implementing the CFSP, including the CSDP.

“The EP will also continue to be regularly consulted on the budgetary implications of CFSP activities including on the financing of the common costs of civilian CSDP operations and EU Special Representatives.”

58.5 The report complements the chapter on external relations of the annual report on the progress of the EU presented to the European Parliament in application of Article 4 of the Treaty on European Union, which includes the broad priorities of the EU’s external relations. It reviews 2009 under seven headings:

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246 The European Security and Defence Policy (ESDP) prior to the entry into force of the Lisbon Treaty.
247 OJ No. L 42, 16.2.08, p.92
• Addressing Threats and Global Challenges;
• Regional Conflicts and Situations of Fragility;
• Building Stability in Europe and Beyond;
• Contribution to a More Effective Multilateral Order;
• Promotion of Democracy, Human Rights and the Rule of Law;
• Fostering Partnerships Across the World; and
• More Effective, Capable and Coherent.

58.6 As well as a section looking ahead to 2010, there are also three annexes:
• Annex I lists the legal acts in the CFSP area;
• Annex II lists the appearances by representatives of the Council before the European Parliament; and
• Annex III covers the CFSP budget for 2009 (commitment appropriations).

58.7 Annex I of the report lists 18 pages of legal acts carried out in the CFSP area, Annex II lists the appearances of representatives of the Council before the European Parliament and Annex III the commitment appropriations of the 2008 CFSP budget (which is reproduced at the Annex to this chapter of our Report).

58.8 In his Explanatory Memorandum of 15 June 2010, the Minister for Europe (Mr David Lidington) describes and analyses “the highlights” as follows:

Iran

“The EU continued its efforts on the dual track strategy of engagement and pressure, including support of the EU High Representative’s calls for engagement with the E3+3. Iran’s response to the call to engagement was inadequate, and further discussion of sanctions resumed. The Government welcomed the EU’s support for the dual track strategy, and reiterates its shared objective of building a long-term relationship with Iran based on confidence and co-operation.

Afghanistan

“Afghanistan is a key foreign policy objective for the EU and its Member States. As noted in the report, at the October European Council in 2009 Member States agreed to enhance the EU’s engagement in Afghanistan and Pakistan through the Plan for Strengthening EU Action in Afghanistan and Pakistan. This committed the EU to increase its engagement while focussing on areas where it can add value, including sub-national governance, rule of law and rural development, election reform and civilian capacity building. The EU Action Plan also agreed to increase the numbers of police trainers in the police training mission (EUPOL) from 270 to 400.
“The implementation of the EU Action Plan will be overseen by the newly appointed EU Special Representative (EUSR), Vygaudas Usackas. The Government welcomes this strengthened position, which has unified the Commission delegation with the EUSR Office in country. The EU also has an important role to play in ensuring credible and robust Afghan parliamentary elections in September. The Government supports the EU Special Representative’s proposal for an EU Electoral Support Team.

**EU Enlargement**

“The Government agrees with the report’s assessment that Croatia made substantial progress in 2009 in its accession negotiations. The signing of the Arbitration Agreement on the border issue with Slovenia was a welcome development, reducing the risk that differences over the border would impact on Croatian accession negotiations. Whilst accession negotiations are nearing the final phase, Croatia still has much to do, not least to demonstrate full cooperation with the International Criminal Tribunal for the former Yugoslavia.

“The report also restates EU demands for Turkey to step up its efforts to meet EU standards and requirements, including implementing the Ankara Agreement Protocol (i.e. opening its ports and airports to Cypriot vessels), continuing to support the Cyprus settlement talks, and committing to good neighbourly relations. The Government is a strong supporter of Turkey’s accession process. Turkey is an important regional player, promoting security in the Middle East and the Southern Caucasus, and playing a key role in energy supply and the promotion of dialogue between civilisations.

“The report sets out the progress made by the countries of the Western Balkans towards further EU integration. It reports the Council’s full support for the European perspective of the whole region, which remains essential for its future stability and prosperity. The Government supports this position. We attach great importance to promotion of stability in the Western Balkans and considers EU enlargement to the Western Balkans countries, on the basis of the accession criteria, to be a vital strategic goal. We believe that the European Union must sharpen its focus on the Western Balkans in order to ensure that all the countries of the region are irreversibly on the path to EU membership.

“In December 2009 the Council expressed its concerns regarding political developments in Bosnia and Herzegovina and called on the country to urgently speed up key reforms. The Government shares this concern at the political situation and lack of progress in Bosnia and Herzegovina, which it considers requires sustained international attention. In Kosovo, the work of the EUSR (who is double-hatted as the head of the International Civilian Office) continues to be essential in providing focus and leadership for the EU’s commitment to strengthening the country’s stability and socio-economic development.
**Common Security and Defence Policy**

“During the reporting period the EU’s largest rule of law mission to date — EULEX — reached full operational capability with 1700 international staff. The mission made significant progress in areas of its mandate, which has had a positive impact on the development of Kosovo’s police, customs and judicial system. The report highlights the agreement of a protocol with Serbia on cooperation over police issues, and on investigating, prosecuting and trying war crimes. The Government continues to support the work of the mission and sees it as an important international presence in tackling organised crime and corruption, and enabling Kosovo to meet EU standards in rule of law.

“In 2009 EUPOL Afghanistan developed its support to the Afghan Ministry of Interior and the National Police in the fight against corruption. The Mission supported the Afghan authorities in the development of an Anti-corruption Implementation Programme, aimed at creating and maintaining an internal Afghan anti-corruption system. The Government continues to support the work of the mission in building the capacity of the Afghan police — a key part of the counter insurgency strategy in Afghanistan. EUPOL’s provision of civilian policing advice and mentoring, and continued efforts to tackle police corruption, are necessary to develop a sustainable Afghan police force.

“In the Occupied Palestinian Territories the mandates of the EU Border Assistance Mission (EUBAM) at Rafah and the EU Police Mission in the Palestinian Territories (EUPOL COPPS) were extended. EUPOL COPPS conducted a detailed survey of the Palestinian criminal justice sector and produced an action plan as a result. The Mission provides strategic advice and expertise to the entire criminal justice chain based on this plan. The UK continues to support the work of EUPOL COPPS in strengthening law and order in the Palestinian Territories. The mission is a vital presence in the creation of a viable Palestinian state. Despite the continued closure of the border crossing, EUBAM Rafah stands ready to deploy at short notice should the political and security situation allow.

“In 2009 the EU Army Reform Mission to the Democratic Republic of Congo (EUSEC CONGO) adopted a revised general concept, which refocused the mission’s work on supporting the administrative and finance areas of the Congolese Armed Forces as well as giving the mission a stronger focus on tackling sexual violence. During the reporting period, steps were taking to improve civilian and military synergies. In November 2009 for example, a Council Decision created a pool of European experts in Security Sector Reform, who will provide a pool of SSR knowledge on which the EU can draw.

**Russia**

“The EU and Russia have continued to work towards a New EU-Russia Agreement which will provide a comprehensive framework for the EU-Russia relationship. Movement has been slow. The EU has engaged with Russia on foreign and security policy issues, including Iran and Afghanistan, while underlining to Russia the need to meet the commitments they made following the Georgia conflict in August 2008.
The EU and Russia proposed an initiative to develop a Partnership for Modernisation at their Summit in Stockholm in November 2009.

**Georgia**

“The EU continued to play a significant role in the international community’s work to resolve the conflict between Georgia and Russia. Russia’s veto of the continuation of the OSCE and UN missions in Georgia, as noted by the report, has left the EU Monitoring Mission (EUMM) as the only international monitoring presence on the ground. EUMM’s patrols, investigations into incidents, and mediation between the parties continue to play a key role in reducing the risk of renewed conflict. The EU Special Representative for Georgia has been instrumental in maintaining momentum in the Geneva talks. The EU has continued to make its support for Georgia’s sovereignty and territorial integrity clear.

**Somalia**

“The report identifies the role of EUNAVFOR Operation Atalanta in leading international counter-piracy activity operations. This operation, for which the UK provides the Commander and Headquarters, contributed to a significant reduction in successful pirate hijackings in the Gulf of Aden as well as protecting all World Food Programme humanitarian deliveries to Somalia.

“The report also highlights the role of the EU in supporting the efforts of the 4 Working Groups of The Contact Group on Piracy off the coast of Somalia (CGPCS). The UK chairs the working group on operational coordination and regional capability development. In September 2009 the UK led a regional needs assessment mission to East Africa and the Gulf of Aden, which has been endorsed by the wider Contact Group as the basis for international engagement to develop regional capability.

**Sudan**

“In 2009 the EU continued to remain engaged on Sudan through Council and the Special Representative for Sudan. The EU focus on pursuing resolution of the conflict in Darfur and full implementation of the Comprehensive Peace Agreement remains in line with UK objectives. This included for preparations for the nationwide 2010 elections and work to address the continuing widespread insecurity in Darfur.

**Burma**

“The EU strengthened restrictive measures against Burma in August 2009 in response to the sentencing of Aung San Suu Kyi to a further 18 months under house arrest. In March 2010, the regime published election laws which excluded many of the opposition groups from participation in the electoral process, and it became clear that elections would not be inclusive, free or fair. In light of these developments, EU Foreign Ministers agreed in April 2010 to renew the restrictive measures for a further
12 months. The UK will only support the lifting of sanctions in response to positive progress. The EU also continues to urge the regime to begin the process of national reconciliation, establishing a dialogue between all political and opposition groups and to release all political prisoners to allow them to participate in an inclusive electoral process.

“The EU is pursuing a policy of sanctions while seeking to intensify dialogue with the regime. The UK supports engagement with Burma provided that the full range of stakeholders is involved in discussions concerning its political future. The EU provides substantial humanitarian assistance to the people of Burma, as do a number of individual Member States. The UK remains one of the largest donors.”

58.9 Then, turning to the financial aspects, the Minister:

— recalls that the current EU Financial Perspective allocates €1.74 billion from the EC budget to the CFSP Budget from 2007 to 2013, as agreed at the European Council in December 2005, and notes that, with the UK contributing 13.59% of the total EU Budget, on a pro-rata basis, this equates to approximately €236 million over the seven year period; and

— notes that, for 2009 the outturn for the CFSP budget was €242.75 million in commitments and €315.97 million in payments.

58.10 Finally, the Minister says that the report is due to be adopted at Foreign Affairs Council on 14 June 2010 and then transmitted to the European Parliament in line with the inter-institutional agreement.

Conclusion

58.11 As with earlier such Reports, the previous Committee, and thus the House, is familiar with much of the content of this latest Report via the legislative actions and accompanying Explanatory Memoranda submitted to it by the Foreign and Commonwealth Office. Nonetheless, we consider that they continue to warrant reporting to the House.

58.12 In so doing, we recall the previous Committee’s description of its discussion in 2009 with the then Foreign Secretary and the then Ministers of Europe about the “upstream” scrutiny of CFSP and CSDP — i.e., the points at which policy decisions are taken that then result in the legislative actions that are submitted for scrutiny — and the assurance given to it in May 2008 by the previous Foreign Secretary, that the Government was “committed to the principle of upstream scrutiny” and recognised “that, for scrutiny to be effective, your Committee needs to be able to examine the EU policy-making process at the earliest possible stage”, and that he supported “being as open as possible regarding the context of the Conclusions and the general position that the UK will be taking in Council.” That discussion is set out fully in the previous
Committee’s Report on the 2008 CFSP Report. In sum, the previous Committee said that:

— what it needed above all was not to be taken by surprise when it was presented with a draft Council Decision, or a declaration or statement of some sort that will then determine future Council Decisions;

— the initiative must lie with the FCO, since by definition the Committee cannot know what is under discussion, particularly with regard to such declarations or statements; and

— it was here that, in line with the previous Foreign Secretary’s and Minister for Europe’s own assurances, the possibilities lay for more constructive and imaginative thinking, and where the Committee looked to the FCO to be as forthcoming as possible when future Council Decisions, declarations, statements and the like were in gestation.

58.13 We share our predecessor’s views and look forward to continuing to discuss with the new Government how to give expression most effectively to what we hope will be a shared aspiration.

58.14 In the meantime, we draw these exchanges to the attention of the House not only so that it, but also the Minister for Europe, may be aware of them.

58.15 We now clear the document.

59 CFSP: EU support for the Democratic Republic of Congo

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**Legal base**
Articles 28 and 43 TEU; unanimity

**Department**
Foreign and Commonwealth Office

**Basis of consideration**
EM of 10 June

**Previous Committee Report**
None; but see (30992) —: HC 19–xxviii (2008–09), chapter 13 (21 October 2009); (30900) —: HC 19–xxvii (2008–09), chapter 26, (14 October 2009); (30686) 10358/09: HC 19–xx (2008–09), chapter 7 (17 June 2009) and (30667) —: HC 19–xviii (2008–09), chapter 21 (3 June 2009); also see (29722) — and (29734) —: HC 16 xxiv (2007–08), chapters 6 and 14 (18 June 2008), and (28650) —, (28651) —: HC 41–xxiii (2006–07), chapter 19 (6 June 2007)

**To be discussed in Council**
11 June 2010 Environment Council

**Committee’s assessment**
Politically important

**Committee’s decision**
Cleared, but further information requested

**Background**

59.1 The original police mission in the Democratic Republic of Congo (EUPOL Kinshasa) was launched in April 2005 to support the development of the Integrated Police Unit and played a key role in the protection of the transitional government, crowd control and public disorder leading up to the elections in 2006.

59.2 Its mandate was extended and amended in April 2006 to allow a temporary reinforcement to cover the elections that were successfully held in September 2006, and allowed the formation, in 2007, of a government which adopted a programme prioritising reform in the police, the armed forces, and the judiciary.

59.3 Against this background, the EU indicated in September 2006 that it was prepared to undertake, in close co-operation with the UN, the co-ordination of international efforts in Security Sector Reform in order to support the Congolese authorities in this area. Following two fact-finding missions in October 2006 and March 2007, two Joint Actions were agreed by the Council on 12 June 2007, which aimed:

— to establish a police mission leading on Security Sector Reform and its justice interface in the Democratic Republic of Congo (EUPOL DRC); and

— to build on, via a new and revised mandate, the substantial progress already made during the previous two years and continue to contribute to the integration of the
different armed factions in the DRC, and assist Congolese efforts to restructure and
reconstruct the army, to be known as EUSEC RD Congo.\footnote{See (28650) —, (28651) —: HC 41 xxiii (2006–07), chapter 19 (6 June 2007) for our consideration of that Joint Action.}

59.4 Earlier Reports by the previous Committee outline its subsequent consideration of
these two Joint Actions.\footnote{See headnote.}

59.5 A common concern from the outset of all Ministers for Europe has been that
members of the security sector are the perpetrators of what has been regularly described as
“a large proportion of violent crimes in the Democratic Republic of Congo, including rape
and human rights violations.”

59.6 On 3 June 2009, the previous Committee cleared a Joint Action amending Joint
Action 2007/405/CFSP on EUPOL DRC and extending it until June 2010. In so doing, it
noted that, although the extension raised no questions in and of itself, and there was more
information on this occasion about activity than there had been a year earlier, there was
still a paucity of assessment of outcomes, i.e., the extent to which all this activity and
expenditure had produced measurable improvements in behaviour and security. In
particular, in the critical area of violent crime, sexual violence and human rights violations,
the words chosen by the then Minister for Europe (Caroline Flint) were identical to those
of her predecessor 12 months earlier: “EUPOL continues to work with the Congolese
police in this field and to encourage officers to react to incidents appropriately” —
notwithstanding that, a year earlier, the previous Committee had said that it would have
liked evidence of how effective the mission’s advice had been, and how Congolese officers’
attitudes and practices had been changed by the “encouragement” to which the then
Minister referred.

59.7 The previous Committee therefore asked the then Minister to say something about
this, and about the effectiveness of EUSEC RD Congo, when she submitted an Explanatory
Memorandum on the forthcoming mandate extension of this latter.\footnote{See headnote: (30667) — HC 19–xviii (2008–09), chapter 21 (3 June 2009).}

59.8 On 11 June 2009, the previous Committee then considered a proposal for a three
month, “no cost” extension of EUSEC RD Congo’s mandate. The then Parliamentary
Secretary at the Foreign and Commonwealth Office (Chris Bryant) explained in his 11 June
2009 Explanatory Memorandum that this was to take account of recent changes in
leadership, which meant that more time was required for further detailed analysis on the
needs and priorities of the Congolese in the field of Security Sector Reform. He said that:

— “strategic indicators” would be used to assess Congolese political commitment in the
medium term;

— a revised General Concept would be formed including possible mission restructuring
and detailed measures of progress to assist further review of longer term engagement;

— a three month extension would allow this work to take place and permit a better
judgement when considering any further mandate extension.
59.9 On 11 June 2009, in a separate letter, the then Parliamentary Secretary also responded as follows to the previous Committee’s earlier observations on EUPOL DRC:

“The lack of professionalism, poor discipline and conduct within the security services is directly related to poor terms and conditions of service, lack of proper training, and poor command and control. Human rights training which focuses on awareness raising and similar interventions around SGBV (Sexual and Gender based Violence) training must be accompanied by concrete measures to improve pay, conditions of service, professional training and strengthen systems for ensuring internal discipline and conduct. The latter is part of longer term institution-building, to which EUPOL DRC is a part, to secure behaviour change at an institutional level.

“Such improvements in the attitudes and behaviour of the Congolese National Police are inherently difficult to measure. Changes tend to be incremental, rather than representing a noticeable step change, and the process of reform is fundamentally affected by changes in national leadership. However, there are some positive signs of progress. For example, EUPOL has supported national seminars with some success to build up the awareness of the Congolese National Police to policing in a democratic state such as how police should deal with meetings and public demonstrations. The mission has also succeeded in pushing forward local ownership of Police Reform which is a key step towards changing attitudes and behaviours. The Police Reform Monitoring Committee (CSRP) is now considered both by the Congolese authorities and by international partners as truly owned and run by the Congolese.

“Violent crimes, sexual violence and human rights violations continue to be areas of grave concern in the DRC. For this reason, the Political and Security Committee requested that Council Secretariat ‘examine the options for strengthened ESDP action to combat sexual violence and impunity in the DRC in view of assessing a possible scope of action for EUPOL’. Work in Brussels in [sic] on-going to discuss further measures that the mission can implement. It is likely that the Operational Plan will be adjusted to strengthen the ability of EUPOL DRC to combat sexual violence and impunity.”

59.10 Notwithstanding the then Parliamentary Secretary’s views, the previous Committee continued to feel that it should not be difficult to measure change in a situation in which, still, it seemed that a large proportion of violent crime, sexual violence and human rights violations were committed by members of the Congolese police and military: either the number of such violations of human dignity and rights, and the part of the security sector in them, was falling, or it was not. The previous Committee also asked the then Parliamentary Secretary if, in due course, he would let it know the outcome of what the Political and Security Committee had asked the Council Secretariat to do, and how the Operational Plan was to be adjusted. It then cleared the extension.252

59.11 Subsequently, in dealing with the Joint Action extending EUSEC DRC from 1 October 2009 until 30 September 2010, the previous Committee noted that, in her

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Explanatory Memorandum of 14 September 2009, the then Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) said that the revised Joint Action had a greater emphasis on tackling sexual violence and human rights issues within the army reform process. Additional staff positions were to be introduced to the mission’s structure, and shared with EUPOL DRC, focusing on Human Rights and Gender issues and based both in Kinshasa and the cities of Goma and Bukavu, allowing the mission to have a wide geographical influence. As well as having several “strategic indicators”, the then Minister particularly welcomed the new initiative to review mission progress at the six-month point against pre-defined indicators, which she said was in line with the wider FCO strategy “to develop more effective international interventions [which …] will enable the mission to provide a progress report on the development of the reform of the FARDC and to evaluate the impact of the mission.”

59.12 The previous Committee noted that, by the time this latest extension was completed, the EU would have spent some €26.9 million on EUSEC RD Congo, and said that the strategic indicators should confirm whether or not the positive developments to which the Parliamentary Secretary referred in June, and which seemed fundamental to any further progress, had been consolidated.

The previous Committee also felt that it would have been helpful to have had some details of the “pre-defined indicators” that the then Minister welcomed, which it assumed were the “measures of progress to assist further review of longer term engagement” to which the Parliamentary Secretary had referred in June. In particular, the previous Committee said, it would have been interested to know how they would measure progress on the problem upon which the project would now be more focussed, i.e., sexual and gender based violence. It still could not see why, when a large proportion of violent crime, sexual violence and human rights violations was said to be committed by members of the Congolese police and military, it was said to be difficult to quantify the number of such violations, and the part of the security sector in them, and thus to see whether or not they fell: if this was more complex than it had imagined, the previous Committee said that it would have been helpful if the then Minister had put the Committee straight. The previous Committee noted that there was to be a review in six month’s time, and accordingly asked the then Minister to report its findings and recommendations and comment on this particular matter.  

The previous Council Joint Action amending Joint Action 2007/405/CFSP on EUPOL RD Congo

59.13 The revised Joint Action outlined the financial implications for the period 1 November 2009 to 30 June 2010 (the first four months, from 1 July — 31 October, were of no extra cost).

59.14 In her Explanatory Memorandum of 13 October 2009, the then the Minister for Europe at the Foreign and Commonwealth Office (Baroness Kinnock of Holyhead) said that the estimated financial amount to cover EUPOL DRC expenditure from 1 November 2009 to 30 June 2010 was €5,150,000, broken down as follows:

- Personnel Costs: €2,961,258

253 See headnote: (30900)---: HC 19–xxvii (2008–09), chapter 26, (14 October 2009)
• Missions: €220,910
• Running Expenditure: €1,169,280
• Capital Expenditure: €715,515
• Representation: €14,000
• Contingencies: €69,037.

With the UK currently contributing 17% to the CFSP (Common Foreign and Security Policy) budget, the then Minister said that the cost to the UK would be €875,500. The then Minister further explained that the funding for the eight month period would be used to purchase armoured vehicles and accommodation in the east, to support the new multidisciplinary teams, as well as ongoing mission expenditure.

The then Minister again recalled the contribution of the Congolese Police or Armed Forces in SGBV crimes within the DRC and again said that the revised Joint Action would allow EUPOL DRC to place a greater emphasis on tackling SGBV through its work advising and assisting the Congolese reform their National Police Force. She continued as follows:

“Two multidisciplinary teams of experts will be deployed to Goma and Bukavu in the eastern DRC in order to provide advice and assistance on combating SGBV and impunity as well as assisting with the stabilisation process. Although based in the east of the country the team’s competence will cover the whole of the DRC territory. One of the main tasks of these multidisciplinary teams will be to help ensure that legal services are provided for victims of sexual violence and offenders are prosecuted.

“The mission works in close cooperation with EUSEC DRC (the EU’s Army Reform mission to the DRC) which has also recently been given a greater focus on combating SGBV. By giving EUPOL DRC a greater emphasis on tackling SGBV as well it will allow a more consistent approach to be taken on SGBV simultaneously across both the Congolese Police and Armed Forces. The UK government supports this increased emphasis as a means to achieve wider stability, and increased faith in the Police and Armed Forces. This is also an area that we believe the ESDP mission can make a meaningful difference.”

The then Minister concluded by saying the Joint Action was to be agreed at the Agriculture and Fisheries Council on 19 October 2009.

In his letter of 16 October 2009, the then new Minister for Europe (Chris Bryant) said that he welcomed the previous Committee’s interest in the ESDP mission mandates, and regretted that “due to the recent change of Ministerial portfolios, we were not able to provide you with the Explanatory Memorandum in sufficient time for it to be considered at your meeting on 15 October (sic)”. As a result, he said, he would have to agree for this Joint Action to be considered at the Agriculture and Fisheries Council on 19 October without prior debate at Committee. He continued as follows:

“The Council Secretariat must proceed with the implementation of the Joint Action, which provides the mission with a greater emphasis on tackling sexual violence and,
importantly, provides the necessary budget for the mission to continue its activities from 1 November 2009 until the expiry of its mandate on 30 June 2010.

“While there are Council meetings towards the end of October (Justice and Home Affairs on 23 October, and the GAERC on 26 October), were I to delay lifting the UK scrutiny reserve until 22 October, the Council Secretariat would not have enough time to properly administer the renewal of contracts. This would result in a gap in funding beyond 31 October 2009 until contractual positions were resolved. As the mission is looking to place a greater emphasis on tackling sexual and gender based violence and is looking to deploy two multidisciplinary teams to the eastern DRC to take this forward, this could have a serious operational impact.”

59.19 The then Minister then said that he was taking this opportunity to provide further information on the levels of sexual violence committed within the DRC and the benchmarks being used by the mission to measure the success of the work undertaken to tackle this serious issue:

“The problem of rape and sexual violence is one of the most serious aspects of the conflict in the DRC. Sexual and gender based violence is used systematically as a weapon of war by the Congolese Army and by militia groups to humiliate and intimidate women and men of all ages. Conflict-affected areas continue to be the hardest-hit, with South and North Kivu in the eastern DRC recording the most cases. The UN Population Fund reported 5,204 cases during the period of January to June 2008 and the Congo Advocacy Coalition announced over 2,200 cases of rape recorded in North Kivu in the month of June 2008 alone. The more recent reports from the mission itself have indicated that the number of victims for the first half of 2009 (2,587) has exceeded the total cases reported for the whole of the previous year (2,383). The US Secretary of State visited the DRC in August 2009. Secretary Clinton’s visit highlighted the issue of sexual violence and reignited the international community’s interest.

“These figures reflect that the level of sexual crime in the DRC remains a serious concern. However, as my predecessor explained in the Explanatory Memorandum submitted on 13 October, the amended Joint Action now grants EUPOL DRC a greater emphasis on tackling sexual and gender based violence through its work assisting the Congolese to reform their National Police Force (PNC). Under the mission’s new operational plan, the success of the mission will be measured against the following benchmarks:

• “the reinforcement of the PNC’s capacity to deal with the victims of sexual violence;

• “participation in a project to help map the location of sexual violence incidents committed by the police force;

• “the development of an anti-sexual violence cell within the PNC; and

• “the implementation of a code of conduct for members of PNC which reinforces the unacceptability of SGBV.”
The previous Committee’s assessment

59.20 The previous Committee did not receive either his predecessor’s Explanatory Memorandum until 15 October or his letter until 19 October. Nor, with the Committee due to meet on 21 October, did it see why delaying submission of this document to the Council until 23 October, rather than 19 October, would not have provided the Council Secretariat with enough time to renew the relevant contract. If the documents were ready on 19 October, the previous Committee noted, then a delay of three days would not have prevented their timely issue; and if they were not ready, ditto.

59.21 As to the contents of his letter, the previous Committee said that it was obviously worrying that, notwithstanding all the EU’s efforts thus far, the level of sexual and gender-based violence had increased so dramatically in 2009.

59.22 The previous Committee accordingly found it odd that, if “one of the main tasks of these multidisciplinary teams will be to help ensure that legal services are provided for victims of sexual violence and offenders are prosecuted”, this was not included among the benchmarks to which the Minister referred.

59.23 The previous Committee also noted that the then Minister made no mention of any six-month review period here, as was the case with EUSEC RD Congo. It nonetheless asked that, when he reported on this review (c.f. paragraph 59.12 above), he also provided an assessment of how well the four benchmarks and the task referred to in the previous paragraph had been achieved.

59.24 The previous Committee then cleared the document.

The Council Decision

59.25 With the mission’s current mandate due to expire on 30 June 2010, the Council Decision extends the mandate of EUPOL DRC by three months until 30 September 2010.

59.26 In his Explanatory Memorandum of 10 June 2010, the Minister for Europe at the Foreign and Commonwealth Office (Mr David Lidington) says that, under the three month extension, the mission’s tasks will be unchanged and will be to:

— contribute to the reform and restructuring of the Congolese National Police by supporting the implementation of a viable, professional, and multi-ethnic/integrated police force, with the full participation of the Congolese authorities; and

— contribute to improved interaction between the police and the wider criminal justice system.

Legal Basis

59.27 The Minister says:

“Articles 28, 31(2) and (3) of the Treaty of the European Union are likely to be the legal basis of the Council decision. At present the Council decision’s legal base is shown as Article 14 of the Treaty of European Union which was the legal base for
adopting joint actions before the Treaty was amended by the Lisbon Treaty. Joint actions no longer exist today. The budgetary impact statement, however shows the legal basis to be Articles 28, 31 (2) and (3).

“Voting Procedures: Qualified majority voting applies where the legal basis includes Article 31 (2).”

The Government’s view

59.28 The Minister goes on to note that the DRC remains a focus of international attention “because of the potential for conflict not least caused by the poor humanitarian situation throughout the majority of the country.” He continues as follows:

“The Congolese police and justice sectors are weak and impunity for major crimes, including rape and murder, is common with justice rarely delivered for victims. Without international assistance parts of the DRC could slide back into a state of conflict which would destabilise the wider region.”

59.29 Security Sector Reform (SSR) in order to root out one of the causes of instability in the DRC is, the Minister says, therefore a high priority for the International Community:

“Over the last twelve months EUPOL DRC has struggled to fully achieve its mandate. The mission has taken forward some work to tackle sexual and gender based violence by organising training courses to equip Congolese police officers with skills to better deal with sexual violence cases. However, understaffing and security concerns have hindered further efforts in the East where the majority of sexual and gender based violence crimes are committed.”

59.30 Despite this, the Minister says:

“the Government supports a three month extension of the mission until 30 September 2010. Security Sector Reform in the DRC is essential to stability in the country, but there are many international actors involved and they are not always coordinated effectively. The key player is the UN Peacekeeping Mission to the DRC (MONUC) whose new mandate has just been adopted by the UN Security Council. The details of its implementation and exact focus on SSR should become clear in the next few months. It will be important that the EU does not duplicate UN efforts so if, for example, it is decided that the UN mission will have a greater focus on police reform, we will need to judge the EUPOL DRC mandate in that light. Negotiations regarding MONUC’s new mandate have been delicate and, as the second largest peacekeeping mission in the world, the way forward for MONUC must be decided before discussions begin on the future focus of EUPOL DRC. The three month extension will facilitate this and allow for a more informed decision to be taken on the longer term future of EUPOL DRC.”

59.31 The Minister then goes on to explain that the Council Secretariat proposes to undertake a strategic review of EU engagement in the DRC this summer to look at EU coherence, including between EUPOL DRC and “the separate and better performing EU Security Sector Reform mission (EUSEC DRC)”, which focuses on reform of the Congolese Armed Forces:
“The review will look to assess the effectiveness of EU activity so far and identify areas where the EU can add most value to international efforts in the future. The three month extension will give the UK, the EU and other Member States the opportunity to look at international support with the intention of improving the EU’s effort. Over this period, the UK will assess carefully the DRC’s SSR and police reform needs, particularly in view of the refocused UN mission and the EU’s strategic review. We will look to analyse the level of the EU’s impact and what resources are required to have a greater impact. If the strategic review fails to identify an area where continued CSDP engagement in police reform can add sufficient value going forward we will push to close EUPOL DRC.”

59.32 The Minister concludes by saying that:

— the estimated total budget for the three month extension of EUPOL DRC is €2,020,000 which will be funded from the EU’s Common Foreign and Security Policy budget, within which the UK share will be around £275,000; and

— the Council Decision is planned to be agreed at the Environment Council on 11 June 2010.

Conclusion

59.33 We clear the document. In so doing, we recognise that the Dissolution and consequent delay in setting up the European Scrutiny Committee militated against the Minister withholding agreement to this Decision until it had been scrutinised by the Committee. We do not object, on this occasion and in these circumstances, to his agreeing to its adoption prior to scrutiny.

59.34 But we also note that the Minister has nothing to say about the reviews into both EUPOL DRC or EUSEC RD Congo referred to by his predecessors and about which the previous Committee asked to have information prior to the presentation of further proposals extending their mandates. There is also no mention by the Minister of the mission’s impact since the last extension, though the implication is that it has been limited, to say the least. However, rather than raking over the coals, we ask the Minister to deposit whatever document emerges from strategic review of EU engagement in the DRC, so that the House may have an opportunity to consider the Government’s views prior to the presentation of any further Council Decisions.
60 EU police, rule of law and civilian administration mission to Iraq

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Legal base: Articles 28 and 43(2) EU; unanimity
Department: Foreign and Commonwealth Office
Basis of consideration: EM of 11 June 2010
Previous Committee Report: None; but see (30633) —: HC 19 xviii (2008–09), chapter 18 (3 June 2009) and HC 19–xvii (2008–09), chapter 3 (13 May 2009); also see (26356) — : HC 38–ix (2004–05), chapter 9 (23 February 2005) and (27480) —: HC 34–xxix (2005–06) chapter 9 (17 May 2006)

To be discussed in Council: 14 June 2010 Foreign Affairs Council
Committee’s assessment: Politically important
Committee’s decision: Cleared, but further information requested

Background

60.1 EUJUST LEX was launched in July 2005 with the aim of increasing capacity and coordination in the Iraqi criminal justice system and promoting human rights and respect for the rule of law. During its initial mandate, the mission delivered courses within EU Member States focused on management and crime investigation for senior Iraqi criminal justice officials. For security reasons, all the preparation and the courses were held outside Iraq. But a small liaison office, headed by a Briton, was set up inside the British Embassy in Baghdad. Its costs, and other common costs, have been funded by the CFSP budget; training provided by Member States, including the UK, is funded by them. The full background to and nature of the mission is set out in detail in the previous Committee’s Report of 13 May 2009.254

60.2 In June 2006, the Council of Ministers agreed to extend the mission’s mandate for a further 18 months. This mandate authorised the provision of more specialised courses as well as secondments in EU Member States for senior Iraqi police officers and prison governors. Both these actions were reported to the House.255 At the time at which the draft Joint Action was submitted for scrutiny, the additional cost had yet to be worked out; the financial reference amount was subsequently increased by € 11.2 million.

60.3 Then, in November 2007, the Council decided on a further extension, until 30 April 2008. The UK was to continue to contribute by providing specialised courses and offering a work-experience prisons secondment for a senior Iraqi official, as well as continuing to support the Baghdad Liaison Office with office and living accommodation. This further extension would be at no additional cost. Looking ahead, the then Minister for Europe (Mr Jim Murphy) said that, with the arrival of an EC Delegation in Baghdad, there was potential for the eventual development of Community-supported institution-building and rule of law programmes to carry forward EU JUST LEX’s work, which was expected to end in 2009.

60.4 In April 2008 the then Minister for Europe submitted the draft of a further Council Joint Action, which extended the mandate, at no additional cost, until 30 June 2008. He supported the continuation of the mission, which had facilitated training for over 1400 Iraqis from the police force, the judiciary and the penitentiary system; as of January 2008, the Mission had received commitments for over 40 training interventions by Member States until June 2009 and would therefore be able to maintain its level of activities.

60.5 Finally, a further “no cost” extension was submitted for scrutiny by the then Minister on 12 June 2008, which we cleared on 18 June 2008. This authorised continuation of the mission until June 2009.

60.6 The previous Committee judged that none of these straightforward, “no cost”, extensions warranted a substantive Report to the House, and were cleared accordingly.

**The most recent Joint Action**

60.7 This Joint Action, which the previous Committee considered on 13 May, extended the current mandate for a further 12 months until 30th June 2010. In brief, the mission had provided 88 training courses and 17 work experience secondments for over 1,900 Iraqis since summer 2005; the UK had provided 17 courses and 3 secondments; the mission’s success was recognised in 2008 when the Head of Mission won the prestigious Webber-Seavey Award for “excellence in law enforcement and leadership”. In addition to continuing the mission’s current activity, the then Minister for Europe (Caroline Flint) explained in her 9 May 2009 Explanatory Memorandum that EUJUST LEX would carry out a pilot phase of activities in Iraq, in which up to 18 activities would be undertaken in Baghdad, Sulamanayah and Talil regions; these activities would include further training courses, providing strategic advice on the ground and follow up mentoring sessions for previous course participants; planning for these activities was ongoing but “by engaging in country EU Just Lex will be able to be more visible, proactive and better placed to aid the Iraqi authorities when needed.”

60.8 The then Minister also noted that the UK had:

— judged that the EU’s original strategic objectives for an ESDP mission for Iraq remained valid;

— been a strong advocate of EU JUST LEX moving in country, which she said would allow the mission to further assist the Iraqi government in strengthening the rule law through the provision of follow up programmes with past course participants and
“increase the impact of the EU’s intervention by building on the mission’s activities so far, improving evaluation of the mission’s activities, and improving local ownership, including through increased contact and participation.”;

and that:

— other EU Member States continued “to demonstrate an increased willingness to engage in Iraq”, with the Mission having received in January 2008 commitments for over 40 training interventions by Member States until June 2009;

— the Government of Iraq also remained “highly supportive of the mission with the Iraqi Chief Justice and Acting Minister of Justice both visiting EUJUST LEX courses in Europe in the last few months.”

60.9 On the financial aspects, the Minister said that the mission was operating within budget and continued to deliver a full training schedule; had cost €28.4 million since 2005; and would require a further €11.5 million to cover the period from 1 July 2009 to 30 June 2010.

60.10 The previous Committee noted that the then Minister’s predecessor had envisaged that the Mission was likely to end in 2009, and that the Commission would thereafter be left to pursue union-supported institution-building and rule of law programmes. Neither from her Explanatory Memorandum nor the draft Joint Action was it clear why this had not happened; nor why, as she asserted, “an EU contribution to the emergence of a stable, secure and democratic Iraq through addressing the needs of the Iraqi criminal justice system is still required”.

60.11 Nor were the previous Committee entirely clear as to what she meant when she said that, though the courses are currently run and hosted by Member States, “this may change when the mission begins undertaking activities in country”.

60.12 The draft Joint Action also referred to a review in 2010 and a further decision on the mission’s future, suggesting at least the possibility of a further extension.

60.13 In summary, the previous Committee asked the Minister to explain more fully what the rationale was for continuing with the Mission for a further year when, last April, her predecessor said that he expected it to end in 2009, and the basis of her thinking about its longer-term future.

60.14 The previous Committee were also now able to see that, when what became Council Joint Action 2008/190/CFSP was adopted on 23 June 2008, it contained a provision authorising a new financial reference amount to cover the period 1 July 2008 to 30 June 2009; and that, from the draft text, this amounted to a further €7.2 million — notwithstanding having been told by the then Minister’s predecessor that this was to be a “no cost” extension — and asked the Minister to explain this discrepancy.

60.15 In addition to the UK share of the overall CFSP expenditure, the previous Committee also asked what the cost was of the UK’s direct and indirect contributions to EUJUST LEX so far.
60.16 In the meantime, the document was retained under scrutiny.256

**The Minister’s letter of 22 May 2009**

60.17 With regard to why the mission was being extended after the previous Minister for Europe stated that it would end in 2009, the then Minister said that her understanding was that the mission was never due to end in 2009:

“It has always been the intention that EUJUST LEX would, depending on developments in-country, continue into 2010 with a view to conducting training activities in Iraq. However, the current mandate is due to come to an end in June 2009 and it may be that this was taken at the time to mean that the mission would cease on that date, which as I have said, I do not believe to be the case.”

60.18 With regard to the remark in her Explanatory Memorandum that though courses are currently run and hosted by Member States, “this may change when the mission begins undertaking activities in country”, the then Minister said that, as more training courses were hosted in Iraq, the number hosted in Member States would decrease, “though the Mission and national secondees will remain as the lead in running the courses.” She also said that “the initial pilot phase of the move in country should include activities such as providing strategic advice, follow-up mentoring of EUJUST LEX alumni and conducting up to 18 thematic seminars or workshops (as and where security and resource conditions allow)”. 

60.19 The then Minister also said that the rationale for continuing the mission was that “there is a lot of work still to be done in Iraq.” She further said that in its four years EUJUST LEX “has achieved a great deal but the improved security situation presents an excellent opportunity to move training activities in country where they will have a greater effect and increase the levels of Iraqi ownership.” The then Minister supported this move “because the in-country activities will allow the development of a more strategic approach to rule of law in Iraq, targeting a wider range of participants for follow up, and ensuring the sustainability of the mission’s work”.

60.20 Turning to the 2010 review, the then Minister said that it would “evaluate all aspects of the move of activities in country … take into account Iraqi capabilities as well as activities of other international actors [and] inform the decision as to whether EUJUST LEX should continue beyond June 2010 and, if so, in what capacity.” The review would “be the point at which we and other Member States consider again the long term future and direction of the mission”.

60.21 The then Minister then turned to the financial aspects. She recalled that her predecessor’s Explanatory Memorandum of 9th June 2008 said that the last mandate extension until June 2009 (then under consideration) would be a “no cost” extension. She explained that this was, unfortunately, incorrect: that Explanatory Memorandum had been prepared from a draft version of the Joint Action text which, at the time, did not include the financial reference amount of €7.2 million, and when this was agreed upon in a

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separate document (the mission’s financial statement) it had not been included in the Explanatory Memorandum sent to the previous Committee. Having apologised for the misunderstanding that this caused, the then Minister said that she would endeavour to keep the Committee better informed in the future and provided a note with more detail on the direct and indirect costs to the UK of supporting EUJUST LEX.

The previous Committee’s assessment

60.22 The previous Committee thanked the Minister for this further information, and accepted her explanation, apology and assurances.

60.23 It also looked forward to hearing from her in due course about the outcome of the 2010 review and her views on it, ahead of any fresh Joint Action to extend the mission mandate. In the meantime, it cleared the extension.

The proposed Council Decision

60.24 This Council Decision alters the mandate of EUJUST LEX-IRAQ in three ways;

— The mission’s mandate will be extended for two years until 30 June 2012.

— The mission’s focus will further shift towards in-country training activities (although courses held in EU member states will continue).

— The mission’s permanent presence within Iraq will increase in line with the increased focus on in-country activities:

   • Baghdad: The mission’s current Baghdad Liaison Office will be expanded by 5 members of staff;

   • Erbil: A new liaison office will be opened in the northern city of Erbil with 15 members of staff who will assist with the co-ordination and planning of the proposed increase of in-country training; and

   • Basra: 4 mission personnel will be deployed in Basra to assist with southern based training activities, operating under the Baghdad office. They will also look into the possibility of the mission opening a full scale liaison office in Basra in the future should security conditions allow.

The Government’s view

60.25 In his Explanatory Memorandum of 11 June 2010, the Minister for Europe at the Foreign and Commonwealth Office (Mr David Lidington) says “establishing effective rule of law is central to the future stability of Iraq.” He continues as follows:

“Through support to the Iraqi criminal justice system, EUJUST LEX-IRAQ has made an important contribution to building the institutional knowledge necessary to develop the rule of law. EUJUST LEX-IRAQ courses are helping the Iraqi system to work towards meeting international best practice by providing senior Iraqi officials with the skills and techniques to take forward criminal investigations and manage
cases more effectively. Since it was deployed in 2005, EUJUST LEX-IRAQ has facilitated 116 EU Member State courses and 22 work experience secondments. It has also conducted three regional thematic seminars, three preliminary in-country events and successfully completed 14 pilot in-country activities with more than 3100 Iraqis participating. The in-country activities have provided training on key issues such as Effective Crime Scene Management, Domestic Violence (a significant problem in Iraq), and Management of Vulnerable Prisoners. The mission is also working to move the criminal justice system towards evidence rather than confession based forms of investigation which can be open to human rights abuses. As a result, the mission is highly visible with senior officials and Iraqi politicians many of whom are supporters of the mission’s work.”

60.26 The Minister supports a new two year mandate for the mission:

“because of the impact the mission has made and because it is a key way of bringing EU engagement together on a UK foreign policy priority which has previously divided the EU. As the US prepares to drawdown its large scale presence in the autumn, EU support will become increasingly important. In addition, there has been a modest but positive improvement in security in Iraq since 2008. Despite a relapse in politically motivated violence in the run up to the March 2010 elections the civilian death toll in Iraq decreased by half between 2008 and 2009 and inter-sectarian violence (a major problem in 2006 and 2007) has also decreased. With the completion of elections and the improving security situation the timing is right for EUJUST LEX-IRAQ to increase its presence in-country.”

60.27 The Minister goes on to say that the UK has consistently called for improvements in the way the mission assesses the impact of its work:

“As a result, an impact assessment will be produced in October in order to target the mission’s future training activities. Increasing EUJUST LEX-IRAQ’s focus on in-country activities should facilitate better assessment. It should also enable the mission to conduct more effective follow up sessions with course participants to check whether learning has been implemented. This will be supplemented with some mentoring of Iraqi officials. Finally, the Iraq based activity will facilitate more effective liaison with the Iraqi authorities so that EUJUST LEX-IRAQ activities can be better planned to support the Iraqi national training programme.”

60.28 The Minister then says that the UK has also argued that the mission should establish a more permanent footprint outside of Baghdad to facilitate training and mentoring activities throughout the country:

“In the northern Kurdistan Region, Erbil was selected as the location for the proposed new office due to the city’s favourable security conditions. It has also been the location for the majority of completed in-country activities with training venues and facilities already established. In order to tackle any suggestion of ethnic bias towards Kurds, the activities run out of Erbil will cover the Iraqi population beyond the Kurdish region.
“The proposed smaller presence in Basra is due to the security conditions there with a number of Member States reluctant to see an expansion to the south before testing whether projects could be effectively delivered. The staff placed in Basra under the new mandate will evaluate the ability for the mission to have an impact.”

60.29 Finally, the Minister says that:

— the estimated total budget for the two year extension is €17,500,000 which will be funded from the EU’s Common Foreign and Security Policy budget;

— the UK contributes 13.6% to the overall EU budget in 2010;

— as the EU budget funds the CFSP budget, the cost to the UK for the two year extension will be €2,380,000 (£2,019,000); and

— this Council Decision is due to be agreed at the Foreign Affairs Council on 14 June 2010.257

Conclusion

60.30 Although no questions arise from the Council Decision itself, we are again reporting this extension to the House because of the widespread interest in developments in Iraq, and especially in the area of rule of law.

60.31 We now clear the document. In so doing, we recognise that the general election and its aftermath militated against the Minister withholding agreement to this Decision until it had been scrutinised by the Committee, and do not object, on this occasion and in these circumstances, to the action that he took in agreeing to its adoption prior to scrutiny.

257 And was indeed adopted by the FAC on that day.
61 Restrictive measures against Iran

(31779) Council Decision concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP

Legal base Article 29 TEU; unanimity
Department Foreign and Commonwealth Office
Basis of consideration EM and Minister’s letters of 9 July 2010 and 29 July 2010
Previous Committee Report None; but see (29812) — and (29813) —: HC 16–xxvii (2007–08), chapters 16 and 17 (16 July 2008) and (29912) 12463/08: HC16–xxx (2007–08) chapter 16 (8 October 2008)
To be discussed in Council 26 July 2010 Foreign Affairs Council
Committee’s assessment Politically important
Committee’s decision Cleared; further information requested

Background

61.1 On 23 December 2006, the UN Security Council adopted Resolution 1737, which imposed a number of sanctions on Iran. In broad terms UNSCR 1737:

- prohibited the sale/transfer to Iran — and also the export by Iran or export from Iran — of certain goods and technologies that could contribute to sensitive activities (enrichment related, reprocessing and heavy water activities and the development of nuclear weapons delivery systems);
- prohibited technical or financial assistance related to these activities;
- froze the assets of named individuals and entities involved in, associated with or providing support to Iran’s sensitive nuclear and missile programmes;
- called on signatory States to “exercise vigilance” about the travel to or through their territories of individuals involved in, associated with or providing support to Iran’s sensitive nuclear and missile programmes and required them to inform the Security Council when named individuals do so; and
- called on States to prevent Iranian nationals from studying sensitive subjects.

61.2 On 7 February 2007 the then Committee cleared Common Position 2007/140/CFSP, which enabled EU Member States to fulfil their obligation to implement these restrictions. It was subsequently adopted by the Council on 27 February 2007.

61.3 In his Explanatory Memorandum of 10 July 2008, the then Minister for Europe (Mr Jim Murphy) recalled the adoption of UNSCR 1803 imposing further restrictive measures against Iran, and explained that the measures were to be given effect in the EU by the
adoption of a Common Position amending Council Common Position 2007/140/CFSP. The previous Government was “keen to build on this by adding to the Common Position additional clarity and detail on the UN’s call for financial vigilance measures as well as extensions of the list of prohibited items, restriction of export credits and increased inspections and reporting requirements on cargoes of certain Iranian carriers.” The extension of the restrictive measures was “important in the increasing pressure being placed on Iran by the international community”, and represented “a significant further measure, building upon the designation of further individuals and entities, including Bank Melli, adopted on 23 June 2008.” The UK remained committed to a dual track strategy of sanctions and engagement, but Iran had still not complied with four successive Security Council Resolutions; it was important to continue to take steps to prevent the financing and proliferation of Iran’s nuclear and missile programmes. The measures, particularly in the area of financial vigilance, in the amended Common Position meant that European implementation would be concrete and robust. The notification burdens on transactions with Bank Saderat and increased vigilance over transactions with Iranian linked banks were particularly significant; combined with extension of the list of prohibited items, restriction of export credits and increased inspections and reporting requirements on cargoes of certain Iranian carriers, the amended Common Position provided “a clear message to Iran.”

61.4 The then Committee concluded that no questions arose about the document, and that time would tell if the policy of “sanctions + engagement” was effective, and accordingly cleared the document.258

61.5 Then, in his further Explanatory Memorandum of 2 October 2008, the then Minister for Europe said that the complementary implementing Council Regulation further defined the clarity and detail provided in the Common Position on the UN’s call for financial vigilance measures as well as extensions of the list of prohibited items, restriction of export credits and increased inspections and reporting requirements on cargoes of Iranian carriers. He continued as follows:

“The UNSCR was not as strong as the UK would have preferred but it usefully went beyond the more proliferation focused measures in earlier resolutions by introducing restrictions on export credits and the activities of Iranian banks. The extension of restrictive measures is an important element in the increasing pressure being placed on Iran by the international community.

“These represent a significant further measure, building upon the designation of further individuals and entities, including Bank Melli (a major Iranian bank listed for providing or attempting to provide financial support for companies which are involved in or procure goods for Iran’s nuclear and missile programmes), adopted on 23 June 2008.”

61.6 The then Minister talked of a “refreshed offer” by the E3+3 to Iran thus:

“On 19 July the E3+3 (the UK, France, Germany, the US, Russia, China) presented a new offer of incentives to Iran in return for the suspension of enrichment related

activities. The Iranians delivered a reply to Javier Solana, High Representative for the Common Foreign Security Policy, on 5 August. They failed to provide a clear response to the offer. E3+3 countries have expressed disappointment that Iran failed to give a clear positive response, reiterated their commitment to both engagement and sanctions tracks and made Iran aware that the E3+3 are examining further measures in the absence of a positive response.”

61.7 The Minister then reaffirmed the previous government’s commitment to “a dual-track strategy of increasing sanctions while offering genuine engagement” and continued as follows:

“Iran has still not complied with four successive Security Council Resolutions. The IAEA (International Atomic Energy Agency) issued a report on Iran on 15 September. The report highlighted Iran’s continuing failure to meet UNSCRs by continuing its enrichment programme and installation of new cascades. This is the second report in a row that has noted Iran’s failure to answer the IAEA’s questions relating to studies with a possible military dimension. Dr ElBaradei (IAEA Director General) reported that, ‘The Agency, regrettably, has not been able to make any substantive progress on the alleged studies and other associated key remaining issues which remain of serious concern’. Dr ElBaradei noted his ‘serious concerns’ about these issues in May.”

61.8 He went on to say that:

“The Government believes that it is important to continue to take steps to prevent the financing and proliferation of Iran’s nuclear and missile programmes through increasing the weight and effectiveness of sanctions. The UK has played a leading role in pursuing restrictive measures at the EU as well as the UN level. For example, the measures adopted in the Common Position on 7 August provided a robust implementation of UNSCR 1803, going beyond it in several areas. The UK fully supports this extension of measures. The Government believes that notification burdens on transactions with Bank Saderat and increased vigilance over transactions with Iranian linked banks are particularly significant.”

61.9 The then Minister went on to note that on 29 September the UN had adopted a new Security Council Resolution against Iran:

“The Resolution sent a clear signal to Iran. It demonstrated the continued resolve of the E3+3 to ensure that Iran does not continue on the path towards a nuclear weapon. It reaffirmed the strategy of engagement plus sanctions and drew attention to Iran’s defiance of IAEA inspectors. We will continue to press for stronger UN measures.”

61.10 Turning to the situation in Iran, the then Minister said:

“Despite the rhetoric of the Government of Iran there are early signs of an internal debate beginning in Iran over the E3+3’s recent offer of negotiations and incentives if Iran suspends the enrichment of uranium.
“Media reports also indicate that investors have become increasingly nervous over investing in Iranian enterprises, blaming the political tensions surrounding Tehran’s nuclear programme. Stronger sanctions, particularly increasing vigilance over Iranian financial institutions appear to be having an impact.”

61.11 Summing up, the then Minister concluded:

“At present Iran is enriching uranium for which it has no credible civilian need. The United Kingdom, with our E3+3 partners, is pursuing a dual-track strategy to persuade Iran to engage in negotiations to lead to an agreement on the future of its nuclear programme that is acceptable to the international community, the IAEA, and Iran. This involves engagement on one hand, and pressure on the other. The E3+3 made a generous offer in June 2006, refreshed in June 2008. This offers Iran all it needs to pursue a modern nuclear industry, in a less proliferation-sensitive manner, as well as a range of other benefits. Javier Solana, on behalf of the E3+3, has met the Iranian Chief Nuclear Negotiator (Sa’id Jalili) a number of times, but Iran has so far failed to take up the offer. As for pressure, the UN Security Council has passed three sanctions resolutions against Iran. The EU has implemented each of these by going beyond the requirements of the UN text. The US also has unilateral sanctions in place against Iran.”

61.12 Given the high level of public concern about Iran’s nuclear activities, as well as clearing the Regulation, the then Committee reported this exposition of the Government’s approach and assessment to the House (and, for the same reason, also forwarded that chapter of its Report to the Foreign Affairs Committee).259

**The proposed Council Decision**

61.13 In his Explanatory Memorandum of 9 July 2010, the Minister for Europe (Mr David Lidington) says that on 9 June 2010, the UN Security Council adopted Resolution 1929 on Iran’s nuclear programme and its failure to comply with its international obligations, which imposes a number of further restrictive measures against Iran and which, he says, in broad terms:

— reaffirms that Iran shall cooperate fully with the International Atomic Energy Agency;

— stops new Iranian nuclear facilities and bans Iranian nuclear investment in third countries;

— imposes total bans on exports of several major categories of arms, and further restrictions on Iran’s ballistic missile programme;

— freezes the assets of 40 entities, including one bank subsidiary, several Islamic Revolutionary Guard Corps companies, and three Islamic Republic of Iran Shipping Lines subsidiaries, which have been involved in multiple sanctions violations cases;

— freezes the assets of and bans travel on one senior nuclear scientist;

— implements a regime for inspecting suspected illicit cargoes and authorising their seizure and disposal;

— places restrictions on financial services, including insurance and reinsurance, where there is suspicion of a proliferation link;

— bans existing and new correspondent banking relationships where there are proliferation concerns;

— establishes a Panel of Experts to advise and assist on sanctions implementation; and

— reaffirms the dual track strategy (of pressure and diplomacy).

61.14 The Minister then explains that EU Heads of Government welcomed the UN resolution in a Council Declaration on 17 June 2010, which invited the EU Foreign Affairs Council to adopt a Council Decision at its next session, on 26 July, to implement the measures contained in UNSCR 1929, as well as additional EU sanctions in the following areas:

— the energy sector, including the prohibition of investment, technical assistance and transfers of technologies, equipment and service;

— the financial sector, including additional asset freezes against banks and restrictions on banking and insurance;

— trade, including a broad ranging ban on dual use goods and trade insurance;

— the Iranian transport sector in particular the Islamic Republic of Iran Shipping Line (IRISL) and its subsidiaries and air cargo; and

— new visa bans and asset freezes, especially on the Islamic Revolutionary Guard Corps (IRGC).

61.15 Consequently, the Minister says, the EU Council Secretariat has produced a draft Council Decision that incorporates all of these elements in addition to the latest UN measures.

61.16 With regard to the Fundamental Rights aspects of the Decision, the Minister says that:

— the procedures for designating individuals as subject to travel restrictions and asset freezes are compliant with fundamental rights. Individuals may only be listed where evidence suggests that they are engaged in activities listed under Articles 18 (1) (b) and 19 (1) (b) of the draft Decision. Member States may grant exemptions from the travel ban and asset freeze for specified reasons including, inter alia, where travel or payments are justified on the grounds of humanitarian need by application to the UN Sanctions Committee on Iran;

— the draft Decision says that the Council will communicate their listing to designated persons and entities, so as to give them an opportunity to present observations. Where observations are submitted or where substantial new evidence is presented, the Council
will review its decision in the light of those observations and inform the person or entity concerned accordingly. In addition, the travel ban and asset freezing measures will be reviewed at regular intervals and at least every 12 months; and

— challenges to a listing can be brought before the General Court. Challenges to the application of a travel ban or asset freeze (e.g. grant of exemptions) may be brought in the courts of the Member State concerned.

The Government’s view

61.17 In his Explanatory Memorandum of 9 July 2010, the Minister says that the Government “is committed to tough additional EU sanctions against Iran, aimed at halting its proliferation sensitive activity and making it comply with its international obligations”, and continues as follows:

“The UN Security Council has sent a strong signal that Iran’s continued failure to comply with its international obligations cannot be ignored. The Government believes that the UN resolution is a clear response to continuing Iranian non-cooperation with the international community over its nuclear programme, which continues in contravention of previous UNSCRs and IAEA Board resolutions.

“It is clear that Iran has so far failed to reassure the international community, or the IAEA, that its programme is exclusively peaceful. The UK urges Iran to allow the IAEA the access it seeks to enable it do so, including answering their questions about the alleged military studies.

“The Government is deeply concerned by the revelations last year about the construction of the covert enrichment facility of Qom. And given that Iran continues to increase its stockpile of Low Enriched Uranium — a critical step towards a nuclear weapon — in defiance of six UNSCRs, and with no apparent civil use, the Government, along with the rest of the international community, remains critically concerned about Iranian intentions.

“The Government has said many times that we do not question or challenge Iran’s right to peaceful nuclear energy. But with that right comes important responsibilities which Iran has continually failed to accept. We continue to make clear to Iran that the E3+3 remain willing to meet to pursue a diplomatic resolution to the nuclear issue.

“The United Kingdom has been pressing hard for tough action by the EU to accompany and reinforce the recent UN resolution. The European Council Declaration on 17 June sent a clear and strong signal of our unity and resolve.

“The Government welcomes the strong additional restrictive measures that are included in the draft Council Decision, which sends a strong message to the Iranian regime and the international community of the EU’s resolve to halt Iran’s nuclear proliferation sensitive activity and make it return to the negotiating table. The measures under negotiation will have a tangible impact on the Iranian regime’s ability to finance nuclear proliferation activity, through freezing the assets of additional banks, close monitoring of all financial transactions with Iran and by
cutting revenue to the regime through sanctions against the energy sector. The extended ban on dual use goods and the targeting of the transport sector will make it more difficult for Iran to acquire the goods and technology needed to advance its nuclear activity. The contribution of key individuals and entities to proliferation sensitive activity will be hit by additional asset freezes and travel bans, particularly the Iranian Revolutionary Guard Corps (IRGC)."

The Minister’s letter of 9 July 2010

61.18 In his accompanying letter of 9 July 2010, in addition to reiterating the essence of his Explanatory Memorandum, the Minister says that the Government is committed to ensuring that the Committee has an opportunity to express its views on texts, and thus hold the Government to account on EU decision making, and has therefore submitted the Decision, despite it being still a working document, so that the Committee has time to scrutinise the proposal.

61.19 The Minister goes on to say that he will submit the final Decision for scrutiny as soon as it has been agreed by officials and, in advance of the adoption, will outline the main differences from the draft text — which, he says, he expects to be of detail rather than substance.

61.20 The Minister also explains in his Explanatory Memorandum that, once the Decision is adopted, the EU will negotiate an implementing Council Regulation, which will make these measures binding upon Member States; which he expects to be adopted in October 2010; and upon which he will submit for scrutiny when a draft is received.

61.21 The Council Decision was adopted by the 26 July 2010 Foreign Affairs Council, together with a Regulation extending the list of entities and individuals subject to an assets freeze.260

The Minister’s letter of 29 July 2010

61.22 The Minister for Europe’s letter of 29 July 2010 is with regard to the updating of the existing Council Regulation:

"The update was necessary to allow Member States to implement the asset freeze and travel ban against newly designated individuals and entities contained in the Council Decision with immediate effect. It was imperative that the Regulation update was agreed along with the Council Decision on restrictive measures against Iran to prevent asset flight. There would have been a real threat if action had been delayed until adoption of a new Regulation in the autumn and would have weakened the impact of the new measures agreed. I regret that your Committee was not able to scrutinise the update to the Regulation before it was adopted. The final list of agreed names was only agreed and circulated on 23 July. As a result, I had to agree to the adoption of the Regulation amendment at the Foreign Affairs Council, before the Committee has cleared it from scrutiny.

“This is not a decision I have taken lightly. I am fully committed to the rigorous parliamentary oversight of the Government’s policy in the EU. However, given the exceptional nature of this particular case, I believe that on balance was in the national interest to proceed without clearance. The Government, together with EU and international partners, has been clear that it is imperative to adopt tough additional EU sanctions against Iran in the shortest possible timeframe. The Government’s approach to Iran has enjoyed consistent cross Party support in the House.

“As you know, I have attempted to keep the Committees fully informed on EU action against Iran. I submitted an Explanatory Memorandum on the draft Decision and I wrote to you separately on 9 July, where I raised the likelihood of further designations. My officials also updated the Clerk of the Lords Committee on 21 July, inter alia, that the EU would need to update the existing Regulation.

“Now that the Decision has been adopted, this will need to be translated into a Council Regulation, which we expect to be completed by the end of September. I will submit the draft Regulation to be scrutinised by your Committee in due course.”

Conclusion

61.23 It is disappointing that, despite his protestations regarding his commitment to rigorous scrutiny, the Minister has now agreed to override scrutiny of the amendment to the implementing Council Regulation without giving the Committee any prior warning. At paragraph 4 of his Explanatory Memorandum the Minister said that “once the Decision is adopted, the EU will negotiate a Regulation. This will make these measures binding on upon Member States. On current timing, we expect the Regulation to be adopted in October 2010.” And at paragraph 27 he said again “Once the Decision is adopted EU member states will begin negotiation of the Council Regulation”. His follow-up letter of 9 July similarly made no mention of an amendment to the implementing Regulation being adopted at the same time as the Decision. So it is only in his letter of 29 July, after the meeting of the Council, that we are told that in fact an amended Regulation was adopted at the same time as the Decision.

61.24 We ask the Minister to explain when the Commission forwarded the proposed amendment to the Regulation to the Council, and why the Government did not deposit it with an Explanatory Memorandum, as is the procedure for EU documents under our Standing Order.

61.25 We also ask the Minister to deposit the amended Regulation with an Explanatory Memorandum. Given that the Regulation is directly effective, the Explanatory Memorandum should cover the fundamental rights implications of the travel restrictions and asset freezes in the Regulation, in particular in the light of the ECJ’s decision in Yusuf and Kadi.261

61.26 If, as we understand, there is a second implementing Regulation to be adopted, we look forward to its early deposit with an accompanying Explanatory Memorandum.

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261 Joined cases C-402/05 and C-415/05.
61.27 **In the meantime, we clear the Council Decision.**

### 62 The EU Eastern Partnership

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**Legal base**
- Foreign and Commonwealth Office

**Department**
- Minister’s letter of 30 March 2010

**Basis of consideration**
- Previous Committee Report
  - HC 19–xviii (2008–09), chapter 16 (3 June 2009);
  - HC 19–xiii (2008–09), chapter 1 (1 April 2009);
  - HC 19–xi (2008–09), chapter 5 (18 March 2009);
  - Also see (30615) 9029/09: HC 19–xviii (2008–09), chapter 17 (3 June 2009)

**Discussed in Council**
- 11–12 December 2008 European Council

**Committee’s assessment**
- Politically important

**Committee’s decision**
- Debated in European Committee B on 27 April 2009; further information now provided

### Background

62.1 The June 2008 European Council initially discussed the idea of an Eastern Partnership (EaP), based on a Polish/Swedish proposal. It envisaged “enhancing EU policy towards eastern European Neighbourhood Policy (ENP)\(^\text{262}\) partners in bilateral and multilateral formats”, and agreed on:

> “the need to further promote regional cooperation among the EU’s eastern neighbours and between the EU and the region, as well as bilateral cooperation between the EU and each of these countries respectively, on the basis of

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\(^{262}\) According to its website, the ENP was developed in 2004 “with the objective of avoiding the emergence of new dividing lines between the enlarged EU and our neighbours and instead strengthening the prosperity, stability and security of all concerned.” See [http://ec.europa.eu/world/enp/index_en.htm](http://ec.europa.eu/world/enp/index_en.htm) for full information and chapter 17 of the then Committee’s most recent Report for its consideration of the latest Commission report on the ENP.
differentiation and an individual approach, respecting the character of the ENP as a single and coherent policy framework.”

62.2 It said that such cooperation “should bring added value and be complementary to the already existing and planned multilateral cooperation under and related to the ENP, in particular the Black Sea Synergy and the Northern Dimension”, and invited the Commission to take the work forward and present to the Council in Spring 2009 “a proposal for modalities of the “Eastern Partnership”, on the basis of relevant initiatives.” 263

62.3 The Extraordinary Council on 1 September, which met to discuss the crisis in Georgia, noted with concern the impact of the crisis on the whole of the region, and considered that it was “more necessary than ever to support regional cooperation and step up its relations with its eastern neighbours, in particular through its neighbourhood policy, the development of the “Black Sea Synergy” initiative and an “Eastern Partnership”. The Council indicated that it now wished to adopt this partnership in March 2009 and, to this end, invited the Commission to submit its proposals sooner, in December 2008. 264

The Commission Communication

62.4 The Communication presents proposals for an ambitious and specific Eastern dimension within the ENP. It advocates a “step-change in relations” with the six Eastern neighbours — Ukraine, Moldova, Belarus, Georgia, Armenia and Azerbaijan — “without prejudice to individual countries’ aspirations for their future relationship with the EU.” The Eastern Partnership (EaP) “should bring a lasting political message of EU solidarity, alongside additional, tangible support for their democratic and market-oriented reforms and the consolidation of their statehood and territorial integrity”. This will, the Commission says, serve “the stability, security and prosperity of the EU, partners and indeed the entire continent”, and “will be pursued in parallel with the EU’s strategic partnership with Russia”. The Commission sees the EaP as going further than the present ENP:

“The guiding principle should be to offer the maximum possible, taking into account political and economic realities and the state of reforms of the partner concerned, bringing visible benefits for the citizens of each country.”

62.5 An essential component will be a commitment from the EU to accompany more intensively partners’ individual reform efforts. The full political engagement of EU Member States will be essential. Active parliamentary contacts and exchanges will also play an important role.

62.6 The EaP will be based on mutual commitments to the rule of law, good governance, respect for human rights, respect for and protection of minorities, and the principles of the market economy and sustainable development. The extent to which these values are reflected in national practices and policy implementation will determine the “level of


ambition of the EU’s relationship with the Eastern Partners’; joint ownership is seen as essential, and both sides of the EaP are to “have their responsibilities.” Only with strong political will on both sides will the EaP achieve its objective of political association and economic integration.

62.7 The main proposals (which are set out in more detail in our previous Reports) are:

— new Association Agreements (AA) between the EU and each partner country, to succeed the existing Partnership and Cooperation Agreements due to expire in 2008 and 2009. These agreements would aim to help encourage these countries to adopt EU norms and standards, both in terms of democracy and governance as well as technical standards for trade, energy and other sectors. They should also advance cooperation on Common Foreign and Security Policy and European Security and Defence Policy;

— a Comprehensive Institution Building programme (CIB) to help build partners’ administrative capacity to meet commitments and conditions arising from the AAs;

— to achieve a deep and comprehensive free trade agreement between each EaP country and the EU Member States, with a longer term vision of creating a neighbourhood economic community;

— individual country mobility and security pacts: encompassing both labour mobility and cooperation on tackling illegal migration, border management aligned to EU standards, and enhanced efforts to fight organised crime and corruption;

— talks on visa facilitation with partners: improved consular coverage; roadmaps to waiving visa fees from Schengen countries and increased EU support for national strategies to tackle organised crime, trafficking etc., with non-Schengen countries such as the UK invited to take parallel steps;

— policies to promote energy security;

— a new multilateral forum to allow EU member states to share information with the Eastern Partners to help these countries to modernise. This would include an annual Spring meeting of Foreign Ministers and a biennial meeting of Heads of State and Government; and

— third countries (e.g. other Black Sea Synergy partners like Russia and Turkey) could be involved in various projects if all the partners agreed.

62.8 The multilateral track will provide a new framework to support each differentiated bilateral component, providing a “forum to share information and experience on partners’ steps towards transition, reform and modernisation”, facilitating the development of common positions and activities, and initiating “a structured approximation process, supported by the CIB”.

62.9 There should be four Thematic Platforms:

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265 For example: “The level of Belarus’ participation in the EaP will depend on the overall development of EU-Belarus relations”.

• democracy, good governance and stability;
• economic integration and convergence with EU policies;
• energy security; and
• contacts between people.

62.10 A number of flagship initiatives are also suggested (e.g., an Integrated Border Management Programme, an SME Facility, promotion of regional electricity markets, disaster preparedness), to be funded through multi-donor support, International Financial Institutions and the private sector.

62.11 The Communication also discusses funding — “substantially increased financial resources are required to achieve the objectives set out in this proposal” — and monitoring and evaluation.


62.13 The proposal was strongly supported by the then Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint). But, as the Commission itself pointed out, significant additional resources would be needed. With “significant pressures on the ENP Instrument due to reallocation of funding for the Georgia crisis and on-going support to the Palestinian Territories”, the Commission estimated it would need €600 million extra in this budget to support the implementation of the EaP; €250 million had been found from the existing ENPI envelope (2010–2013), mainly through re-prioritisation of funds from the Regional East Programme; but an additional €350 million of new money would be required. Detailed Commission proposals were awaited: “further re-prioritisation in the framework of the budget mid-term review [would] need to be carefully balanced with the needs, expectations and current initiatives (such as the Union for the Mediterranean) for the Southern neighbours.”

62.14 The history of the previous Committee’s subsequent consideration of the Commission Communication is set out in its previous Reports. It was debated in European Committee B on 27 April 2009.267

62.15 During the debate, the then Minister undertook to provide further information, following the “launch” Summit in Prague, under the Czech Presidency, on 7 May 2009.

The then Minister’s letter of 18 May 2009

62.16 The full details of the then Minister’s letter is set out in the previous Committee’s most recent Report. On the key issue of Financing, she recalled that the €600 million headline figure endorsed by the Spring European Council declaration on the Eastern Partnership was based on a Commission proposal to reprioritise €250 million from existing ENPI (European Neighbourhood and Partnership Instrument) — Regional East

267 See http://www.publications.parliament.uk/pa/cm200809/cmgeneral/euro/090427/90427s01.htm for the record of the debate, which took place on 27 April 2009.
funds and new additional commitments of €350 million from the budget margins of Heading 4 (external actions or ‘EU as a Global Partner’). She went on to say that financing for the Eastern Partnership would be included in discussion of the Commission’s Preliminary Draft Budget for 2010 and the annual EU budget negotiation process, which she did not expect to be completed before mid-November, with the Parliament expected to adopt the budget in early December; and that, for 2010, the Commission proposed additional commitment appropriations (CA) of €25 million, and payment appropriations (PA) of €5 million, for the Partnership.

62.17 She then went on to note that:

“The margins are normally reserved for crises and other unforeseen expenditure such as support for missions in Kosovo or responding to the crisis in Palestine. The Commission’s plans to pre-allocate more than half the remaining budget margins up to 2013 may constrain our ability to support other foreign policy priorities with EC Budget funds and could ultimately compromise the EC Budget 2007–2013 Financial Framework. Any use of the margins to finance the Eastern Partnership will represent wholly additional expenditure of which the associated UK costs (approximately 14.7% of the total, which would amount to around £43m, subject to exchange rates and UK GNI contribution shares, if new expenditure reached €350m) will need to be found.

“We therefore want to ensure that adequate margins are maintained to finance future crises and UK priorities, and will continue to encourage further re-prioritisation within existing resources and to limit the proposed use of the margin. We also want the Commission to clarify for us why there should be such a disparity between the commitments and payments profiles in the proposal. The Foreign Secretary secured an important amendment in the Spring European Council conclusions to ensure that the commitment to €600m was set in the context of a budget-disciplined approach and the importance of maintaining adequate margins.

“My officials continue to collaborate in a joint strategy with HMT and DFID to influence decisions on financing the Eastern Partnership. Policy will be discussed in the COEST working group (an FCO lead), budget issues in the Council budget committee (an HMT lead), and individual partner country allocations in the ENPI Management Committee (a DFID lead).

62.18 She then went on to note that funding for the Eastern Partnership from 2011 was also linked to the mid-term review (MTR) of the ENPI, which was due to be completed in March 2010:268

“We view the MTR as an important exercise in assessing the impact and effectiveness of EC aid in the region and an opportunity for Member States to propose adjustments to existing priorities and programmes (including country allocations for the Eastern Partnership) accordingly. We want the MTR to consider funding needs

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268 The ENPI is one of a suite of new financial regulations, or Instruments, that were adopted in 2007 with respect to the funding of the EU’s external actions, including the Development and Cooperation Instrument, the Instrument for Stability, and the Instrument for the promotion of democracy and human rights.
and priorities for the Eastern Partnership countries from 2011–13. The UK plays an active role in the Brussels ENPI Management Committee, working closely with other Member States to make it an effective forum, and to hold the Commission to account. We will continue to encourage the Commission to allocate funding based on a sound resource allocation model to reflect partners’ needs, priorities and absorption capacity.”

62.19 The previous Committee observed that it could not imagine why the Commission should need such encouragement, since it could see no other sensible basis upon which to allocate the available resources, and said that it would be looking to both her and her colleagues in the Department for International Development, who had made much, in a variety of contexts, of their commitment to pursuing these matters in the relevant Councils and Council working groups, to demonstrate this when the time came.

62.20 The previous Committee also drew attention to a second common factor between the proposed Union of the Mediterranean and the EaP, in addition to embarking on major initiatives without any indication that appropriate funding was in place — namely, what, despite the evidence to the contrary, were often styled as “common values”. It noted that the Joint Declaration of the Prague Eastern Partnership Summit said that the Eastern Partnership was “founded on mutual interests and commitments”, including “to the principles of international law and to fundamental values, including democracy, the rule of law and the respect for human rights and fundamental freedoms … and good governance.”269 However, as the analysis in the Commission Communication on implementation of the ENP made clear, the reality on the ground was somewhat different: although there had undoubtedly been economic development in the ENP partner countries, there had been very little progress in these other areas — the absence at the Prague Summit of the President of Belarus, whose democratic failings had constrained its participation in the ENP hitherto, exemplifying the magnitude of the challenge that lay ahead.

62.21 In the meantime the previous Committee reported this further information to the House in view of the importance of issues concerned.

The then Minister for Europe’s letter of 30 March 2010

62.22 In his letter, the then Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) updates the Committee as follows:

**Eastern Partnership Budget**

“An overall allocation of €5.7 billion for the ENPI for the period 2011–2013 has been agreed. Financing for the Eastern Partnership for this period was approved in December 2009 by the EU budget committee. The March 2009 European Council agreed to find €600 million additional resourcing for ENPI to fund the Eastern Partnership. The UK was successful in reducing this to €350 million additional

funding. This amount will be taken from the margins of the External Relations, Heading 4, EU budget and will require annual approval in Budget Committee Meetings. The remaining €250 million has been reallocated from existing ENPI funding for activity in the East.

“There are 3 main areas of funding engagement under the Eastern Partnership: (i) The Comprehensive Institution Building programme, which supports capacity building in individual partner countries to enable reforms to be carried out (€175 million); (ii) Regional programmes aimed at addressing economic and social disparities within partner countries (€75 million); and (iii) the multilateral dimension (€350 million).

**ENPI Mid-term Review**

“At the ENPI mid-term review in December 2009, Country and Regional Strategy Papers for 2007–13 were reviewed and new three-year National and Regional Indicative Programmes for the period 2011–13 agreed with five of the six Eastern Partnership countries. The 2007–10 National Indicative Programme for Belarus will be extended to one more year, to include 2011, to allow a review of the most recent developments in democratisation, respect for human rights and the rule of law to be carried out before a new one is developed. We will monitor the situation closely.

“We are satisfied that the new National and Regional Indicative Programmes and financial allocations are in line with our and Partners’ priorities, and reflect progress against medium and long-term objectives and absorption capacity. We will continue to press for the aims and objectives which are outlined in strategy documents to be implemented. Our priority is to ensure spend continues to be used effectively and supports concrete political and economic reform.

**Multilateral Dimension**

“The Eastern Partnership has both bilateral and multilateral dimensions. Multilateral working groups allow Partners and Member States to share best practice and guidance in areas of common interest. The groups are structured around four key areas of work, referred to as ‘platforms’: Platform 1 Democracy, Good Governance, Stability; Platform 2 Economic Integration & Convergence with EU Policies; Platform 3 Energy Security and Environment and Climate Change; and Platform 4 Contacts Between People.

“Flagship initiatives in Integrated Border Management, Prevention of, preparedness for, and response to natural and man-made disasters, SME Development, Regional energy markets and energy efficiency and Environmental Guidance are now being developed and the initiatives on border management and response to disasters have already been launched.

**Association Agreements**

“Bilateral Association Agreements between the EU and each Partner country will require Partners to make progress in ensuring rule of law, respect for human rights
and improved economic governance. The Eastern Partnership offers Association Agreements to five of the six partners (i.e. excluding Belarus). Negotiations on an Association Agreement with Moldova have begun and the EU is currently putting together negotiating mandates for Association Agreements with all three South Caucasus countries. Much progress has been made in negotiating the Association Agreement with Ukraine and I hope work on this will be finalised by the middle of next year.

“Belarus remains ineligible for an Association Agreement whilst respect for democratic values and the rule of law are not clearly demonstrated. The long term EU goal for Belarus is for it to become a democratic, stable and prosperous partner with whom we share a common agenda based on common values. We support the Commission approach to progressing work with Belarus with this aim, which consists of a two track approach of restriction of political contact and links with, and assistance to, other actors in civil society.”

62.23 The then Minister concludes by saying that the Foreign and Commonwealth Office “will to continue to work closely with other government departments, and our representations in Brussels and the region to ensure the Eastern Partnership delivers real progress in our priority areas”, and that he “will continue to update the Committee on progress at key stages.”

Conclusion

62.24 So far as funding is concerned, there seems to have been little change in the situation described by the then Minister (Caroline Flint) in her previous letter. Her determination to encourage further re-prioritisation within existing resources, and to limit its use notwithstanding, the margin is still where the bulk of the €600 million is to be found.

62.25 So far as the process itself is concerned, Belarus continues to exclude herself, and on the key element — new Association Agreements — only Moldova is out of the traps. Dramatic change was never on the cards. But the challenge will be to ensure that, on its tenth anniversary, the EaP does not find itself being described by the then Minister for Europe in the same terms as did one of his or her predecessors on the tenth anniversary of its southern precursor: moribund, and in need of “a strategic refresh”.

62.26 We note the offer of further updates. But the Committee has now done its job in ensuring the scrutiny of the establishment of the Eastern Partnership. Unless the Commission produces further documents on the EaP (which should, of course, be deposited for scrutiny), we are content to leave interested Members to follow its development via other channels and for the Minister to respond accordingly.
63 Post–Lisbon changes to ongoing legislative proposals

(a) (31212) 
17193/1/09 + ADDs 1–5
COM(09) 665  
Commission Communication: Consequences of the entry into force of the Treaty of Lisbon for ongoing inter-institutional decision making procedures

(b) (31609)  
8579/10 COM(10) 147  
Addendum to Commission Communication: Consequences of the entry into force of the Treaty of Lisbon for ongoing inter-institutional decision making procedures

Legal base
Document originated (b) 12 April 2010
Deposited in Parliament (b) 19 May 2010
Department Foreign and Commonwealth Office
Basis of consideration (a) EM of 13 January 2010
(b) Addenda to EM of 13 January 2010
Previous Committee Report (a) HC 5–vii (2009–10), chapter 10 (20 January 2010)
(b) None
To be discussed in Council n/a
Committee’s assessment (a) and (b) Legally and politically important
Committee’s decision (a) Cleared (decision reported on 20 January 2010)
(b) Cleared

Background

63.1 The Treaty of Lisbon entered into force on 1 December 2009. It amends the Treaty on European Union and the Treaty establishing the European Community. In addition, the TEC was renamed the Treaty on the Functioning of the European Union (TFEU).

63.2 In December 2009 the European Commission prepared a Communication entitled Consequences of the entry into force of the Treaty of Lisbon for ongoing inter-institutional decision-making procedures to inform the Council and European Parliament of legislative proposals introduced under the previous treaty regime that need to be adapted to the new post-Lisbon legislative framework.

63.3 The Lisbon Treaty necessitates the following five categories of changes to ongoing legislative proposals:

- All pending proposals will have to be renumbered in accordance with the new post-Lisbon Treaty framework. This is very much a technical change with no substantive implications;
- The Lisbon Treaty provides for the extension of “ordinary legislative procedure” (formerly known as co-decision) to a number of new areas. It also affects the use
and scope of the other legislative procedures which are now known collectively as ‘special legislative procedures’. Budgetary matters, i.e. overall spending levels and levels of Member State contributions, will continue to be decided by Member States strictly by unanimity. An approval procedure will be applied to the conclusion of international agreements, whilst otherwise foreign and defence policy will remain largely unaffected by changes in the legislative procedure;

- In addition to all proposals being renumbered, the Communication identified 16 proposals where the Lisbon Treaty entails a change to their legal base that goes beyond a mere change to the numbering (Annex 1 of the Communication);

- The Communication lists all current ex-Third Pillar Justice and Home Affairs proposals, which are to be withdrawn and to be replaced, for the most part, with new proposals. Those proposals which are most recent will be retabled and will be subject to the normal scrutiny arrangements (Annex 2); and

- Commission “recommendations” under Article 126(6) (ex Article 104(6) EC) will now be known as Commission “proposals” (Annex 3). This is also a technical change with no substantive implications.

63.4 Together with the Communication the Commission provided an indicative list of ongoing proposals whose procedures changed under the Lisbon Treaty (contained in Annex 4 of the Communication). Our predecessor Committee cleared the Communication with all annexed lists on 20 January 2010 on the grounds that the changes were technical and obligatory under the new treaty regime.

The document

63.5 Document (b) provides an update on the Commission Communication published in December. The purpose of this update is to amend the lists in the annex to that Communication. More specifically, it proposes to delete from Annex 4 a number of proposals that have been adopted by the legislator. Under the rubric of Annex 4 there are also six proposals for which the applicable procedure has been amended, whilst for four proposals the reference to the legal basis has been corrected and two proposals have been added. A further three proposals have been moved from Annex 4 to Annex 1, while two proposals have been added to the latter. Lastly, two proposals have been deleted from Annex 1. A detailed list of all proposals to be amended, updated, deleted or transferred from one annex to another is provided in the Appendix to this chapter.

The Government’s view

63.6 In its original Explanatory Memorandum the previous Minister for Europe (Chris Bryant) set out the technical nature of the proposed amendments contained in document (a). The Government has now submitted addenda to that EM which specifically relate to document (b), which updates the list of proposals to be adapted to the post-Lisbon treaty framework. The Government supports the proposed changes on the same grounds as set out in its original Explanatory Memorandum, namely, that they are technical, do not affect the substantive content of the proposals and are both obligatory and consequential to the changes agreed in the Lisbon Treaty. The changes proposed by document (b) are due either
to original misclassification or re-classification of proposals in the light of more thorough examination of the new Lisbon procedures and legal bases.

**Conclusion**

63.7 We agree with the Government that the changes contained in the Addendum (document (b)) to the Commission Communication are technical, consequential and in any event obligatory under the post-Lisbon Treaty framework. We are therefore happy to clear document (b) from scrutiny.

**Appendix: Annex 1**

(A) **Add the Following Proposals:**

COM(2006) 168 — Amended proposal for a EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE on criminal measures aimed at ensuring the enforcement of intellectual property rights [based on Article 95]. *Article 83(2) TFEU.*

COM(2008) 778 — Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (recast) [based on Article 95 EC]. *Article 194(2) TFEU.*

COM(2009) 326 — Proposal for a COUNCIL DECISION on the conclusion of the Statute of the International Renewable Energy Agency (IRENA) by the European Community and on the exercise of its rights and obligations [based on Article 175(1), Article 300(2), first paragraph, and Article 300(3), first paragraph]. *Article 194(2) and Article 218(6)(a) TFEU.*

COM(2009) 459 — Proposal for a COUNCIL REGULATION concerning authentication of euro coins and handling of euro coins unfit for circulation [based on Article 123(4)]. *Article 133 TFEU.*

COM(2009) 580 — Proposal for a COUNCIL DECISION providing macro-financial assistance to Ukraine [based on Article 308 EC]. *Article 212 TFEU.*

(B) **DELETE THE FOLLOWING PROPOSALS:**

COM(2005) 276 — Proposal for a EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE on criminal measures aimed at ensuring the enforcement of intellectual property rights.

Annex 4

(A) Delete the Following Proposals:

<table>
<thead>
<tr>
<th>Proposal</th>
<th>Date adopted, rejected, withdrawn or moved to Annex 1</th>
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<tbody>
<tr>
<td>COM(1998) 344 — Proposal for a COUNCIL DECISION on the signature by the European Community of the UN/ECE Convention on access to information, public participation and access to justice in environmental matters</td>
<td>17/2/2005</td>
</tr>
<tr>
<td>COM(2006) 752 — Draft Proposals for Council Decisions on the signature, on behalf of the European Community, and on the provisional application of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation’s association with the implementation, application and development of the Schengen acquis</td>
<td>28/2/2008</td>
</tr>
<tr>
<td>COM(2007) 143 — Proposal for a COUNCIL AND COMMISSION DECISION on the conclusion of the Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Tajikistan, of the other part, to take account of the accession of the Republic of Bulgaria and Romania to the European Union</td>
<td>17/11/2009</td>
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<tr>
<td>Proposal</td>
<td>Date adopted, rejected, withdrawn or moved to Annex 1</td>
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## Proposal

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<tr>
<th>Proposal</th>
<th>Date adopted, rejected, withdrawn or moved to Annex 1</th>
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<tbody>
<tr>
<td>COM(2008) 778 — Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products</td>
<td>(goes to Annex I)</td>
</tr>
<tr>
<td>COM(2008) 796 — Proposal for a COUNCIL REGULATION laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products (codified version)</td>
<td>30/11/2009</td>
</tr>
<tr>
<td>COM(2009) 18 — Proposal for a COUNCIL DECISION on the signing and conclusion of the Agreement in the form of an exchange of letters between the European Community and the Arab Republic of Egypt concerning reciprocal liberalisation measures on agricultural, processed agricultural products and fish and fishery products and the replacement of Protocols 1 and 2 and of the Annex to Protocol 1 and the Annex to Protocol 2 and modifications to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part</td>
<td>9/10/2009</td>
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<tr>
<td>COM(2009) 28 — Proposal for a COUNCIL DIRECTIVE concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures</td>
<td>16/3/2010</td>
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<tr>
<td>Proposal</td>
<td>Date adopted, rejected, withdrawn or moved to Annex 1</td>
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<tr>
<td>COM(2009) 61 — Proposal for a COUNCIL DECISION on a Community Position concerning the Rules of Procedure of the Joint CARIFORUM-EC Council, the Trade and Development Committee and the Special Committees provided for by the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part</td>
<td>16/11/2009</td>
</tr>
<tr>
<td>COM(2009) 95 — Proposal for a COUNCIL DECISION on the signing and conclusion of the Agreement in the form of an exchange of letters between the European Community and the State of Israel concerning reciprocal liberalisation measures on agricultural, processed agricultural products and fish and fishery products and the replacement of Protocols 1 and 2 and of the Annex to Protocol 1 and the Annex to Protocol 2 and modifications to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part</td>
<td>20/10/2009</td>
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<tr>
<td>COM(2009) 97 — Proposal for a COUNCIL DECISION on a Community Position concerning the participation in the CARIFORUM-EC Consultative Committee provided for by the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part and on the selection of the representatives of organisations located in the EC Party</td>
<td>16/11/2009</td>
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<tr>
<td>COM(2009) 100 — Proposal for a COUNCIL DECISION amending Decision 2006/326/EC to provide for a procedure for the implementation of Article 5(2) of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters</td>
<td>30/11/2009</td>
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<tr>
<td>COM(2009) 101 — Proposal for a COUNCIL DECISION amending Decision 2006/325/EC to provide for a procedure for the implementation of Article 5(2) of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters</td>
<td>30/11/2009</td>
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<td>Proposal</td>
<td>Date adopted, rejected, withdrawn or moved to Annex 1</td>
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<tr>
<td>COM(2009) 185 — Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)</td>
<td>15/2/2010</td>
</tr>
<tr>
<td>COM(2009) 221 — Proposal for a COUNCIL DECISION on the signature and provisional application on behalf of the European Community of the Agreement on Scientific and Technological Cooperation between the European Community of the one part and the Hashemite Kingdom of Jordan of the other part</td>
<td>10/11/2009</td>
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<td>Proposal</td>
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<td>(EC) No 539/2001 listing the third countries whose nationals must be in</td>
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<td>possession of visas when crossing the external borders and those whose</td>
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<td>nationals are exempt from that requirement</td>
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<td>to be taken as regards the Joint Committee decision authenticating the</td>
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<td>Agreement between the European Community and its Member States on the</td>
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<td>one part, and the Swiss Confederation on the other, on the free movement</td>
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<td>of persons in the Bulgarian and Romanian languages</td>
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<td>concerning the Rules of Procedure for Dispute Settlement and the Code of</td>
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<td>Conduct for Arbitrators provided for by the Economic Partnership Agreement</td>
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<td>between the CARIFORUM States, of the one part, and the European Community</td>
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<td>and its Member States, of the other part</td>
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<td>2000/29/EC as regards the delegation of the tasks of laboratory testing</td>
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<tr>
<td>COM(2009) 459 — Proposal for a COUNCIL REGULATION concerning</td>
<td>(goes to Annex I)</td>
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<td>authentication of euro coins and handling of euro coins unfit for</td>
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<td>circulation</td>
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<td>the Community position to be adopted in the Commission for the</td>
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<td>Conservation of Southern Bluefin Tuna</td>
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<td>the Community position to be adopted in the South East Atlantic Fisheries</td>
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<td>Organisation</td>
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<td>the Community position to be adopted in the Commission for the</td>
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<tr>
<td>Conservation and Management of Highly Migratory Fish Stocks in the</td>
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<td>Western and Central Pacific Ocean</td>
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<td>(EC) No 423/2007 concerning restrictive measures against Iran</td>
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<td>Regulation (EC) No 329/2007 concerning restrictive measures against the</td>
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<tr>
<td>Democratic People’s Republic of Korea</td>
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<td>Agreement in the form of a Protocol establishing a dispute settlement</td>
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<td>mechanism applicable to disputes under the trade provisions of the</td>
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<td>Euro-Mediterranean Agreement establishing an association between the</td>
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<td>European Community and its Member States, of the one part, and the</td>
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<td>Republic of Lebanon, of the other part</td>
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<td>assistance to Serbia</td>
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<td>assistance to Georgia</td>
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<td>Proposal</td>
<td>Date adopted, rejected, withdrawn or moved to Annex 1</td>
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<tr>
<td>COM(2009) 556 — Proposal for a COUNCIL DECISION on the signing, on behalf of the European Community, of the Agreement on Port State measures to prevent, deter, and eliminate Illegal, Unreported and Unregulated fishing (IUU fishing)</td>
<td>20/11/2009</td>
</tr>
<tr>
<td>COM(2009) 570 — Recommendation for a COUNCIL DECISION on the position to be taken by the European Community regarding the renegotiation of the Monetary Agreement with the Vatican City State</td>
<td>26/11/2009</td>
</tr>
<tr>
<td>COM(2009) 572 — Recommendation for a COUNCIL DECISION on the position to be taken by the European Community regarding the renegotiation of the Monetary Agreement with the Republic of San Marino</td>
<td>26/11/2009</td>
</tr>
<tr>
<td>COM(2009) 580 — Proposal for a COUNCIL DECISION providing macro-financial assistance to Ukraine</td>
<td>(goes to Annex I)</td>
</tr>
<tr>
<td>COM(2009) 587 — Proposal for a COUNCIL DECISION on the position to be taken by the Community concerning the proposal to amend the Customs Convention on the International Transport of goods under cover of TIR carnets (TIR Convention 1975)</td>
<td>25/1/2010</td>
</tr>
</tbody>
</table>

(B) Change the Applicable Procedure for the Following Proposals:


COM(2007) 144 — Proposal for a COUNCIL DECISION on the signing and provisional application of a Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Turkmenistan, of the other part, to take account of the accession of the Republic of Bulgaria and Romania to the European Union: **Delete APPRO**

COM(2007) 595 — Proposal for a COUNCIL REGULATION authorising the Commission to approve modifications to protocols of fisheries partnership agreements concluded between the European Community and third countries: **Replace COD with APPRO**


C) **Change the Legal Basis for the Following Proposals:**

COM(2007) 144 — Proposal for a COUNCIL DECISION on the signing and provisional application of a Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Turkmenistan, of the other part, to take account of the accession of the Republic of Bulgaria and Romania to the European Union: **Article 218(5) TFEU [instead of Article 218(5)(a)]**

COM(2009) 293 — Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice: **Article 77(2)(b) TFEU [instead of Article 77(1)(b) and (e)]**


(D) **Add the Following Proposals:**

COM(2006) 754 — Proposal for a **COUNCIL DECISION** on the conclusion of a Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland.

SEC(2008) 2023 — Proposal for a **COUNCIL DECISION** on the conclusion of negotiations with the United States of America on the necessary compensatory adjustments resulting from the US intended withdrawal of specific commitments on gambling and betting services pursuant to Article XXI of the General Agreement on Trade in Services (GATS).

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**64 The European External Action Service**

<table>
<thead>
<tr>
<th>(a) (31439) 8029/10</th>
<th>Draft Council Decision establishing the Organisation and Functioning of the European External Action Service</th>
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<tbody>
<tr>
<td>(b) (31747) 11507/10</td>
<td>Draft Council Decision establishing the Organisation and Functioning of the European External Action Service</td>
</tr>
</tbody>
</table>

**Legal base**

Article 27(3) TEU; unanimity, with the consent of the Commission and after consulting the European Parliament

**Deposited in Parliament**

(b) 1 July 2010

**Department**

Foreign and Commonwealth Office

**Basis of consideration**

EM of 9 July 2010 and Minister’s letter 13 July 2010

**Previous Committee Report**

(a) (31439) 8029/10: HC 5–xvii (2009–10), chapter 1 (7 April 2010)

(b) None

**To be discussed in Council**

26 July 2010 Foreign Affairs Council

**Committee’s assessment**

Politically important

**Committee’s decision**

Both cleared (debated on the Floor of the House on 14 July 2010), further information requested
Background

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

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

64.3 At their informal meeting in Brussels on 19 November 2009, ahead of the entry into force of the Treaty of Lisbon (TEU) on 1 December 2009, EU Heads of State or Government agreed on the appointment of Baroness Catherine Ashton as the High Representative of the Union for Foreign Affairs and Security Policy (HR).

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

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

64.5 Article 27(3) TEU constitutes the legal basis for the Council decision on the organisation and functioning of the EEAS.
“In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the member states. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.”

European Council Guidelines on the EEAS

64.6 On 30 October 2009, the European Council agreed on guidelines for the European External Action Service (EEAS). The future HR was invited to present a proposal for the organisation and functioning of the EEAS as soon as possible after the entry into force of the Lisbon Treaty, with a view to its adoption by the Council at the latest by the end of April 2010. This was endorsed by the December 2009 European Council.

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

64.8 With respect to its staffing:

— EEAS staff will be appointed by the High Representative and drawn from three sources: relevant departments of the General Secretariat of the Council, of the Commission and of national diplomatic services of the Member States. Recruitment will be based on merit, with the objective of securing the services of staff of the highest standard of ability, efficiency and integrity, while ensuring adequate geographical balance;

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271 The extract from the European Council conclusions reads thus:
"The European Council takes note of the preparatory work in view of the entry into force of the Lisbon Treaty (doc. 14928/09). It endorses the Presidency's report on guidelines for the European External Action Service (doc. 14930/09) and invites the future High Representative to present a proposal for the organisation and functioning of the EEAS as soon as possible after the entry into force of the Lisbon Treaty with a view to its adoption by the Council at the latest by the end of April 2010. In this context, it also recognises the need, as underlined in the European Security Strategy, for the European Union to become more capable, more coherent and more strategic as a global actor, including in its relations with strategic partners, in its neighbourhood and in conflict-affected areas."
In order to enable the High Representative to conduct the European Security and Defence Policy (ESDP), the EU’s crisis management structures should be part of the EEAS, under the direct authority and responsibility of the High Representative.

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

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

**The first Council Decision**

64.11 In March 2010, the HR presented a draft Council Decision. The previous Government submitted this for scrutiny shortly before the dissolution. This included detailed views from the then Minister for Europe (Chris Bryant), which are set out in the previous Committee’s report of on 7 April 2010.272

**The previous Committee’s assessment**

64.12 When it considered this draft Council Decision on 7 April 2010, the previous Committee began by expressing its appreciation of the assiduousness of the then Minister for Europe in keeping it informed about the development of this proposal, and for having submitted his Explanatory Memorandum so soon after its publication, so that it could be considered before the dissolution of Parliament.

64.13 The previous Committee noted that, while the draft Council Decision had remained faithful to the guidelines and timeline endorsed by the European Council, it was somewhat short of the finished article — for example, the Annex, which lists the departments of the Commission and Council Secretariat to be transferred to the EEAS, was incomplete.

64.14 The previous Committee also noted that the then Minister did not refer to adoption of the Decision before the end of April, but said instead that that the Council would be “seeking political agreement” on it by then — a formulation normally used in the context of co-decision. This, the previous Committee felt, perhaps unconsciously acknowledged the elephant in the room, i.e., the European Parliament (EP). The HR had said that her proposals “shall take effect on the day of the adoption of the amending Budget of the European Union providing for the corresponding posts and appropriations in the EEAS” — put otherwise, could be implemented only as and when the European Parliament did so.

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And all the indications thus far were that it was endeavouring to make its agreement to this and the associated staff and financial regulations dependent on changes to this Council Decision, particularly with regard to the Deputy Secretary General positions. Powerful voices there, it seemed, wished to see three political Deputy Secretaries General, broadly reflecting the political balance of the EP, who would deputise for the HR when necessary — a bizarre notion, the previous Committee felt, but one that was nonetheless in play, in a situation in which the EP had demonstrable leverage.

64.15 The previous Committee also noted that the crucial proposals in Article 8 — about who was to do what, when and with whom concerning the plethora of EU external programmes and instruments — remained open to discussion. The complex arrangements set out therein seemed much more to reflect unresolved “turf wars” and the inherent difficulties of a position that had a large footprint in two institutions than a formula consistent with the “principle of cost-efficiency aiming towards budget neutrality”. As a consequence, the previous Committee was unable to understand the division of responsibilities between the EEAS and the Commission in the programming of the EU’s external cooperation programmes, particularly with respect to development and neighbourhood policies in Article 8(4) and (5).

64.16 On the plus side, the previous Committee found the previous Minister’s position on the provision of consular services to UK citizens overseas “commendably clear and robust.”273 Even so, the previous Committee noted, he had nothing to say about what impact he thought the creation of a world-wide EU diplomatic service, delivering technical assistance and in charge of an expanding EU common foreign and security policy, would have on Britain’s capacity to promote her own bilateral interests in the major centres of power and opportunity, which would remain crucial to our future as a global economic and political actor.

64.17 With a general election now imminent, the normal option of holding the Council Decision under scrutiny while the Minister provided further information between the date of the meeting and the end April was not available to the previous Committee. The option of a debate ahead of adoption was also not possible. But the previous Committee did not feel able, on the basis of the information presently available, to clear it. In all the circumstances — and recognising that this could not take place until there was a new Parliament — the previous Committee considered that a debate was the best option available to it, and so recommended.

64.18 Given the importance of this proposal, which — the Minister’s assurances on consular protection notwithstanding — was nonetheless likely to be the most significant change in the conduct of British foreign policy for many years, the previous Committee recommended that this debate should be on the Floor of the House. When it took place, it said that it would expect the new Minister to provide a detailed outline of what had been transferred to the EEAS and of the arrangements that had been decided upon under Article 8 between the EEAS and the Commission in the programming of the EU’s external cooperation programmes, and his or her views on:

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273 For the Committee’s consideration of this matter, see (29353) 5947/07: HC 16–xvii (2007–08), chapter 1 (26 March 2008) and the subsequent debate in the European Committee on 23 June 2008, the record of which is available at http://www.publications.parliament.uk/pa/cm200708/cmgeneral/euro/080623/080623e01.htm.
— how they fulfilled the “principle of cost-efficiency aiming towards budget neutrality”;

and

— the impact of this new global diplomatic service on Britain’s ability to promote her bilateral interests.

64.19 In the meantime, the previous Committee retained the document under scrutiny.274

64.20 On 26 April, the EU Foreign Affairs Council reached political agreement on the proposal.

64.21 Three accompanying measures are required for the EEAS to take up its work:

• Commission’s draft proposal amending the staff regulations (published on 9 June 2010);275

• Commission proposal amending the financial regulation (published 24 March 2010);276

and

• an amending budget (published 15 June 2010).277

64.22 The European Parliament has co-decision rights in the above measures. Though it is only entitled to be consulted on the Council decision on the establishment of the EEAS, the EP sought to take advantage of its co-decision rights on the accompanying measures in order to seek effective *de facto* co-decision rights on the Council Decision. Negotiations continued thus since the end of April.

64.23 On 21 June 2009 a further “quadrilogue” (the HR, the Presidency representing the Member States, the Commission and EP representatives) was held in Madrid where all parties reached a political agreement on the establishment of the EEAS.278 This agreement was approved by the EP will vote on 8 July 2010 during its plenary session in Strasbourg. This allows the High Representative/Vice-President of the Commission to commence the recruitment process over the summer by advertising vacant posts. The EP would then vote on the amendments to the staff and financial regulations in September. The present timeline foresees the EEAS to be up and running by December 2010.

64.24 Key elements include:

— the EEAS will be *sui generis*;

— the EEAS will be headed by a Secretary General and two Deputy Secretaries-General. The political representatives of the High Representative/Vice-President of the


Commission (HR/VP) will be the Commissioner for Enlargement or the Commissioner for Development when discussing Commission matters and matters that fall under the competence of the Commission and the Member States. If the matter is solely the responsibility of the Member States, a Member States representative (most likely to be the Foreign Minister of the Presidency country) will stand in for the High Representative;

— on development policy, the HR “shall ensure overall political coordination of the EU’s external action, ensuring the unity, consistency and effectiveness of the EU’s external action in particular through the external assistance instruments”. The EP wanted development policy to remain as closely linked with the Commission as possible to ensure consistency in that policy. Any decision concerning the European Development Fund, the Development Cooperation Instrument and the European Neighbourhood and Partnership Instrument will have to be proposed jointly by the HR/VP and the relevant Commissioner and endorsed by the Commission College;

— the EEAS will from the start include a department assisting the HR in her institutional relations with the EP (as laid down in the Treaties and in the Declaration on Political Accountability) and with national Parliaments;

— on Common Foreign and Security Policy (CFSP), while the HR has committed herself to seek the views of the EP on the main aspects and basic choices of this policy prior to the adoption of mandates and strategies — a Treaty requirement — the EP would seem to regard the agreement as meaning that it will have a more significant influence on EU foreign policy in the future;

— the EEAS will draw the majority of its staff from the Commission (including Directorate General (DG) RELEX, DG Development, External Service) and the General Secretariat of the Council (Policy Unit, ESDP and crisis management structures, DG E, staff seconded to EUSRs and CSDP missions). Any existing geographic imbalances would translate to the EEAS. The agreement specifies that “recruitment will be based on merit whilst ensuring adequate geographic and gender balance. The staff of the EEAS should comprise a meaningful presence of nationals from all Member States” (it is not however defined what adequate or meaningful actually mean). To ensure this is acted upon, the agreement includes a review clause stating that “the High Representative should, by mid-2013, make a review of the functioning and organisation of the EEAS, accompanied, if necessary, by proposals for a revision of this Decision”;

— when the EEAS has reached its full capacity, staff from the Member States should represent at least one third of all EEAS staff at AD level, while permanent EU officials, including staff coming from the diplomatic services of the Member States who have become permanent EU officials, should represent at least 60% of all EEAS staff at AD level;

— the EP was not successful in its demand for pre-appointment hearings of EU Special Representatives (EUSRs) and senior Heads of Delegation agreed; instead the HR will respond positively to requests from the EP for newly appointed Heads of Delegations and EUSRs to appear before the Foreign Affairs Committee for an informal exchange of views before taking up their posts;
the proposal for the 2010 amending budget requests a budget of €9.5 million and the creation of a hundred new posts — 20 in the headquarters and 80 in delegations. Whilst the EEAS should create synergies, the EEAS will also take on new roles which the Commission and General Secretariat of the Council were not currently fulfilling (e.g. the additional task of the Presidency of Working Groups and Committees which prepare the Foreign Affairs Council and the need to establish the Corporate and Policy Boards). The 20 posts in Brussels will provide for the creation of new management posts, a small legal cell and the task of chairing working groups. In the delegations the 80 posts will take on the tasks which were previously covered by the embassy of the country holding the presidency, i.e., representation, co-ordination and negotiation on behalf of the EU.

The revised Council Decision

64.25 Against this background, the purpose of this Council Decision is to establish the organisation and functioning of the European External Action Service (EEAS) as provided in the Treaty of Lisbon.

64.26 The Decision explains that provisions should be adopted relating to the staff of the EEAS and their recruitment and the Financial Regulation should be adopted in order to ensure budgetary autonomy necessary for the smooth operation of the EEAS. In particular the High Representative will be the Appointing Authority, in relation both to officials subject to the Staff Regulations of Officials of the European Communities and agents subject to the Conditions of Employment of Other Servants, and will also have authority over the Seconded National Experts (“SNEs”) in post in the EEAS. The number of officials in the EEAS will be decided each year as part of the budgetary procedure and be reflected in the establishment plan.

64.27 The Decision goes on to explain how the EEAS should function including in relation to the following:

- **Nature and Scope:** the EEAS will be administratively autonomous, separate from the Commission and the Council Secretariat and with its central administration headquarters in Brussels and include EU delegations to third countries and international organisations;

- **Tasks:** as well as supporting the High Representative the Decision states that the EEAS shall assist the President of the Commission, the Commission and the President of the European Council;

- **Co-operation:** the Decision outlines the ways in which the EEAS will work with the Council Secretariat and Commission services in order to ensure that there is consistency between the different areas of the Union External action;

- **Central Administration:** as well as being managed by a Secretary General under the authority of the High Representative and assisted by two Deputy Secretaries-General, there will be a number of Directorates General comprising geographic desks covering all countries and regions of the world as well as multilateral and thematic desks. It explains in broad terms what will be included in the central administration such as a
legal department and who will chair the Council preparatory bodies and that the Council Secretariat and the Commission will, as expected, also support the High Representative and the EEAS in line with their own responsibilities;

- **Union Delegations**: the High Representative is responsible for the EU Delegations; the Decision outlines how the delegations will work, including how the delegations will get their instructions and how the heads of Delegation will implement operational credits. Implementation of those, including development spending, remains the responsibility of the Commission;

- **Staff**: the Decision explains who shall comprise the EEAS, how they will be recruited and that changes will need to be made to the staff regulations to take account of the EEAS and give a base for staff terms and conditions;

- **Budget**: the Decision makes it clear that the High Representative shall act as authorising officer for the EEAS section of the General Budget;

- **Programming**: the Decision sets out the way in which the EEAS and the Commission will work together on programming and implementation cycle for the key geographic and thematic financial instruments.

64.28 Other issues covered by the Decision include the range of issues that a new body would have to take account of when it is being set up.

**The Government’s view**

64.29 The Minister for Europe (David Lidington) says that the purpose of his Explanatory Memorandum of 9 July 2010 is to highlight where there have been notable changes from the text submitted by his predecessor under cover of his Explanatory Memorandum of 30 March, which “described the key issues on which the previous Government was working to secure.” Since then, the Minister says, the text of the draft Decision has undergone some changes as a result of discussion, then political agreement of the text at the 26 April General Affairs Council and subsequently in consultation with the EP.

64.30 Referring to the June 21 “quadrilogue”, the Minister says that, upon adoption, the final text of the Decision will be accompanied by a number of additional documents namely:

- a Declaration on political accountability;

- elements for a Statement to be given by the High Representative in the plenary of the European Parliament on the basic organisation of the EEAS central administration;

- a Statement of the High Representative on CSDP structures; and

- a Declaration of the High Representative with regard to the appointment procedure she intends to apply in the EEAS.

64.31 The Minister says that the “purpose of these accompanying Declarations and statements, which form part of the overall political agreement, is to provide welcome clarity around some elements of the text of the Decision.”
64.32 The Minister continues as follows:

“The Government is seeking a distinctive British Foreign policy that extends our global reach and influence. As part of that we have set out to be highly active and activist in our approach to the European Union and using Europe’s collective weight in the world to tackle external challenges: from stability in our neighbourhood, the threats of the Middle East, to combating global poverty. An effective High Representative and EEAS can contribute to these — including through EU engagement with third countries. We are therefore positive about the text of the draft Decision to establish the EEAS which has emerged from the High Representative’s discussion with the European Parliament, as it respects the essentials of the proposals which the Member States reached political agreement on in April. This Decision will lay the foundation for the kind of service we believe will support the High Representative to help bring about a more coherent and effective EU external effort.

“The Government welcomes in particular a number of drafting changes between this text of 29 June (11507/10 and 11507/10 Corr1) and the text submitted earlier to Parliament on 30 March. In the recitals the UK helped secure the insertion of references to respecting the objectives of EU development policy (recital 3a) and that the EEAS be guided by the principle of cost-efficiency aiming towards budget neutrality recital (8bis), including using all opportunities for rationalisation. We are not expecting this rationalisation to happen on day one of the establishment of the EEAS. But neither are we expecting the full complement of Member States representatives to arrive on day one.

“The language on consular protection in Article 5.10 now makes a specific reference to the Treaty Articles on consular protection. This makes clear that Member States lead in this area and the Service will only provide a supporting role in line with the existing provisions in the Treaty that allow a European National to access the consular support of a Member State in a country where their own Member State has no provision. The reference to ‘providing consular protection to Union citizens in third countries on a resource-neutral basis’ is also important at a time of tight financial pressure in all Member States.

“The changes to the text brought about by the EP help to give clarity on the EP’s role on scrutiny of spending under the external spending instruments. The EP also made minor textual changes to Article 8 which are helpful in defining better the role of the Development Commissioner. He is now ‘responsible’ for the preparation of the aid programming, done by staff inside the EEAS. The High Representative is responsible for ensuring the consistency of the EU’s external action, especially through development aid. How this set up will work in practice remains to be seen. In order to ensure appropriate development understanding in the EEAS, the Government believes it should have a senior development stakeholder and sufficient development policy capacity to support the strategic programming and lead on sector and country spending allocations. There is no change to the text that suggests the High Representative should have political deputies or that the EEAS should be a part of the Commission. Earlier in discussions, both of these points were important to the EP but red lines for the Council.
“The Government welcomes the accompanying Declarations from the High Representative on the basic organisation of the EEAS and CSDP structures respectively. Having a Secretary General and two Deputy Secretaries General to support the High Representative should allow them to be able to provide high level corporate leadership, easing the burden of representational work on the High Representative, and ensuring policy coherence within the Service. We would expect the High Representative to seek to recruit her top team as soon as the EEAS is established. The Declaration on CSDP confirms that bringing the CSDP structures (CMPD, CPCC, SITCEN, EUMS) into the EEAS, which should help in terms of ensuring the overall coherence of EU crisis management operations, will not affect their status, staffing or how they interact with the High Representative, to whom they will continue to report directly. The Government supports this approach.

“This Decision sets out a good framework for the EEAS. However, even once adopted, there will be a myriad of implementation issues to be worked through over the next six months and beyond, including around appointing the senior management team, the detail of the day to day handling of crisis management the reporting lines to the Development Commissioner and ensuring sufficient development expertise in the EEAS to carry out programming of the financial instruments. It will take time for the High Representative to match fully the structures inherited from the Commission and the Council Secretariat to EU foreign policy priorities as set by the Council. We shall support the High Rep in establishing the EEAS as a body which enables the EU to pursue agreed common positions in a cohesive and effective way. We shall be both vigilant and determined to ensure that the EEAS respects the competences of Member States for Foreign and Security Policy as set out in the Treaty and that it provides value for money. We will keep Parliament updated regularly on progress.”

64.33 The Minister goes on to say that the proposal “does not have any direct financial implications for the UK”. He explains that a Commission proposal outlining the implications for the EU budget relating to the establishment of the EEAS is expected to be adopted once the Council has adopted the Decision establishing the organisation and functioning of the EEAS; and confirms that, although not yet agreed, the Commission has estimated that the cost of the new Service for 2010 will be €9.5 million; on which basis, the Minister says, “the pre-abatement cost to the UK of this proposal in 2010 would be roughly £1 million (€1,313,948 or £1,115,016).” The Minister also notes that the Decision states that “the establishment of the EEAS should be guided by the principle of cost-efficiency aiming towards budget neutrality”.

64.34 Finally, the Minister confirms that: the EP has now been formally consulted and given a favourable Opinion; the High Representative is currently seeking the Commission’s consent; the draft will then come back to the Council for formal adoption by unanimity; and that he expects the text to be taken at the 26 July General Affairs Council.

279 Civilian Planning Conduct and Capability (CPCC), Crisis Management and Planning Directorate (CMPD), EU Military Staff (EUMS).
The Minister’s letter of 13 July 2010

64.35 The Minister amplifies his Explanatory Memorandum as follows:

“As you are aware, the Lisbon Treaty brings together both the former external work conducted by the European Community and the classic foreign and security policy tools under the CFSP. Responsibility for the conduct of the EU’s external action will fall to the High Representative, Baroness Ashton, who fulfils the dual roles of High Representative and vice-President of the Commission and who will be supported by the EEAS. She is ultimately responsible to the Council. EU Delegations, staffed by members of the EEAS — including secondees from the Member States — replace the former Commission and Council delegations around the world and will support the High Representative in both her roles. EU Delegations will represent agreed EU positions on ex-Community matters on which the Commission formerly represented the EU, as well as taking over the rotating Presidency’s former responsibility for representing the EU on CFSP matters.”

64.36 The Minister goes on to say:

“Some Member States and the European Parliament wanted to go further, for example to see the EU Delegations take on a wider role in the provision of consular services, or to make the EEAS part of the Commission. We argued successfully against such proposals.”

64.37 The Minister then says that, in his view:

“through negotiation we have secured a draft EEAS Decision which respects the UK Government’s aims. Those aims are clear: where we have agreed a position with our EU partners, the EEAS should allow the EU to use its collective weight more effectively to make that voice heard. It should support, supplement and strengthen our role. However, in doing so we firmly believe that the existing division of competences between the EU and Member States must be respected.

“Member States remain free to determine how they are represented when they decide to coordinate on matters falling within their competence.”

64.38 In relation to consular services, the Minister says:

“the EEAS role is limited to coordination work in support of Member States’ consular assistance. The provision of frontline consular services remains strictly a Member State responsibility. There is no role for EU Delegations in this regard.”

64.39 Once the EAS Decision is agreed, the Minister says:

“we are likely to see some administrative restructuring of EU Delegations by the High Representative to fulfil the tasks assigned to the EU Delegations by the Treaty. We want to ensure that such changes fit with the cost-neutral objective in the text of the draft EEAS Decision.

“The establishment of the EEAS should be guided by the principle of cost-efficiency aiming towards budget neutrality. To this end, transitional
arrangements and gradual build-up of capacity will have to be used. Unnecessary duplication of tasks, functions and resources with other structures should be avoided. All opportunities for rationalisation should be used.”

64.40 The Minister then says:

“I have also made a Written Ministerial Statement on the additional rights for the EU as an observer in the UN General Assembly (UNGA), which will enable the EU Delegation to fill the role previously played by the rotating Presidency in the UNGA. As is currently the case, the EU will not have the right to vote, it will not be a full member of the UNGA, nor will it be seated among the UN Member States. The granting of such rights to the EU will not affect the UK’s position as a member of the UNGA or of the UN Security Council.”

64.41 The Minister expresses his desire to ensure that the Committee and Parliament as a whole is kept fully informed of the progress of this implementation work, and says that he will ensure that the Committee is kept fully informed and consulted “as we pursue our goals for the EU to use its collective weight more effectively on the external stage.”

64.42 In the first instance, the Minister notes that he will debate the EEAS on the floor of the House on 14 July 2010.

64.43 At the end of that debate, the House resolved:

“That this House takes note of European Document Nos. 8029/10 and 11507/10, draft Council Decisions establishing the organisation and functioning of the European External Action Service; European Document No. 8134/10, draft Regulation on the Financial Regulations for the European External Action Service; and an unnumbered draft Regulation amending Staff Regulations of officials of the European Communities and the conditions of employment of other servants of those Communities; and supports the Government’s policy to agree to the Decision establishing the External Action Service at the Foreign Affairs Council in July 2010.”

Conclusion

64.44 Had the Committee been in existence at the time, we would both have confirmed our predecessors’ recommendation regarding the first draft of the Council Decision and also recommended that the revised version be debated on the floor of the House. Had we been able to do so, we would have noted that the arrangements set out in Article 8 — which are central to the main rationale of the EEAS, i.e., the greater effectiveness of the EU’s external action and the billions of Euros involved — are still no

280 The text of that statement is available at http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100714/wmstext/100714m0001.htm#1007141200005.

281 The text of the debate is available at http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100714/debtext/100714–0003.htm#1007143400003.
more reassuring than in the original text, especially given the Minister’s statement that: “How this set up will work in practice remains to be seen.”

64.45 We would also have asked the Minister to explain what he means by “a senior development stakeholder and sufficient development policy capacity to support the strategic programming and lead on sector and country spending allocations”, and to outline what he plans to do with regard to the effective implementation of “the myriad of implementation issues to be worked through over the next six months and beyond, including around appointing the senior management team, the detail of the day to day handling of crisis management the reporting lines to the Development Commissioner and ensuring sufficient development expertise in the EEAS to carry out programming of the financial instruments.”

64.46 We would also have noted that something else that remains to be seen too is the extent to which the establishment and operation of the EEAS is able to conform to “the principle of cost-efficiency aiming towards budget neutrality.”

64.47 The debate notwithstanding, we hope that, between now and the review in 2013, the Minister will take every opportunity to see to it that (as he puts it) “unnecessary duplication of tasks, functions and resources with other structures [are] avoided [and] all opportunities for rationalisation [are] used”, and to ensure that mechanisms are devised that are able properly to assess the effectiveness of the arrangements that will now be put in place governing the planning and implementation of the EU’s external action.

64.48 We would also have highlighted the Declaration on Political Accountability (which we reproduce at the Annex to this chapter of our Report), upon which the Minister is silent in both his Explanatory Memorandum and his letter. During the debate, the Minister was asked to clarify the legal status of those documents and the degree to which they are relied on, and to provide the House with reassurance that the agreement does not give the Commission or the European Parliament any greater power over the budget for the Common Foreign and Security Policy. He replied that:

“Declarations are not legally binding. They are statements that provide a political context for a Council decision and how it will operate as it is taken forward.”282

64.49 The first sentence is self-evident; the second is ambiguous. The EP has made it plain its belief that, under these arrangements, it will have greater oversight of EU external action: otherwise, what would be the point of its negotiating such a Declaration? Reading the text itself, a number of questions arise. Point 1 talks of “exchanges of views prior to the adoption of mandates and strategies in the area of relevant EP Committees” and “enhanced” briefings that “relate in particular to CFSP missions financed out of the EU budget, both to those being implemented and those under preparation”. Then, in Point 10 at the end, the Declaration says:

“The HR will play an active role in the upcoming deliberations on the updating of existing arrangements regarding the financing of CFSP contained in the 2006 IIA

282 HC Deb, 14 July 2010, col 1056.
on budgetary discipline and sound financial management, based on the engagement with regard to the issues set out in point 1. The new budgetary procedure introduced by the Lisbon Treaty will apply fully to the CFSP budget. The High Representative will also work for greater transparency on the CFSP budget, including, inter alia, the possibility to identify major CSDP missions in the budget (like the present missions in Afghanistan, Kosovo and Georgia), while preserving flexibility in the budget and the need to ensure continuity of action for missions already engaged.”

64.50 We ask the Minister to set out his views on the significance of this Declaration in greater detail. In the final analysis, CFSP activity depends upon the level of funding and who controls it. We therefore ask in particular that he clarifies:

— the full import of the first sentence of Point 10;
— what the new budgetary procedure is and how it might “apply fully to the CFSP budget”;
— what he understands by “greater transparency on the CFSP budget”;
— what the import is of the words “the possibility to identify major CSDP missions in the budget (like the present missions in Afghanistan, Kosovo and Georgia), while preserving flexibility in the budget and the need to ensure continuity of action for missions already engaged.”

64.51 We should also like to know under what authority the HR negotiated this Declaration, and the extent to which Member States were involved in its drafting.

Annex: Declaration by the High Representative on Political Accountability

“In her relationship with the European Parliament, the High Representative (HR) will build on the consultation, information and reporting engagements undertaken during the last legislature by the former Commissioner for external relations, the former High Representative for the Common Foreign and Security Policy, as well as by the rotating Council Presidency. Where necessary, these engagements will be adjusted in light of Parliament’s role of political control and the redefinition of the role of the High Representative as set out by the Treaties and in accordance with Article 36 TEU.

“In this regard:

1. On CFSP, the HR will seek the views of the European Parliament on the main aspects and basic choices of this policy in conformity with Article 36 TEU. Any exchanges

283 Footnote: The term HR in this declaration covers all functions of the High Representative of the Union for Foreign Affairs and Security Policy, who is also a Vice-President of the European Commission, and the President of the Foreign Affairs Council without prejudice to the specific responsibilities under the specific functions she exercises.
of views prior to the adoption of mandates and strategies in the area of CFSP will take place in the appropriate format, corresponding to the sensitivity and confidentiality of the topics discussed. In this context, also the practice of Joint Consultation Meetings with the Bureaux of AFET and COBU will be enhanced. Briefings given at these meetings will relate in particular to CFSP missions financed out of the EU budget, both to those being implemented and those under preparation. If necessary, additional Joint Consultation Meetings may be arranged, on top of regular meetings. The EEAS presence (at all the meetings) will include in addition to the permanent Chair of the Political and Security Committee, senior officials responsible for the policy.

“2. The results of the ongoing negotiations on the Framework Agreement between the European Parliament and the Commission on negotiations of international agreements will be applied mutatis mutandis by the HR for agreements falling under her area of responsibility, where the consent of the Parliament is required. The European Parliament will be, in accordance with Article 218 (10) TFEU, immediately and fully informed at all stages of the procedure, including for agreements concluded in the area of CFSP.

“3. The HR will continue the practice of holding in-depth dialogue on and of communicating all documents for the strategic planning phases of the financial instruments (except European Development Fund). The same will apply to all consultative documents submitted to Member States during the preparatory phase. This practice is without prejudice to the outcome of negotiations on the scope and application of Article 290 of the TFEU on delegated acts.

“4. The present system of providing confidential information on CSDP missions and operations (through the IIA 2002 ESDP EP Special Committee) will be continued. The HR can also provide access to other documents in the CFSP area on a need to know basis to other MEPs, who, for classified documents, are duly security cleared in accordance with applicable rules, where such access is required for the exercise of their institutional function on the request of the AFET Chair, and, if needed, the EP President. The HR will, in this context, review and where necessary propose to adjust the existing provisions on access for Members of European Parliament to classified documents and information in the field of security and defence policy (2002 IIA ESDP). Pending this adjustment, the HR will decide on transitional measures that she deems necessary to grant duly designated and notified MEPs exercising an institutional function easier access to the above information.

“5. The HR will respond positively to requests from the European Parliament for newly appointed Heads of Delegations to countries and organisations which the Parliament considers as strategically important to appear before AFET for an exchange of views (differing from hearings) before taking up their posts. The same will apply to EUSRs. These exchanges of views will take place in a format agreed with the HR, corresponding to the sensitivity and confidentiality of the topics discussed.

“6. In cases where the High Representative cannot participate in a debate in the plenary of the European Parliament, she will decide on her replacement by a Member of an EU institution, that is either by a Commissioner for issues falling exclusively or prevalingly into Commission competence or a Member of the Foreign Affairs Council for issues falling exclusively or principally into the area of CFSP. In the latter case, that replacement will either come from the rotating Presidency or from the trio Presidencies, in conformity with
Article 26 if the Council’s Rules of Procedure. The European Parliament will be informed of the High Representative’s decision on replacement.

“7. The HR will facilitate the appearance of Heads of Delegations, EUSRs, Heads of CSDP missions and senior EEAS officials in relevant parliamentary committees and subcommittees in order to provide regular briefings.

“8. For military CSDP operations, financed by the Member States, information will continue to be provided through the IIA 2002 ESDP EP Special Committee subject to any revision of the IIA, in accordance with point 4 above.

“9. The European Parliament will be consulted on the identification and planning of Election Observation Missions and their follow-up — in keeping with Parliament’s budgetary scrutiny rights over the relevant funding instrument, i.e. the EIDHR. The appointment of EU Chief Observers will be done in consultation with the Election Coordination Group, in due time before the start of the Election Observation Mission.

“10. The HR will play an active role in the upcoming deliberations on the updating of existing arrangements regarding the financing of CFSP contained in the 2006 IIA on budgetary discipline and sound financial management, based on the engagement with regard to the issues set out in point 1. The new budgetary procedure introduced by the Lisbon Treaty will apply fully to the CFSP budget. The High Representative will also work for greater transparency on the CFSP budget, including, inter alia, the possibility to identify major CSDP-missions in the budget (like the present missions in Afghanistan, Kosovo and Georgia), while preserving flexibility in the budget and the need to ensure continuity of action for missions already engaged.”
65 EU Enlargement: Bulgaria, Romania and Croatia

(a) (31824) 12558/10 + ADD1 COM(10) 400
Commission Report on progress in Bulgaria under the Co-operation and Verification Regime

(b) (31825) 12562/10 + ADD 1 COM(10) 401
Commission Report on progress in Romania under the Co-operation and Verification Regime

Legal base
Documents originated 20 July 2010
Deposited in Parliament 26 July 2010
Department Foreign and Commonwealth Office
Basis of consideration EM of 27 July 2010 and Minister’s letter of 20 June 2010

Previous Committee Report

To be discussed in Council 13 September 2010 General Affairs Council
Committee’s assessment Politically important
Committee’s decision Cleared

Background
65.1 The accession negotiations with Romania and Bulgaria were concluded in December 2004 and a Treaty of Accession was signed on 25 April 2005. The UK ratified the Treaty on 5 April 2006.
65.2 The Commission’s October 2005 and May 2006 monitoring reports identified a number of areas where further improvements were needed in order to meet all membership requirements, and all of which went to the heart of a properly functioning governance system based on the effective implementation of laws by an accountable, independent and effective judiciary and bureaucracy. The Accession Treaty allowed for a delay until 2008, but only if the Commission recommended that either country was “manifestly unprepared” for membership. The Commission’s final verdict was that both countries would be in a position to take on the responsibilities of membership by 2007.

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

65.4 Bulgaria’s benchmarks are:

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

65.5 Romania’s benchmarks are:

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

284 For details, see previous Reports enumerated in the headnote to this chapter.
65.6 The Commission monitors progress and writes reports every 6 months: interim reports at the start of the year and main reports at mid-year. The previous Committee’s consideration of earlier reports is enumerated in the headnote; the most recent being the Commission’s interim reports of March 2010.  

65.7 The main reports provide an over-view of progress, while the accompanying technical reports detail progress on each benchmark since the last full report in July 2009.

**Bulgaria**

65.8 In this year’s report the Commission points to “a strong reform momentum which has been established in Bulgaria” since the July 2009 annual report, and says that the new strategy for judicial reform “demonstrates the existence of a strong political will in Bulgaria to achieve a deep and lasting reform of the judiciary”. The report also recommends that Bulgaria improve judicial practice in order to allow the judiciary to act more pro-actively and to show a stronger sense of responsibility. It says that important reforms of its penal procedures have been adopted. Legislation to strengthen asset forfeiture and to improve protection against conflict of interest is under discussion. The structural set-up of the prosecution to deal with fraud and organised crime has been strengthened. Organised crime is actively tackled for the first time since the inception of the CVM. In June the Government adopted “an ambitious and far-reaching strategy which provides a blue-print for a comprehensive, long term reform of the judiciary”, and the most pressing reforms to improve the efficiency, accountability and consistency of the judicial process “are in the process of consultation within the Government.” The strong push for reform by the Government is showing some results; allegations of corruption within the judiciary are receiving a stronger disciplinary and criminal response than in the past; the number of indictments for organised crime has increased, severe sentences were pronounced, but not yet enforced, in a case involving large scale fraud of EU funds in April and June.

65.9 At the same time, the Commission’s analysis shows that important deficiencies remain in judicial practice both at the level of the prosecution and at the level of the court. The judicial process in Bulgaria lacks initiative and professional capacity. Complex investigations show a lack of direction and purpose, procedures are too formal and too long and often fail in court. There are continuing shortcomings regarding the prevention of corruption and protection against conflict of interest. Effective implementation of the new national anti-corruption strategy adopted in November 2009 has not yet started. The implementation of the conflict of interest law is insufficiently effective. Shortcomings in the implementation of public procurement procedures are widespread. To strengthen the prevention of corruption and conflict of interest, Bulgaria should pursue its plans to create a special and independent commission for protection against conflict of interest, accelerate the implementation of the action plan for the national anti-corruption strategy and strengthen legislation on asset forfeiture.

65.10 The Commission concludes its report with a further 11 recommendations covering Reform of the Judiciary, the Fight against Organised Crime and the Fight against Corruption. Success, the Commission says, will require a sustained commitment by

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Bulgaria, the Commission and other Member States. For now, “Bulgaria has established a new partnership with the Commission and improved the quality of its reporting on progress under the CVM. The Commission will continue to support Bulgaria in achieving further progress under the CVM and provide its next assessment in summer 2011.”

65.11 In his accompanying Explanatory Memorandum of 27 July 2010, the Minister for Europe (Mr David Lidington) describes the situation under each Benchmark as follows:

**Benchmark 1: Independence/accountability of the judicial system:** The report focuses on the work of the Inspectorate of the Supreme Judicial Council (ISCJ), noting that inspections have taken place in four of Bulgaria’s five appellate regions, issuing recommendations and following up on compliance where appropriate. The report notes that the newly institutionalised Commission on the Analysis and Follow-up to the ISJC Recommendations has oversight of the implementation of the measures recommended by the ISCJ, which is then controlled by follow-up inspections as recommended in the last Commission reports. The report also finds that between August 2009 and May 2010, a total of 70 disciplinary proceedings against members of the judiciary and magistracy were completed, with 13 sanctions imposed.

**Benchmark 2: Transparency/efficiency of judicial process:** In response to a Commission recommendation in July 2009, the Government has adopted several amendments to the Penal Procedure Code (PPC). The amendments are designed to avoid undue delays in hearings, extend investigative powers to police, streamline and simplify the pre-trial phase, and enhance the rights of defendants and victims, including through provision for translation of documents. However, the report finds that some concerns around the administration of evidence remain and the Penal Procedure remains excessively formalised. The report notes changes to plea bargaining, which Bulgaria claims has helped to speed up judicial proceedings, but recommends that Bulgaria should continue to monitor the effect of the new provisions to ensure sanctions are not too lenient. The report summarises the thematic inspections used to monitor the codes and finds that close monitoring of the PPC will need to continue to ensure effective implementation. Further legislative amendments have been prepared to the Administrative Procedure Code, to help the balancing of administrative courts’ workloads, and the Judicial System Act, to further improve transparency and accountability. Steps have been taken to enhance the unification of jurisprudence through the publication of rulings of the Supreme Cassation Court (SCC) and the Supreme Administrative Court (SAC). Training of judges and regular meetings on unification of jurisprudence are being pursued. Finally, the report notes that steps have been taken to prepare reform of the Penal Code, including through public consultation. The report reiterates the urgency of reform to the Penal Code and notes that this is an outstanding recommendation from the 2009 reports.

**Benchmark 3: Reform of the judiciary:** The report summarises the action taken by the Bulgarian Government in adopting its comprehensive strategy for reform of the judiciary, which focussed on three priority objectives: better management and good governance within the judiciary, placing citizens in the centre, and countering
corruption in the judicial system. The report notes that the strategy received broad support in the judiciary, civil society and from politicians, and stresses that its success depends now on full implementation. Reforms have been made to enhance the transparency and professionalism of appointments to senior positions, but the report notes it is too early to assess the impact of these. Since July 2009, a number of important cases of trade in influence affected the reputation of the Bulgarian judiciary. The response of the disciplinary and judicial authorities has been mixed, with some disciplinary proceedings taking place but no criminal investigations launched.

“A central web-based interface for publishing judicial acts will add value in harmonising jurisprudence. However, the July 2009 recommendation for all courts to publish their judgements online has not yet been fulfilled, with only partial compliance noted.

**Benchmark 4: High level corruption:** The report finds that efforts to fight high-level corruption have been stepped up, with cases against former ministers, former MPs and other high level officials being initiated and some reaching court. At a central level, the inter-ministerial Commission for the Prevention and Counteraction of Corruption has been given a new mandate and extended role. Further work is required to monitor the progress of this Commission. There continues to be a lack of effective administrative-level control in preventing and tackling fraud, although the institutions managing EU funds have made certain improvements. On conflicts of interest, the report finds that few cases are being sanctioned and that guidelines on the conflict of interest law, as recommended in the 2009 report, have yet to be developed. An agency to prevent conflicts of interest, also recommended by the Commission, is foreseen for 2011. Commission recommendations to protect whistle-blowers remain unaddressed. The joint teams on EU fraud have achieved better results in terms of number of cases in pre-trial proceedings, indictments and court sentences compared to 2009. Severe sentences in two cases related to EU funds were issued. However, the report details a number of areas where investigation of fraud needs further improvement and concludes that penalties for EU fraud remain low compared to other MS.

**Benchmark 5: Corruption at borders and in local government:** An action plan was adopted on 17 March to assist the implementation of the strategy on corruption and organised crime. Implementation of the action plan was decided by the Government in June. It is too early to assess the impact at this stage. The Ministry of Interior has implemented preventative measures in the form of awareness raising campaigns and better identification at the border checkpoints. Initiatives to combat local level corruption have also been implemented. The report notes specific initiatives undertaken to help tackle corruption in the fields of health and education. It also notes that steps have been taken towards prosecutions into cases of vote buying at 2009 EU and parliamentary elections. The report also sets out the results of the Commission’s analysis on controls over public procurement, which revealed significant shortcomings. It further notes that control bodies lack capacity and recommends establishing inspections to address the most blatant irregularities.
“**Benchmark 6: Organised crime:** The report notes that a number of operations have been carried out by the Ministry of Interior, targeting organised groups involved in kidnapping, prostitution and drug dealing. A number of arrests of well-known figures of organised crime groups have been made and there has been an increase in indictments in organised crime cases. The main defendant in a SAPARD (EU funding for agriculture projects) money laundering case has been sentenced to 10 years imprisonment. Work has begun on a unified information system for combating crime to connect the databases of the Ministry of Interior, the prosecution and the courts. This is expected to be operational in 2013. A number of other reforms have been started or implemented. These include: making permanent the joint teams specialising in organised crime and corruption; creating specialised units within five district courts; structural reforms to the State Agency for National Security and the Ministry of Interior, and; a draft law facilitating the forfeiture of assets derived from illegal activities.”

**Romania**

65.12 The main report notes that although there have been some positive achievements over the last six months there have been some serious shortcomings in Romania’s efforts to achieve progress. During the second quarter of 2010, judicial reform has shown important progress with Parliament adopting the Civil and Criminal Procedural Codes, the publication of a draft multi-annual strategy for the development of justice and the preparation of a draft “Small Reforms Law”. However, the report notes a lack of broad-based political commitment to support and provide direction to the reform process, and a degree of unwillingness in parts of the judiciary to cooperate and take responsibility. It notes that, with the exceptions of the examples above, there has been limited effective progress on judicial reform in the areas of: efficiency of procedures; consistency of jurisprudence, and accountability of the judiciary. In the area of anti-corruption, the report further notes that the draft National Integrity Agency (ANI) law proposed by the Senate, the Upper House of Parliament, renders the agency toothless. (ANI is the body set up to monitor wealth statements of parliamentarians and senior public sector officials, and had been making steady progress.) With the ANI having previously been fully operational, the proposed new law represents a backward step in the fight against corruption. The report states that this is in breach of the commitments Romania had taken upon accession. In its conclusions, the Commission calls upon Romania to establish close and constructive cooperation between the different political and judicial actors necessary to ensure success in the reform progress.

65.13 In his accompanying Explanatory Memorandum of 27 July 2010, the Minister for Europe describes the reports on Romania as “the most critical of any of those published since the mechanism began”; notes that, while the reports note some areas of progress, including the passing of new civil and criminal procedural codes, they conclude that Romania’s performance in the past year has been disappointing and that there are key shortcomings in terms of political commitment to reform; also notes that the reports are particularly critical of the Romanian parliament’s decision to strip the National Integrity Agency (ANI) of some of its powers, calling it a “clear breach of its Accession commitment”; and that Recommendations made by the reports include structural
adjustments of the judiciary and “thorough reform” of the disciplinary system, and further reforms against corruption, including in the field of public procurement.

65.14 The Minister goes on to note that, although both the Bulgarian and Romanian governments would like the CVM to be lifted, “there is unlikely to be significant pressure from either country for this to happen this year” and that he supports keeping the CVM in place until all benchmarks are met.

65.15 The Minister then summarises the situation under each benchmark as follows:

**Benchmark 1. Reform of judicial process.** The Civil and Criminal Procedure Codes were adopted by parliament on 22 June and promulgated by the President on 30 June. However, further work is necessary before all four codes enter into force, including on the implementing laws which have been sent to parliament for debate. The report notes that progress on the recommendation to conduct an impact assessment for the four codes has been minimal. The “Small Reforms Law” to be debated by parliament should advance the implementation of some reforms included in the procedural codes. It should also progress the recommendation to streamline the procedure for appeals. Staffing of the judiciary remains a concern. Vacancies have reduced slightly but there are questions as to whether recently appointed magistrates who have not graduated through the National Institute of Magistracy (NIM) are as well prepared as NIM graduated colleagues. The response to the 2009 recommendations to transfer vacancies to higher priority areas has been mixed. There has been progress on structural reforms to maximise the efficiency of existing personnel. The report urges the review of the geographic distribution of personnel and the possibility of a certain level of specialisation of judges.

“The Superior Council of Magistracy (SCM) has taken some steps towards more transparency by publishing decisions online. However, concerns remain over transparency, objectivity and thoroughness of interviews to promote judges to the High Court of Cassation and Justice (HCCJ). Concerns also remain over the handling of disciplinary investigations and decisions reached by the SCM.

**Benchmark 2: Establishment of an integrity agency:** On 14 April the Constitutional Court found substantial and significant parts of law 144/2007 on the National Integrity Agency (ANI) unconstitutional (although the conclusion was not unanimous). As a result, the government put forward a new law on the ANI, which was adopted on 12 May. This was widely criticised by practitioners and civil society, and the President subsequently decided not to promulgate the law. However, on 30 June, the Senate (the upper house of Romania’s Parliament) adopted the law again with only minor amendments. As a result, the control of assets, a fundamental element in the ANI’s original competence, has been lost. The ANI, which has had a good track record in directly taking cases of unjustified wealth to court, has now been deprived of this ability, having to refer them firstly to the tax authorities or prosecutors. This important deterrent and sanction for corruption has therefore been lost. The new law includes a host of other amendments which weaken the effectiveness of the ANI’s legal framework. The report notes that up until the passing of the new law, the ANI had been able to consolidate its institutional base, consolidate improvements in staffing and its operational track record, and therefore
notes that it is imperative that the new law is amended. The Commission’s report is highly critical of the Senate’s proposed law, saying that it “breaches commitments taken by Romania upon accession.” The ANI had previously strengthened case management processes, including monitoring the timely follow up by judicial and disciplinary bodies of cases submitted.

“Benchmark 3: Investigation of high level corruption: The National Anti-corruption Directorate (DNA) has maintained its stable and convincing track record of investigations into allegations of high-level corruption and a significant number of cases were sent to court. Overall, encouraging conviction rates have been achieved. The courts have demonstrated an increasing tendency to apply more severe sentencing, including imprisonment, although this trend has not been followed through at the final judgement stage. Concerns remain regarding the length of the trial phase in high-level corruption cases. The recommendation to apply the procedure for allowing criminal investigations of parliamentarians has only partially been fulfilled. On the positive side, the co-operation between the DNA and other relevant institutions is considered to be effective and challenges to the constitutionality of the DNA’s legislature have so far been rejected by the Constitutional Court. The report notes that additional in-service training courses on fighting corruption have been scheduled. The recommendation to allow the criminal court to resolve illegality exceptions and to limit the application of suspended sentences is also being addressed. Further work is needed on the individualisation of penalties for corruption.

“Benchmark 4: Further measures against corruption including in local government: Some steps have been taken to strengthen co-ordination of the National Anti-Corruption Strategy for Vulnerable Sectors and for Local Public Administration. This strategy is now in its final months. However, despite a few additional measures proposed, the enhanced co-ordination does not so far appear to have developed to the stage of delivering better identification of vulnerable activities or corruption risks, nor mitigating actions. The report also notes that the real impact of individual actions remain unclear, which makes it difficult to ascertain which measures are actually working or need further attention. Efforts have been made to step up prevention measures in certain sectors. In the wider public administration, the Central Unit of Public Administration Reform (CUPAR) of the Ministry of Administration and Interior (MAI) has developed a guide on simplification of procedures and facilitated external expertise to identify procedures for the simplification in several public agencies. The Ministry of Education, which has identified a systemic weaknesses arising from specific corruption cases, is procuring an information system aimed at reducing corruption in the diploma system. However, overall, prevention measures need to be intensified across public institutions. There is a need to strengthen co-operation between the Fraud Investigation Service of the police and prosecutors in fraud cases. MAI has secured financing for the National Integrity Agency to consolidate anti-corruption efforts, and steps by the General Prosecutor to tackle low and medium-level corruption are beginning to deliver results. Concerns remain on public procurement, where the report describes a number of weaknesses in practice and the institutional structure. Conflict of interest legislation is insufficient and complex. Competent authorities
demonstrate only limited activity aimed at preventing and detecting conflict of interest.”

The Government’s view

65.16 The Minister endorses the Commission’s “thorough reports”, which he says demonstrate how the mechanism “continues to play an essential role in guiding Romania’s and Bulgaria’s efforts in delivering these fundamental reforms, which are essential for public confidence and underpin their further integration into the EU.”

65.17 He notes a divergence in progress over the past year between the two countries. With respect to Bulgaria, the Minister says:

“We welcome the Bulgarian government’s strong demonstration of political will and commitment to reform, whilst acknowledging that there remain serious problems, especially in the fields of organised crime and the judiciary. The development of a strategy for judicial reform is promising and we urge the Bulgarian government to implement this to achieve the serious reform required.”

65.18 With regard to Romania, the Minister says:

“Whilst acknowledging there has been some progress in Romania, we share the Commission’s disappointment at the serious shortcomings over the past year. We are particularly concerned at the Senate’s decision to strip the National Integrity Agency (ANI) of some of its powers. However, it is also important to note that President Basescu has realised that this draft ANI law is ineffective and has not signed it into law. We urge the Romanian government to urgently restore the powers of the ANI, by swiftly adopting a credible ANI law, as they have indicated that they intend to.

“The publication of the report has had a clear impact in Romania, and could be a catalyst for quick and substantive progress. President Basescu has called for a special parliamentary session in August to try and adopt a credible ANI law, the “Small Reforms Law” and a law preventing the suspension of cases when lawyers appeal to the Constitutional Court on matters of law.”

65.19 Noting that this is now the fourth set of full reports issued under the Cooperation and Verification Mechanism since Romania’s and Bulgaria’s accession, the Minister says:

“The Government urges both countries to refocus their efforts to ensure they deliver concrete progress against the recommendations made by the Commission, as well as the Commission’s outstanding recommendations from 2009. Other Member States are starting to link the CVM with Bulgaria and Romania’s desire to join the Schengen zone. Although the UK is not in Schengen, we recognise that fulfilling the benchmark criteria would have obvious wider benefits for both countries, including greater confidence in their border management. We continue to strongly support the CVM and remain resolute that it should remain in place until all benchmark criteria are met.”
65.20 The Minister concludes by noting that further assistance will be provided using existing European Community funding under the programmes already available to Bulgaria and Romania, and explaining that:

“Romania also has access to €100m World Bank loan to upgrade its judicial infrastructure (building new court rooms etc). We will continue to support Romania on justice reform and anti-corruption through our modest bilateral programme at the British Embassy in Bucharest. Recently financed projects include funding two retired judges to help the Ministry of Justice draft sentencing guidelines, and co-funding with the Dutch a survey to address corruption in the Health Sector.”

The Minister’s letter of 20 June 2010

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

65.22 In its Report on the similar Commission reports of 2009, the previous Committee recalled not only its own visit to Croatia in June 2009 but also the evidence it took from the then Foreign Secretary (David Miliband) on 2 July 2009 on enlargement, with a particular focus on the lessons to be learned, and especially the Commission’s earlier judgement that both Bulgaria and Romania needed to demonstrate three things:

— “an autonomously functioning, stable judiciary, which is able to detect and sanction conflicts of interests, corruption and organised crime and preserve the rule of law”;

— “concrete cases of indictments, trials and convictions regarding high-level corruption and organised crime”; and that

— “the legal system is capable of implementing the laws in an independent and efficient way.”

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

65.23 The then Foreign Secretary’s response is set out in that Report, together with a further letter of 25 July 2009 from him, in which he outlined in greater detail the strengthening of the accession process via the addition of a new Chapter 23 on judicial reform and fundamental rights, within which Member States would have to agree unanimously on opening and closing benchmarks, and that they had been met, before the chapter could be opened or closed. There, he noted that the Council had not yet set closing benchmarks and that “when the moment comes we and the EU will certainly want to ensure that they set clear requirements for tackling corruption, including a track record of results.”

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288 See headnote: (30828) and (30829); 12386/09 and 12388/09: HC 19–xxvi (2008–09), chapter 22 (10 September 2010).
65.24 Prior to the publication of these Reports and receipt of his Explanatory Memorandum, the Committee received a letter of 20 June 2010 from the Minister for Europe with an overview of progress. He notes that Croatia has now opened 30 chapters out of 35, and that 18 have been provisionally closed. He goes on to say that the Government has now managed to secure agreement on an EU negotiating position that includes “setting rigorous benchmarks in the areas we want” — including on cooperation with the International Criminal Tribunal for (former) Yugoslavia (ICTY) — and proposes to agree to open formal negotiations with Croatia on this basis. Before the chapter can close, a “comprehensive and robust set of benchmarks” will need to be met (31 in all, compared with the 3–6 that most other chapters have), covering a range of important issues including: judicial transparency, impartiality and efficiency; tackling corruption; protecting minority rights; resolving outstanding refugee return issues; and protection of human rights.

65.25 The Government has, the Minister says, also secured: clarification that Croatia will need to show a track record of implementation across these areas; and a closing benchmark on cooperation with ICTY:

“Full cooperation with the ICTY remains a requirement for Croatia’s progress throughout the accession process, including for the provisional closure of this chapter, in line with the negotiating framework adopted by the Council on 3 October 2005.”[the Minister’s emphasis and italics.]

65.26 The Minister then says that:

“The Government assesses that Croatia has continued to demonstrate commitment to progress the investigation in missing documents requested by the Chief Prosecutor for the trial of General Gotovina. Since December Prime Minister Kosor has chaired 3 inter-agency meetings to drive forward an investigation by a new Task Force. The Task Force is constrained by an order from the Tribunal which prevents them from accessing documents seized from the Gotovina Defence team in December. Despite this the Task Force has conducted approximately 40 interviews with new individuals and fresh searches of premises. Chief Prosecutor Brammertz briefed the Foreign Affairs Council on 14 June and expressed his increasing confidence in the Task Force. This is reflected in his latest report to the UNSC on 18 June.”

“On the basis of the agreement of a clear benchmark and this assessment of Croatian cooperation Ministers have agreed in principle to open this chapter when technical negotiations are concluded, probably on Wednesday 23 June. I spoke yesterday to Davor Bozinovic, State Secretary of the Croatian Ministry of Foreign Affairs, to advise him of this and impress on him the need for Croatia to continue to progress the investigation and demonstrate its commitment to full cooperation with the ICTY.”

65.27 The Minister goes on to say that the Commission will monitor Croatia’s progress on this chapter closely, and that he would be happy to provide updates on progress. He also encloses an extract from ICTY Chief Prosecutor Brammertz’s Oral Report of 10 June 2010 to the UN Security Council.
Conclusion

65.28 The Commission reports, which we now clear, and the Minister’s comments speak for themselves. Concerning the wider lessons of the experience with Bulgaria and Romania’s accession, the Committee shares its predecessor’s standpoint.

65.29 The Committee is thus reassured by what the Minister has to say in his letter, though it notes his emphasis on the word “full” in the paragraph cited concerning the closing benchmark on cooperation with ICTY. This could plainly be open to a number of interpretations, and be influenced by political considerations. We should accordingly be grateful if, when he provides the next update, the Minister would expand on this, and say, in judging what constitutes “full” cooperation, to what extent the Council will depend upon the assessment in this regard of the ICTY Chief Prosecutor.
### EU Special Representatives

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European Scrutiny Committee, 1st Report, Session 2010–11

Council Decision extending the mandate of the European Union
— Special Representative for Sudan

Council Decision extending the mandate of the European Union
— Special Representative for Kosovo

Legal base
Articles 28, 31 (2) and 33 TEU; QMV

Department
Foreign and Commonwealth Office

Basis of consideration
EM of 2 August 2010

Previous Committee Report
None; but see (31290–1) —, (31295–99) — and (31300–04) — (2009–10): HC 5–xi (2009–10), chapter 8 (9 February 2010)

To be discussed in Council
To be determined

Committee’s assessment
Politically important

Committee’s decision
Cleared; further information requested

Background

66.1 EU Special Representatives (EUSRs) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They were established under Article 18 of the 1997 Amsterdam Treaty and are appointed by the Council. The aim of the EUSRs is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

66.2 An EUSR is appointed by Council through the legal act of a Council Decision (formerly a Joint Action). The substance of his or her mandate depends on the political context of the deployment. Some provide, inter alia, a political backing to an ESDP operation; others focus on carrying out or contribute to developing an EU policy. Some EUSRs are resident in their country or region of activity; others work on a travelling basis from Brussels.

66.3 All EUSRs carry out their duties under the authority and operational direction of the High Representative of the Union for Foreign Affairs and Security Policy (HR; Baroness Catherine Ashton). Each is financed out of the CFSP budget implemented by the Commission. Member states contribute regularly e.g. through seconding some of the EUSR’s staff members.

66.4 In June 2005 the Political and Security Committee decided that EUSR mandates should in principle be extended for 12 months rather than the previous arrangement of six months. This was put into effect in February 2006. The UK supported this proposal, as it enables extensions to be based on a more thorough reporting cycle. The renewed mandates now also ask EUSRs to prepare progress reports in mid-June and mandate implementation reports in mid-November.
The European Union currently has 11 EUSRs dealing with 12 areas (one EUSR carries out two functions): Afghanistan, the African Great Lakes Region, the African Union, Bosnia and Herzegovina, Central Asia, Georgia, the former Yugoslav Republic of Macedonia, Kosovo, the Middle East, Moldova, the South Caucasus and Sudan.

The previous Committee considered the most recent changes to their mandates on the basis of two Explanatory Memoranda of 3 February 2010 from the then Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant). He explained that, the earlier decision of the PSC notwithstanding, on this occasion the Council Decisions were to be extended, not for the usual twelve months, but only until 31 August 2010, or until the establishment of the European External Action Service (EEAS), whichever was the earlier; and that the HR intended to revert to the matter in the light of further work on the EEAS.

The Council Decisions concerning the latest proposed extensions, and some of the history, mandate and activities of each EUSR, is helpfully summarised by the Minister for Europe (Mr David Lidington) in his Explanatory Memorandum of 2 August 2010. His comments on each one are in italics beneath the summary.

**Afghanistan**

The Minister says that the UK fully supports the work of the EUSR, Mr Vygaudas Ušackas, and the extension of his mandate for six months or more. He describes him as a senior political figure, in a strengthened, double-hatted position; a welcome signal of the EU’s intention to up its game in Afghanistan; and key to driving forward the EU Action Plan for Afghanistan, adopted at the October Council last year (“the roadmap for a better coordinated, more focussed EU civilian effort in Afghanistan”) and for unified EU support to the Afghan Government for the implementation of commitments made at the Kabul Conference.

"Usackas was an early proponent of an EU Assistance Team for the Afghan parliamentary elections in September, demonstrating his ability to spot where the EU can add value to the wider international effort.

"His efforts have helped secure the deployment of an in-country Assistance Team over the elections period, which will make a significant contribution both to credible and inclusive elections and in support of the Afghan Government’s commitment to longer-term electoral reform. He is also the last piece in the jigsaw to up the international civilian effort, following the appointment of heavyweight figures for the role of NATO Senior Civilian Representative and the UN Special Representative for the Secretary General. Key to the civilian effort in Afghanistan will be enhanced co-ordination between these three roles.

"The UK is keen to see Usackas’ mandate extended for significantly longer than 6 months. Given the hardship conditions in Kabul, the EU mission there is having
trouble recruiting and retaining good staff. Short 6 month contracts only exacerbate this problem.”

Central Asia

66.9 This Decision extends the mandate of Ambassador Pierre Morel for 12 months until 31 August 2011. The EU established a Special Representative for Central Asia in September 2005 to ensure coordination and consistency of external EU actions in the region. Mr Morel was appointed in September 2006.

“The EUSR’s mandate focuses on enhancing EU effectiveness and visibility in the region. It also aims to contribute to the strengthening of democracy, rule of law, good governance and respect for human rights and fundamental freedoms in Central Asia. There have been a series of amendments to the mandate since 2007, adding work covering energy security, bilateral energy co-operation, counter-narcotics and water management issues. The EUSR also has an enhanced role in monitoring the implementation of the EU Strategy for Central Asia, which was adopted at the June 2007 European Council.

“The UK supports the continuation of this mandate. As EUSR, Mr Morel has travelled extensively and contributed to EU discussions on policy towards the region, including on energy security, counter-narcotics and human rights, and he has been effective in raising the profile of the EU in Central Asia. Mr Morel has played a particularly valuable role during the recent unrest in Kyrgyzstan, working closely with his opposite numbers in the UN and OSCE to encourage a coordinated international response to the violence.”

The Crisis in Georgia

66.10 This Decision extends the mandate of the EUSR, who is also Ambassador Pierre Morel, for 12 months until 31 August 2011. The EU established a Special Representative for the Crisis in Georgia in September 2008 to ensure coordination and consistency of external EU actions in the region.

“The EUSR’s mandate is based on the objectives established by the conclusions of the extraordinary European Council meeting in Brussels on 1 September 2008 and the Council conclusions of 15 September on Georgia. The EUSR’s role is to enhance the effectiveness and visibility of the EU in helping to resolve the conflict in Georgia. A key element of the role is representing the EU in the “Geneva Talks” process, the mechanism for seeking a resolution to the conflict.

“The UK supports the continuation of this mandate. While the Geneva Talks have become bogged down over status issues, they remain the only forum in which all the parties to the conflict meet and the UK strongly supports their continuation. The regularity of meetings, combined with local level Incident Prevention and Response Mechanism (IPRM) meetings, help manage tensions between Georgia, Russia and the separatist regions. The current EUSR, Pierre Morel, has played a valuable role in keeping the process going and has built personal relationships with key players, including the de facto authorities in the separatist regions.”
South Caucasus

66.11 This Decision extends the mandate of Mr Peter Semneby for a six month period until 28 February 2011. The intention is that by the end of this period the functions carried out under the mandate shall have been absorbed into the EEAS.

“The EUSR for the South Caucasus was first appointed on 20 February 2006. The EUSR supports the work of High Representative/VP Baroness Ashton in the region. He is tasked with pursuing the following objectives; assisting Armenia, Azerbaijan and Georgia in carrying out political and economic reforms; preventing conflicts in the region and contributing to the peaceful settlement of conflicts, including through promoting the return of refugees and internally displaced persons; engaging constructively with main interested actors concerning the region; encouraging and supporting further cooperation between States of the region, including on economic, energy and transport issues; and enhancing the effectiveness and visibility of the EU in the region.

“The UK believes that the objectives of the current EUSR mandate remain relevant, in a region that is of strategic importance to the UK and the EU. However we also agree that much of the mandate can be taken on by the EU Delegations in Tbilisi, Baku and Yerevan under the EEAS, provided they are properly resourced and tasked to do so. The exception is functions relating to conflict resolution and prevention, which need to be undertaken by someone based outside the region. This could potentially be a senior member of the EEAS based in Brussels. In ongoing discussion about what this role will cover and who will carry it out the UK will seek to ensure whoever fills the position will have sufficient seniority and experience to establish the level of access and influence necessary to have an impact on key players.”

Moldova

66.12 This Decision proposes a further extension of the mandate of Mr Kalman Mizsei until the responsibilities of this role have been transferred to the EEAS, no later than 28 February 2011. The Minister says that the initial extension in February 2010 of six months needs to be repeated as the transfer of the mandate to the EEAS has taken longer than anticipated; and that he understands that the current EUSR mandate will be split between DG level in Brussels and the EU Delegation Chisinau, once the EEAS comes into force.

“The mandate of the EUSRs is to strengthen the EU’s contribution to the resolution of the Transnistria conflict in close coordination with the OSCE. The EUSR works closely with the other members of the 5+2 (the OSCE-led settlement negotiation process) to identify shared objectives and overcome obstacles. Although there has been little substantive progress this year, we have seen a more constructive dialogue between Moldovan and Transnistrian representatives at informal 5+2 meetings. And the joint statements from Germany and Russia, and Ukraine and Russia have raised the international profile of the Transnistrian conflict. The EUSR will advise the EU as it discusses these proposals. Elections in the second half of 2010 in both Moldova and Transnistria may prevent further progress, but the EUSR’s remit is to keep the current focus on settlement discussions during this period.
“The EUSR also makes contributions towards EU policy in other areas, including improving EU-Moldova relations, the strengthening of democracy and the rule of law, and assisting in the fight against trafficking of weapons, other goods and people. He works closely with the EU Delegation in Chisinau, including on implementation of the EU-Moldova European Neighbourhood Policy Action Plan.”

**Macedonia**

66.13 This Decision extends the appointment of Erwan Fouéré until the Council decides, on a proposal by the HR, that appropriate corresponding structures to those under the current decision have been established in the EEAS. The position is double-hatted with the post of Head of the EU Delegation in Skopje.

“The proposed extension provides a pragmatic way of ensuring political continuity of CFSP expertise and visibility in Macedonia in the transition to the European External Action Service. The mandate extension proposal is specifically expressed to retain the option and intention of terminating the mandate earlier, depending on developments.

“The presence of an EUSR has provided an essential contribution to the consolidation of peace, stability and the rule of law in Macedonia. The EUSR plays a key role in ensuring that the necessary efforts and reforms take place for the full implementation of the 2001 Ohrid Framework Agreement (OFA), which ended fighting between the ethnic Albanian National Liberation Army and Macedonian security forces. These reforms are key for improving rights of ethnic Albanians through respect for minority languages, an increased role in the national parliament and an agenda for decentralization. The EUSR also offers advice and facilitates political progress, working to foster a climate of trust and dialogue conducive to implementing reforms necessary to progress towards the EU.

“The Macedonian government has made good progress with some reforms, as the Commission concluded in its “Enlargement Strategy and Main Challenges 2009–2010”. It assessed that Macedonia had substantially addressed the key priorities of its accession partnership, and recommended opening accession negotiations with the country. The Council committed to return to this matter in 2010.

“However, political challenges remain to ensure stability. An effective EU presence in Macedonia needs to encourage the reforms necessary for its EU integration, as well as promoting inter-ethnic stability. A delegation under the EEAS, with a strong political role, as well as Commission capacity to support the accession process, will provide the right mix to achieve this. We look forward to a proposal from the HR in this direction. The decision to extend the EUSR mandate maintains continuity until this arrangement is available.”

**Sudan**

66.14 This Decision extends the mandate of the EUSR, Ambassador Torben Brylle, to 31 August 2011. However, the mandate may be terminated earlier, if the Council so decides,
on a proposal of the HR following the entry into force of the decision establishing the EEAS.

“The mandate of the EUSR is based on the policy objectives of the EU in Sudan. It works with the Sudanese parties, the African Union (AU) and the United Nations (UN) and other national, regional and international stakeholders to achieve a peaceful transition under the Comprehensive Peace Agreement (CPA). This includes the organisation of a credible referendum on Abyei and on self-determination of South Sudan in January 2011. This includes actively contributing to the full and timely implementation of the CPA and post-referendum arrangements; supporting institution building and fostering stability, security and development in South Sudan irrespective of the outcome of the referendum of self-determination; improving security and safety of aid workers, and facilitating a political solution to the conflict in Darfur; promoting justice, reconciliation and respect for human rights, including full cooperation with the International Criminal Court; and improving humanitarian access throughout Sudan.

“We welcome the decision to renew the mandate of the EUSR. The next year will be a crucial period for Sudan with the referendum on Southern independence taking place in January 2011 and the end of the Comprehensive Peace Agreement period in July 2011. It is important that the EU continues to engage on the whole portfolio of issues affecting Sudan.

The current EUSR has played an important role in helping to promote a consistent international approach towards Sudan maintaining close contacts with the African Union (AU) and in particular the AU High-Level Implementation Panel for Sudan, the United Nations (UN), the Inter-Governmental Agency for Development (IGAD), the League of Arab States (LAS) and regional and other key stakeholders including the E6 (P5 + EU) Group of Envoys. The new EUSR will need to maintain this strong level of engagement with key players.

“We have close and regular communication with the current EUSR. His staff are like-minded in our analysis and approach. We look forward to continuing to work with the EUSR and will encourage an active contribution to the formulation of a future comprehensive EU strategy and engagement following the end of the CPA, as well as promoting constructive relations between Khartoum and Juba irrespective of the outcome of the referenda. We have valued the EUSR’s support for the work of the Joint UN/AU Mediator and the AUHIP with regard to international efforts to facilitate a lasting peace agreement for Darfur. These efforts and reporting on the process will remain important.”

**Bosnia and Herzegovina**

66.15 This Council Decision extends the appointment of Valentin Inzko until 31 August 2011. However, the mandate may be terminated earlier by a Council Decision following the establishment of the EEAS. The EU has appointed a EUSR to Bosnia and Herzegovina (BiH) since 2002. Valentin Inzko was appointed on 11 March 2009, and on 22 February 2010 his mandate was extended until 31 August 2010. The objective of the EUSR is to assist in the creation of a stable, viable, peaceful and multi-ethnic Bosnia and Herzegovina (BiH),
co-operating peacefully with its neighbours and irreversibly on track towards EU membership. To this end, the EUSR offers advice and facilitation in the local political progress, co-ordinates the activities of EU actors in BiH and provides EU actors and EU Heads of Mission with regular reporting on the local political situation. The EUSR also undertakes significant outreach work, aimed at communicating to the BiH population the benefits of EU integration and why certain reforms are necessary to realise them.

“The UK fully supports maintaining the Office of the EUSR in BiH. The British Government is very concerned about the situation in BiH, where reform progress has been slow and there are high levels of ethnic nationalist rhetoric. Elections are scheduled to be held in BiH on 3 October. The EUSR will therefore have a key role over the next twelve months. He will work to focus pre-election debate on the reforms necessary for further EU integration and to encourage BiH’s political leaders to work constructively together on achieving these reforms. The EUSR will then be at the centre of the EU’s crucial early engagement with a new government in BiH after elections. The EUSR will continue his outreach and communication programme in BiH, in order to further communicate the benefits of EU accession and the nature of the accession process to the general public in BiH. The Government strongly supports this work.

“The EUSR position is double-hatted with the (International Community’s) High Representative in BiH to ensure a unified and coherent international community approach. The Peace Implementation Council (PIC), which advises the High Representative, concluded in June 2010 that the 5 objectives and 2 conditions agreed as the criteria for closure of the Office of the High Representative (OHR) had not yet been completed. The PIC will continue to review progress against those objectives and conditions at its forthcoming meetings, including its next meeting in November. This EUSR mandate renewal does not prejudge a future PIC decision regarding closure of the Office of the High Representative.”

Kosovo

66.16 This Council Decision extends the appointment of Pieter Feith until 28 February 2011 or until the Council decides, on a proposal by the HR, that appropriate corresponding structures to those under the current decision have been established in the EEAS.

66.17 On 14 December 2007 the European Council underlined the EU’s readiness to play a leading role in strengthening stability in the Western Balkans, including by contributing to a European Security and Defence Policy mission and to an International Civilian Office as part of the international presences in Kosovo. Joint Action 2008/123/CFSP adopted on 4 February 2008 established an EU Special Representative for Kosovo. Kosovo declared independence on 17 February 2008.

66.18 The mandate of the EUSR is based on the objective of securing a stable, viable, peaceful and multi-ethnic Kosovo, which will contribute to regional stability. His tasks include being the channel for the EU’s advice and support to the political process, promoting political coordination in Kosovo through the EU missions, ensuring a coherent public message, and contributing to the consolidation of human rights and fundamental freedoms in Kosovo.
66.19 The EUSR role is currently combined with that of the International Civilian Representative (ICR) who is appointed by an International Steering Group (ISG, of which the UK is a member) and is the ultimate supervisory authority over the implementation of the UN Special Envoy’s Comprehensive Settlement Proposal (Kosovo committed itself to that proposal as part of its declaration of independence). The ICR does not have a direct role in the administration of Kosovo, but retains strong corrective powers to ensure the successful implementation of the Settlement. The ICR’s mandate will continue until the ISG determines that Kosovo has implemented the terms of the settlement.

“The UK fully supports maintaining the office of the EUSR in Kosovo and we would welcome the continued appointment of Pieter Feith in this post.

“Pieter Feith has a long track record of crisis management in both NATO and the European Union and has been closely involved with Kosovo since he was a senior policy official in the NATO International Secretariat in the late 90s. He headed the successful EU-led Aceh Monitoring Mission in 2005 and 2006. In 2007 he was appointed Director of the EU’s Civilian Planning and Conduct Capability and is the Civilian Operation Commander for the civilian ESDP missions. He has proved highly capable in his role throughout, supporting development of a stable, viable and prosperous Kosovo as it works towards its European perspective. In particular he has contributed to efforts to hold free and fair elections in line with international standards, has reached out to the non-majority community and supported dialogue in the field of religious and cultural heritage. He is very well placed to continue to provide strategic policy leadership to the international community effort in Kosovo and to work closely with the NATO and EU missions there. He is also the International Civilian Representative (ICR). This double-hatting has proved highly effective, adding authority and political influence to enable the EUSR to achieve the EU’s objectives.”

**Middle East Peace Process**

66.20 The mandate of Marc Otte is being extended by six months until the end of February 2011 or until the HR decides to incorporate the role into the new EEAS.

66.21 The mandate involves working with EU partners to ensure strong collective support for the negotiations, encouraging both sides to engage on the key final status issues and holding both sides accountable for any actions that undermine the peace process.

66.22 The Minister says that the UK will continue to:

— work with the EUSR and the High Representative on work looking at how the EU could contribute to post-conflict arrangements aimed at ensuring the sustainability of peace agreements;

— work with EU partners to deliver an urgent and fundamental change to the policy of closure of Gaza;

— press Israel to lift the restrictions and allow aid, people and commercial goods into and out of Gaza; and
— at the same time press for the immediate release of the captured Israeli soldier, Gilad Shalit, and the cessation of all violence.

“The EU, as a member of the Quartet for the Middle East, has an essential role to play in international policy on resolving the Arab-Israeli conflict. The EUSR and High Representative are key to driving this policy forward and we will continue to push for the EU to pursue an active stance in support of US efforts towards direct negotiations between the parties.”

African Great Lakes

66.23 This Council Decision extends the appointment of Roeland Van de Geer until 31 August 2011. The mandate may, however, be terminated earlier by a Council Decision following the establishment of the EEAS. Roeland Van de Geer was appointed on 15 February 2007, and on 22 February 2010 his mandate was extended until 31 August 2010. The objective of the EUSR is to assist in the further stabilisation and consolidation of the post conflict situation in the African Great Lakes Region with a particular attention on the regional aspect of developments in the countries concerned. To this end the EUSR maintains an active presence on the ground and in relevant international fora to ensure the continued commitment of the EU in the region, works closely with the UN/MONUSCO on comprehensive Security Sector Reform in DRC, promoting good neighbourly relations in the region, and contributes to post conflict stabilisation in Burundi, Rwanda and Uganda.

“The UK fully supports maintaining the Office of the EUSR in the African Great Lakes Region. The British Government remains very concerned at the situation the Great Lakes Region which is in an important stage of post regional conflict stabilisation but where internal conflict in the DRC threatens regional stability and prosperity. The EUSR will have an important role over the next twelve months. He will work to establish and maintain close contact with the countries in the region, the UN, the AU, and regional organisations. He will advise and assist on Security Sector Reform in DRC and will also contribute where requested, to peace and cease fire negotiations and engage diplomatically if agreements are broken. Mr Van de Geer also chairs and is a key driver for the Minerals Taskforce which works to reform the natural resource sector in DRC.

“The UK has a good relationship with the EUSR and we believe that he makes a positive contribution to supporting efforts to bring peace and stability to the region and we value his analysis and expertise. Mr Van de Geer has long been involved, and is a trusted voice, in the region.

“While Mr Van de Geer is cautiously optimistic about progress in Burundi he remains very aware of the difficulties the country represents, he was very active in seeking to ensure the political engagement of all legitimate parties in the recent elections. With elections taking place in Rwanda on 9 August, and due to take place in DRC in 2011 we believe he will play an important role in coordinating efforts promoting better electoral processes in the region.”
African Union

66.24 On 6 December 2007, the Council adopted Joint Action 2007/805/CFSP appointing Mr Koen Vervaeke as EUSR. This Council Decision extends the appointment until 31 August 2011. The mandate may be terminated earlier by a Council Decision following the establishment of the EEAS.

66.25 The objective of the EUSR is to support African efforts to build a peaceful, democratic and prosperous future as set out in the EU Africa Strategy. To this end the EUSR enhances the EU’s political dialogue and broader relationship with the AU, strengthening the EU-AU partnership, respecting the principle of African ownership and working more closely with African representatives in multilateral fora in coordination with multilateral partners.

“The UK fully supports maintaining the Office of the EUSR in Addis where the African Union is based. The AU is a key partner in Europe-Africa cooperation on human rights and governance. A successful AU will bring the benefits of a reduced peacekeeping burden, fewer thorny governance and human rights issues and the increased prosperity that stability will bring to Africa. This all chimes with the government’s objectives on reducing conflict, promoting sustainable global growth and supporting Africa’s participation globally where the AU is becoming a global “voice for Africa”. The organisation is already making good progress on sanctioning instances of unconstitutional power changes and peace keeping in Africa.

“The EU, the AU’s biggest and most sustainable source of finance provides €350 million for peace and security and human rights alone. The UK can achieve a more able AU through ensuring that EU funds are deployed effectively and co-ordinated with wider donors to achieve common objectives. These are the objectives that we will press the EUSR to achieve.”

Financial Implications

66.26 The Minister provides the following information:

Afghanistan

“Details of the budget for this EUSR have yet to be finalised. I will keep the Committee fully informed of costs in writing during the summer Recess.”

Central Asia

“Details of the budget for this EUSR have yet to be finalised. I will keep the Committee fully informed of costs in writing during the summer Recess.”

The Crisis in Georgia

“The UK contributes 13.6% to the overall EU budget in 2010. As the EU budget funds the CFSP budget the cost to the UK for the extension will be approx. €91,000 of the proposed €700,000 budget.”
South Caucasus

“The UK contributes 13.6% to the overall EU budget in 2010. As the EU budget funds the CFSP budget the cost to the UK for the extension will be €183,300 of the proposed €1,410,000 budget.”

Moldova

“Details of the budget for this EUSR have yet to be finalised. I will keep the Committee fully informed of costs in writing during the summer Recess.”

Macedonia

“Details of the budget for this EUSR have yet to be finalised. I will keep the Committee fully informed of costs in writing during the summer Recess.”

Sudan

“Details of the budget for this EUSR have yet to be finalised. I will keep the Committee fully informed of costs in writing during the summer Recess.”

Bosnia and Herzegovina

“The UK contributes 13.6% to the overall EU budget in 2010. As the EU budget funds the CFSP budget the cost to the UK for the extension will be approx. €481,000 of the proposed €3,700,000 budget.”

Kosovo

“For Kosovo a total allocation of €1,230,000 has been proposed for the period of the mandate (1 September 2010 until 28 February 2011). This is a significant decrease (of €430,000) from the budget for the current 6 month period predominantly due to reduced requirement for capital expenditure and for the contingency reserve. This is despite a proposed increase in staff of five.”

Middle East Peace Process

“Details of the budget for this EUSR have yet to be finalised. I will keep the Committee fully informed of costs in writing during the summer Recess.”

African Great Lakes

“The UK contributes 13.6% to the overall EU budget in 2010. As the EU budget funds the CFSP budget the cost to the UK for the extension will be approx. €197,600 of the proposed €1,520,000 budget.”
African Union

“Details of the budget for this EUSR have yet to be finalised. I will keep the Committee fully informed of costs in writing during the summer Recess.”

Timetable

66.27 The Minister says that he expects these Council Decisions to be agreed by written procedure on 8 August 2010.

The Minister’s letter of 2 August 2010

66.28 The Minister explains that the last possible opportunity for rollover is mid-August, as the current mandates expire on August 31st.

66.29 He goes on to say that he has been able to submit the documents for scrutiny before the summer Recess, because he does not have a full package of agreed documents; that he expects this by the end of the week in which he wrote his letter; and that the first, early, drafts documents were not received until 13 July. He continues thus:

“We will continue to press strongly in Brussels, including with the High Representative, for a more timely issue of documents in the future. In the meantime, I am attaching the set of draft Decisions together with an Explanatory Memorandum.

“I am fully committed to the rigorous parliamentary oversight of the Government’s policy in the EU. However, we consider that some of the EUSRs are crucial to delivery of government policy, in Bosnia and Herzegovina in particular, and also in Kosovo, where we have been in the lead amongst member states in insisting that the position of EUSR be maintained. EUSR Sudan has an important role in ensuring delivery of the Comprehensive Peace Agreement over the next 12 months, and I am pleased to note that the High Representative has just announced her wish to appoint Dame Rosalind Marsden to the position.²⁹⁰ For these reasons I may have to agree to these Decisions before your Committee returns after Summer Recess.”

66.30 The Minister concludes his letter by again noting that details for the budgets for all EUSRs have not yet been finalised, and by assuring the Committee that he will update it “in a timely manner as soon as documents are received in Brussels.”

Conclusion

66.31 The Minister’s Explanatory Memorandum illustrates clearly the wide range of challenges and activities of the present EUSRs.

²⁹⁰ A Council press release of 11 August 2010 announced that Dame Rosalind Marsden, a British diplomat with large experience in African affairs, including as UK Ambassador to Sudan, has been appointed the new EUSR from September 1st, replacing Ambassador Torben Brylle (who is to become his country's ambassador to Austria). See http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/116132.pdf.
66.32 We are concerned that, as on the previous occasion, the Minister is unable to provide very much financial information. We ask him to explain why it has again been necessary to present a key component of these mandates in a piecemeal fashion.

66.33 We draw the Minister’s attention to the separate chapter of this Report, dealing with the continuing lack of response to the previous Committee’s questions about how the Pakistan aspect of the EUSR Afghanistan position could be undertaken most effectively and about the non-EUSR component of Mr Ušackas’ double-hatted job, and ask him to provide this information.291

66.34 We are also concerned that the Committee is presented with assurances from a Minister of Europe of commitment to vigorous scrutiny set against explanations of operational necessity, and promises to press strongly in Brussels for a more timely issue of documents in the future, leaving the Committee once again reporting a fait accompli to the House.

66.35 The timeline was known long ago. These mandate renewals must have been in discussion for some months. Since no major changes are involved, we see no good reason why the draft texts could not have been produced much sooner. The next time any mandates come up for renewal, we expect both full and timely information — full, meaning to include financial information, and timely to mean, in time to scrutinise any proposal and raise any relevant questions before it is adopted.

66.36 We feel that this should apply particularly to any Council Decision to end an EUSR’s mandate and incorporate it into the activity of the EEAS. The Minister already raises concerns about how this would work in the case of the EUSR to the South Caucasus; the same sort of consideration would be bound to arise in the case of the EUSR to the MEPP, whose mandate has been extended for only six months, but without any explanation by the Minister. Against this background, we are concerned to note press reports that, at the July Foreign Affairs Council, it was decided to end four mandates from February 2011, including those of the EUSRs to the South Caucasus and to the MEPP (the others being those to Macedonia and Moldova); and that the Council was unable to reach any agreement on the position of the ICR/EUSR to Kosovo. We therefore ask the Minister to explain:

— how his concerns about the need for conflict resolution and prevention in the south Caucasus to be undertaken by someone based outside the region have been resolved and, now a decision has been taken to end the mandate in February 2011, how he will be able to ensure that this role will be adequately covered and that the person selected to perform it “will have sufficient seniority and experience to establish the level of access and influence necessary to have an impact on key players”;

— if the EUSR and High Representative are key to driving EU policy on resolving the Arab-Israeli conflict, the rationale behind abolishing this EUSR post;

291 (31425); see chapter 51 of this Report.
— given his strong endorsement of both the role of the ICR/EUSR Kosovo and the present incumbent, what has held up agreement in the Council regarding his mandate.

66.37 Against this background, we now clear the documents.

### 67 Value added taxation

| (30885) | Draft Council Regulation on administrative cooperation and combating fraud in the field of value added tax (Recast) |
| 12886/09 COM(09) 427 |

**Legal base**
Article 113 TFEU; consultation; unanimity

**Department**
HM Treasury

**Basis of consideration**
Minister’s letter of 7 June 2010

**Previous Committee Report**

**To be discussed in Council**
Not known

**Committee’s assessment**
Politically important

**Committee’s decision**
Cleared

### Background

67.1 The main instrument governing the exchange of information and assistance in VAT matters is the Administrative Cooperation Regulation (Council Regulation (EC) No 1798/2003). This has been amended on a number of occasions, most recently in late 2008. The Regulation is therefore in need of consolidation.

67.2 This draft Regulation is to recast (consolidate and amend) the existing Administrative Cooperation Regulation. The proposal sets out the Commission’s aim of providing Member States with the means for efficient and well organised administrative co-operation procedures on VAT issues to combat cross-border VAT fraud more effectively and for better collection of VAT in cases where the place of taxation is different from the place of establishment of the supplier.

67.3 The draft Regulation would recast the present Regulation to take into account changes that have already been agreed in other instruments, align, reorder and harmonise existing legal text, introduce new measures and extend the role of the existing comitology.\(^{292}\)

\(^{292}\) Comitology is the system of committees which oversees the exercise by the Commission of powers delegated to it by the Council and the European Parliament. Comitology committees are made up of representatives of the Member States and chaired by the Commission. There are three types of procedure (advisory, management and regulatory), an important difference between which is the degree of involvement and power of Member States’ representatives.
committee (the Standing Committee on Administrative Cooperation) to some of the new elements. The key measures include:

- common minimum standards for Member States when registering and deregistering traders for VAT;
- giving authorised personnel in other Member States automatic access to certain data on VAT registered businesses held by a Member State;
- allowing authorised tax authority personnel access to another Member State’s summary intra-Community trading information and certain other data;
- Eurofisc — the main function of which will be to provide a fast-track network for exchanging specified data between Member States and to provide an early warning system of possible fraud; and
- an enhanced VAT number verification system to help businesses verify their Community customer’s details.

Other changes include:

- establishing the principle that Member States are collectively responsible for helping each other to secure their VAT revenues;
- a requirement that tax authorities provide each other with feedback on the value of the information which they exchange; and
- clarification of existing legislation to facilitate greater use of cooperation tools and to remove inconsistencies of interpretation.

67.4 When the previous Committee considered the proposal, in October 2009, it heard that fighting VAT fraud remained a priority for the Government and that it therefore welcomed the Commission’s proposal, supported many of the measures in it but had some reservations, which it would need to address during negotiations. Our predecessors commented that cooperation between Member States to counter VAT fraud was clearly important and rationalising and improving legislation facilitating that cooperation would be welcome. However, they noted the Government’s reservations about the detail of the draft Regulation. So before considering that document further the Committee asked to hear about developments on these points in the negotiations and to see, if the need for one emerged, any Impact Assessment.

67.5 In January 2010 the previous Committee reported that the Government had told it that:

- only two working group meetings on this matter had been held under the Swedish Presidency (July-December 2009) and so there had been only limited discussion of the proposal;

So-called “Regulatory with Scrutiny”, introduced in July 2006, gives a scrutiny role to the European Parliament in most applications of comitology.
• so the Government had had little opportunity to explore the proposal with other Member States and test its interpretations of the original text;

• nevertheless it was aware from those discussions that there was a wide spectrum of views on the proposal;

• more specifically other Member States shared its concerns with regard to common minimum standards and about the role played by comitology more widely; and

• the Government anticipated that the Spanish Presidency would see this matter as a priority and that more substantive discussions would take place early in 2010.

Our predecessors looked forward to hearing in due course about more substantive discussion and meanwhile kept the document under scrutiny. 293

**The Minister’s letter**

67.6 The Exchequer Secretary to the Treasury (Mr David Gauke) tells us that progress on the draft Regulation has accelerated recently under the Spanish Presidency and that there have been extensive changes to the proposed new provisions. He says that the key changes relate to the areas identified to our predecessors:

• comitology will no longer have a role to play in the establishment of common minimum standards for registration and de-registration and has been restricted to the governance of the technical details of exchange for “direct access” to data; and

• comitology has been deleted from the Eurofisc provisions — instead the details on how the system will operate have been set out in the draft Regulation and an accompanying explanatory Minutes Statement.

67.7 The Minister comments that:

• as a result of the changes to the proposal, the Government is satisfied that it respects both the principles of subsidiarity and proportionality;

• it believes that the proposal will provide anti-fraud benefits for the UK and other Member States as a whole, while ensuring that no additional burdens on business are generated;

• the basic elements of the proposal remain unchanged from the original;

• common minimum standards should help to ensure that entry to the VAT system will be better policed and Member State’s VAT registers more up to date;

• access changes to specified information will speed up the checking of basic information and thus help authorised officials in their investigations, whilst the establishment of Eurofisc will facilitate the exchange of targeted information thus acting as an early warning system for frauds;

293 See headnote.
• introduction of feedback arrangements will help Member States to ensure that the information exchanged is useful and in turn provide material to refine the system;

• the enhanced VAT number checking system will assist business engaged in intra-community trade; and

• given the absence of any impact on business and only a limited resource requirement for HMRC, the Government confirms that an impact assessment will not be necessary for the proposal.

67.8 The Minister tells us that the Presidency is keen to close down discussions on the draft Regulation and tabled it for political agreement at the ECOFIN Council of on 8 June 2010, with all other Member States willing to agree. He says that:

• the decision to put this proposal forward for political agreement put the Government in a very difficult position;

• if it were to block agreement on the grounds that parliamentary scrutiny was not yet concluded, it would in effect be blocking agreement to an important anti-fraud proposal that it supports and for which the Presidency and other Member States have made significant concessions helpful to the UK in order to get the Government’s agreement;

• as all other Member States want to see the proposal agreed, blocking agreement would risk sending out unhelpful and misleading signals that the Government is reluctant to fight fraud or help other Member States do so; and

• this would be particularly sensitive in the current economic climate where all Member States have been affected by VAT fraud and all are looking to protect tax receipts in order to repair their fiscal positions.

67.9 The Minister continues that:

• the Government reluctantly decided, therefore, that if it were the sole Member State blocking agreement at the ECOFIN Council, it would not be in the UK’s best interest to block agreement to the proposal;

• mindful, however, of the fact that neither we nor the Lords’ European Union Committee would have had an opportunity to consider the significant developments that have been made on the proposal, the Government planned to abstain from the vote;

• the Government was aware that since this is a tax proposal and decided under unanimity this would still result in the proposal being agreed prior to the conclusion of the parliamentary scrutiny process;

• it felt, nevertheless, it important to reflect its scrutiny position and to make it clear that in the circumstances it could not vote for the proposal;
the Government’s decision to not block agreement was particularly guided by its belief that all of the concerns expressed previously by our predecessors and in the Lords had been satisfactorily addressed in the current proposal; and additionally

to block the proposal would risk the possibility of the package being reopened at a later stage which could only result in a revised proposal that would be less acceptable to the Government.

67.10 The Minister says finally that he thought it appropriate to write before the ECOFIN meeting to warn us of the likely agreement of this proposal and that, in the circumstance, the Government hoped we can appreciate the impetus behind its decision.

Conclusion

67.11 We note the improvements in the text of the draft Regulation that have been negotiated, which meet the concerns drawn to the attention of our predecessors, and now clear the document.

67.12 As for the breach of the scrutiny reserve resolution we note and accept the Minister’s explanation. Moreover we appreciate the Government’s effort to mitigate the extent of the breach by its decision on abstention, particularly for the message it sends to the EU institutions and other Member States about parliamentary scrutiny.

68 Value added taxation

(31234) 17760/09 COM(09) 672 Draft Council Regulation laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (Recast)

Legal base
Article 113 TFEU; consultation; unanimity
Department
HM Treasury
Basis of consideration
Minister’s letter of 28 July 2010
Previous Committee Report
Discussion in Council
Not known
Committee’s assessment
Politically important
Committee’s decision
Cleared

Background

68.1 In 2006 Council Directive 2006/112/EC, the VAT Directive, which entered into force on 1 January 2007, consolidated the legislation governing value added taxation in the
EU. Article 397 of the VAT Directive says “The Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement this Directive.” Article 398 establishes “the VAT Committee”, a Commission chaired advisory body, to examine questions raised by the Commission, or Member States, in order to agree how the provisions of the Directive should be applied, where there is some doubt.

68.2 With this draft Regulation the Commission proposed a recast (that is codification, or consolidation, together with some substantive amendment) of Council Regulation (EC) No 1777/2005, which prescribed the implementing measures for the pre-2007 VAT legislation. The aim of the proposal was to provide clear and uniform interpretation of selected areas of the VAT Directive.

68.3 In addition to recasting the measures in Council Regulation (EC) No 1777/2005 to reflect the structure and numbering of the VAT Directive, there were articles in the proposal derived from guidelines as to how the VAT Directive’s provisions should be interpreted, which had been unanimously, or nearly unanimously, agreed by Member States in the VAT Committee. New measures proposed were of three types:

- Guidelines agreed within the preceding year that were directly linked to the changes to the rules for “place of supply” in Council Directive 2008/8/EC, which entered into force on 1 January 2010 — there were 30 of these, forming by far the largest and most significant category of measures;
- four Guidelines relating to different elements of the VAT Directive which were agreed in the VAT Committee prior to adoption of Council Regulation (EC) No 1777/2005, but which for various reasons were not included within it; and
- four Guidelines relating to different elements of the VAT Directive which had been agreed in the VAT Committee since adoption of Council Regulation (EC) No 1777/2005.

68.4 When the previous Committee considered this document, in January 2010, it heard, in relation to “place of supply” rules, that:

- although the then Government broadly welcomed the proposal and supported the objectives in principle, it had identified a small number of issues on which it proposed to undertake some further analysis and consult with UK business;
- the Government also needed to ensure sufficient time was built into the discussions of the proposal to enable the detail to be tested against commercial transactions undertaken under the new “place of supply” rules, before being finally consolidated into a legally binding Regulation; and
- it would therefore continue to work with business to monitor what happens in practice and to obtain a clearer picture on these issues.

On the other new provisions in the draft Regulation our predecessors heard that they covered a range of topics which broadly reflected the Government’s existing approach or which provided welcome clarifications, but that while it would be desirable to achieve agreement to this category of new measures, they were not as important as the “place of supply” category.

68.5 The previous Committee commented that, clearly, this draft Regulation would serve a useful purpose and it recognised that the draft was largely unexceptionable. Nevertheless, before considering the document further it asked to hear from the Government about progress in improving the text in the light of its further analysis and its consultations with UK business.

68.6 Our predecessors considered the matter again in March 2010, having heard from the then Government that:

- the Spanish Presidency was then producing a compromise text of the draft Regulation which, when issued, was expected to be discussed at Council working party meetings planned for 14 April and 5 May 2010;
- depending on the content of the compromise text and the outcome of the meetings, the Presidency might then take the proposal to the ECOFIN Council on either 18 May or 8 June 2010 for political agreement;
- the Government had held initial discussions with UK business, through existing HMRC and Treasury liaison fora, including the Joint VAT Consultative Committee and the VAT Forum;
- this had led to creation of a Joint Working Group, to review the text in detail;
- business welcomed the clarity and consistency that such implementing measures would provide and so early agreement would be advantageous, provided the content was satisfactory;
- the Joint Working Group was to undertake a review of the Presidency compromise text when it emerged to test that; and
- this would inform the Government negotiation position for the meetings in April and May 2010.

68.7 The then Minister told the previous Committee that:

“If the legal text or the outcome of those discussions provides UK businesses with the right level of clarity and consistency, then business will be keen to see early agreement and the Government would certainly not wish to stand in the way of that.”

It said that:

- it did not yet wish, in the absence of a definitely acceptable text, to clear the document;
• if, however, the Government judged it appropriate the Committee would be content for it to support a political agreement, under the terms of Article (3)(b) of the House of Commons Scrutiny Reserve Resolution of 17 November 1998;

• whether the Government made use of this dispensation or not it would, of course, wish to have a further account of developments on the proposal; and

• meanwhile the document remained formally under scrutiny. 297

The Minister’s letter

68.8 The Exchequer Secretary to the Treasury (Mr David Gauke) tells us that:

• in the event Council negotiations have still not concluded;

• the Belgian Presidency is taking the matter forward as a priority and may be able to conclude discussions in the next few months, with a text going to the ECOFIN Council thereafter;

• officials have continued discussions with UK business and have feed its views into the EU discussions;

• UK business welcomes the overall clarity and consistency that the latest text provides and would now like to see agreement as soon as possible; and

• on that basis, the Government would be prepared to accede to a political agreement on the proposal if it should go the Council before the end of the Belgian Presidency.

Conclusion

68.9 We are grateful to the Minister for his account of where matters stand on this draft Regulation. In the light of the welcome of UK business for the latest text of the proposal we now clear the document.
69 Stability and Growth Pact

Council Decision addressed to Greece with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit

Legal base
Articles 126(9) and 136 TFEU; —; QMV, excepting the Member State concerned

Background

69.1 The Stability and Growth Pact adopted by the Amsterdam European Council in June 1997 emphasised the obligation of Member States to avoid excessive government deficits, defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a “reference value” of 3%. Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State. These Opinions, which are not binding on Member States, are based on a recommendation from the Commission. The economic content of the programmes is assessed with reference to the Commission’s current economic forecasts. If a Member State’s programme is found wanting, it may be invited by ECOFIN, in a Recommendation, to make adjustments to its economic policies, though such Recommendations are likewise not binding on Member States. This whole procedure is essentially the Pact’s preventative arm.

69.2 On the other hand, the Pact also endorsed a dissuasive or corrective arm involving action in cases of an excessive government deficit — the excessive deficit procedure provided for in Article 126 TFEU (formerly Article 104 EC) and the relevant Protocol. This procedure consists of Commission reports followed by a stepped series of Council Recommendations (the final two steps do not apply to non-members of the eurozone). Failure to comply with the final stage of Recommendations allows ECOFIN to require publication of additional information by the Member State concerned before issuing bonds.

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

299 The 16 Member States (Austria, Belgium, Cyprus, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain) that have adopted the euro have Stability Programmes, whereas the other 11 Member States (including the UK) produce Convergence Programmes.
and securities, to invite the European Investment Bank to reconsider its lending policy for
the Member State concerned, to require a non-interest-bearing deposit from the Member
State concerned whilst its deficit remains uncorrected, or to impose appropriate fines on
the Member State concerned.

The document

69.3 This Council Decision is addressed to Greece in order to:

- reinforce and deepen Commission surveillance of Greece; and
- set out the measures that Greece will need to take to end the present excessive
deficit situation “as rapidly as possible, at the latest, by the deadline of 2014” and to
comply with the conditionality for a joint eurozone/IMF package of support.

69.4 As background the recitals of the Decision lay out a chronology of the events that took
place in Greece since 27 April 2009, when the Council decided that an excessive deficit
existed in Greece and that this should be corrected by 2010 at the latest:

- following Greece’s failure to take effective action by the agreed deadline, the
Council, on 16 February 2010, gave notice to Greece to correct the excessive deficit
by 2012 at the latest;
- the notice outlined a series of measures that Greece should undertake to end the
present state of excessive deficit and imposed a deadline of 15 May 2010 for
effective action to be taken;
- by March 2010 the Commission had assessed that “Greece was implementing, as
requested, the fiscal measures meant to ensure the achievement of the planned
deficit target for 2012” and that Greece’s programme appeared “sufficient to
safeguard the 2010 budgetary targets provided in the Council Decision of 16
February 2010 and in the stability programme”;300
- subsequently, however, significant downward revisions to the Commission’s GDP
forecast for Greece and to Eurostat’s estimates of Greece’s 2009 government deficit
and debt estimates led to a reassessment of the situation in Greece and the
conclusion that Greece’s consolidation plans “can no longer be considered valid,
requiring even more drastic action in the course of the current year”;
- the Commission 2010 Spring Forecast revealed a marked worsening of the
economic scenario in Greece, in turn implying a corresponding deterioration of
the outlook for public finances at unchanged policy;
- the forecast now projects sharp contractions in both 2010 and 2011, in contrast to
the Commission 2009 Autumn Forecast, which predicted a mild contraction in
2010 followed by a recovery in 2011;

to this was added the upward revision of the government deficit outcome for 2009 (from an estimated 12.7% of GDP at the time of Council Decision of 16 February 2010 to 13.6% of GDP according to the fiscal notification submitted by Greece on 1 April 2010), with the risk of a further upward revision (of the order of 0.3 to 0.5 % of GDP) following completion of the investigations that Eurostat is undertaking with the Greek Statistical Authorities; and

- concerns in the markets for the public finances, meanwhile, were resulting in sharp increases in risk premia on government debt, compounding the difficulties in controlling the path of government deficit and debt.

69.5 The recitals then conclude that:

- the worse than expected depth of the recession, revised fiscal statistics and increased risk premia “make the achievement of the initial deficit reduction path unfeasible”; and

- “unexpected adverse economic events with major unfavourable consequences for government finances can be considered to have occurred in Greece”.

69.6 Finally the recitals record that the Council:

- decides, in accordance with Articles 136, never before called on, and 126(9) TFEU, that Greece’s deadline for correcting its deficit should be extended by two years to 2014, that the Council’s recommendations to Greece should be revised and that fiscal surveillance in Greece should be reinforced and deepened;

- stresses, in spite of the extended deadline, the “extremely urgent need for Greece to take decisive action, on an unprecedented scale, on its deficit and on other factors contributing to the increase in debt, in order to reverse the increase in the debt-to-GDP ratio and allow it to return as soon as possible to market financing”; and

- notes a joint eurozone/IMF stability support package that was extended to Greece “with a view to safeguarding the financial stability of the euro area as a whole”; and

- underlines that this support is conditional on Greece respecting the articles of the Council Decision — in particular, it is expected to carry out the full list of measures outlined in the Decision in accordance with the calendar set out therein.

69.7 The measures prescribed by the Decision are in its first four Articles, the first two relating to the measures that Greece needs to undertake to correct its deficit and the latter two relating to the deepening and strengthening of fiscal surveillance. The first Article sets out the annual change that will be required in government deficit and consolidated gross debt, requiring that:

- Greece put an end to the present excessive deficit situation “as rapidly as possible and, at the latest, by the deadline of 2014”;

- the adjustment path towards correction of the excessive deficit aims to achieve a general government deficit not exceeding 8.0% of GDP in 2010, 7.6% of GDP in 2011, 6.5% of GDP in 2012, 4.9% of GDP in 2013 and 2.6% of GDP in 2014;
achievement, to this end, of an improvement in the structural balance of at least 10% of GDP over the period 2009–2014; and

the debt to GDP ratio, based on the current GDP projections, does not exceed 133.2% in 2010, 145.2% in 2011, 148.8% in 2012, 149.6% in 2013 and 148.4% in 2014.

69.8 The second Article outlines a detailed calendar of the measures and actions that Greece will need to take to correct its deficit, quarter by quarter:

• the first set of deadlines falls at the end of June 2010 and the final set of deadlines at the end of December 2011;
• measures to be undertaken focus initially on frontloading a substantial number of spending and tax measures; and
• later milestones include actions to move structural reform forward as well as actions to improve processes, institutional systems, administrative capacity and accountability structures.

Headline measures include:

• by June 2010 an increase the VAT rate, increases in fuel, tobacco and alcohol excises, cuts in civil servants remuneration, pension reforms, including the abolition of ‘bonuses’ (one-off payments) paid to pensioners three times a year, cuts in public investment and significant tax reforms, including the abrogation of all exemptions;
• by September 2010 a commitment to further fiscal measures in 2011 amounting to “at least 3.2% of GDP”;
• by December 2010 reforms to the fiscal framework, together with structural reforms aimed at improving Greece’s competitiveness; and
• in 2011 a commitment to further fiscal measures for 2012 amounting to at least 2.2% of GDP, including further reductions in public sector employment, broadening of the VAT base and structural reforms to public sector pay.

69.9 In order to strengthen fiscal surveillance the third and fourth Articles provide that Greece shall:

• fully cooperate with the Commission;
• submit to the Council and the Commission quarterly reports that outline the policy measures taken to comply with the Decision; and
• transmit without delay any data or document required in order to monitor compliance with the Decision.
The Government’s view

69.10 The Financial Secretary to the Treasury (Mr Mark Hoban) says that the Council Decision does not have any direct policy implications for the UK, but that the Government will be monitoring the situation closely as this issue is of importance to all Member States. He also says that there are no direct financial implications for the UK arising from the Decision. However the Minister comments further that:

- on 10 May 2010 the General Affairs Council took note of conclusions, adopted on 5 May 2010 by all 27 Member States, that “Member States whose currency is the euro have decided to provide stability support to Greece in an intergovernmental framework via pooled bilateral loans. The EU Member States entrust the Commission with the tasks in relation to the coordination and management of the stability support set out in an inter-creditor agreement to be concluded by the euro area Member States providing the support”;

- as the UK is not in the eurozone there are no financial implications arising from these loans for the UK;

- the IMF will follow normal procedures in financing its Stand-by Arrangement with Greece;

- the IMF borrows resources from its members to finance its ongoing lending operations, contributions are drawn widely across members’ “quota subscriptions” as well as through bilateral loans and the UK participates in these arrangements along with other IMF members;

- UK loans to the IMF are held as part of the Official Reserves and do not add to public sector net debt as they are treated as financial assets;

- there are a number of safeguards to protect UK contributions to the IMF, including the conditions attached to IMF programmes, the IMF’s provision of support through instalments and the IMF’s status as a preferred creditor;

- on 9 May 2010 the ECOFIN Council agreed a European Financial Stabilisation Mechanism (EFSM) to support Member States in need, up to the level of €60 billion (£49.1 billion);³⁰¹

- should the mechanism be called upon the Commission would raise the money on capital markets;

- loans would be granted in parallel with IMF programmes and would be subject to policy conditionality;

- the EU budget would be used to guarantee the loans, but only where there were defaults on loan repayments would there be a cost to the budget;

³⁰¹ (31611) 9606/10 (31796) 12119/10: see chapter 7 in this Report.
• Member States would be liable for a share — based on the UK’s contribution to the 2010 EU Budget its share would be approximately 13.8% of any increase, or up to a maximum of around €8 billion (around £6.5 billion);

• the ECOFIN Council also agreed up to €440 billion (£359.7 billion) to complement the EFSM Regulation through a Special Purpose Vehicle;

• this is a voluntary intergovernmental agreement of eurozone Member States, lasting three years, which has no bearing on the EU budget; and

• the Government has chosen not to participate in the Special Purpose Vehicle and, will not make contributions — there is therefore no question of any liability arising for the UK.

Conclusion

69.11 We are grateful to the Minister for his full account of the content and adoption of this Council Decision and clear the document.

70 Financial services: bank resolution funds

| (31646) | Commission Communication: Bank resolution funds |
| 10394/10 | |
| COM(10) 254 | |

Legal base

Document originated: 26 May 2010

Deposited in Parliament: 2 June 2010

Department: HM Treasury

Basis of consideration: EM of 14 June 2010

Previous Committee Report: None

Discussion in Council: None planned

Committee’s assessment: Politically important

Committee’s decision: Cleared

Background

70.1 In its Communication for the Spring 2009 European Council, Driving European Recovery, the Commission noted a perceived need for a framework for cross-border crisis management in financial services.302 In an October 2009 Communication, An EU

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framework for cross-border crisis management in the banking sector, and an accompanying staff working document, the Commission’s presented its views on the development of a regulatory framework for stabilising and controlling the systemic impact of a failing cross-border bank — it aimed to ensure that Member States have common tools that can be used in a coordinated manner to allow prompt action in the event of major banking failures, protecting the financial system, avoiding costs to taxpayers and ensuring a level playing field. In particular, the aim was to ensure that orderly failure is a credible option for any bank, irrespective of size or complexity. One of the three themes in the Communication was a discussion of resolution, covering measures taken by national authorities to manage a crisis in a banking institution, to contain its impact on financial stability and, where appropriate, to facilitate an orderly winding up of the whole or parts of the institution.303

The document

70.2 In this Communication the Commission:

- sets out its thinking on how the financial sector could contribute to the cost of financing the resolution of failing banks; and
- explains how it sees bank resolution funds fitting within the broader framework of measures designed to strengthen the future EU framework for crisis prevention and management.

The Commission:

- supports establishing a network of national resolution funds, funded by an ex ante levy on banks;
- believes such funds should be used to finance the costs of resolving failing banks, which would minimise reliance on taxpayer funds for bail-outs and allow banks to be wound down in an orderly manner without causing wider contagion; and
- notes that the Communication does not deal with levies or taxes which aim to recoup public funds committed during the crisis, or to tackle excessive risk-taking or speculative activity.

70.3 The Communication covers four key themes:

- an EU approach to bank resolution funds;
- financing bank resolution funds;
- scope and potential size of funds; and
- governance of bank resolution funds.

On an EU approach to bank resolution funds the Commission:

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• proposes that, as a first step, Member States should establish a system based around a harmonized network of national funds linked to a set of coordinated national crisis management arrangements;

• suggests these arrangements be seen as a first step and be reviewed by 2014 with the aim of creating EU integrated crisis management and supervisory arrangements, as well as an EU Resolution Fund in the longer term;

• asserts that failure to adopt an EU approach on bank resolution funds could result in the unilateral imposition of domestic levies and thus risk competitive distortions between national banking markets and potentially lead to overlapping of levies for cross-border banks; and

• asserts that different approaches to private sector financing mechanisms may create obstacles to efficient handling of crises or use of resolution tools and may render agreement on the sharing of costs more complex, if not impossible.

70.4 On financing bank resolution funds the Commission believes ex-ante levies could be based on several indicators of bank risk, such as assets, liabilities, profits and bonuses — on balance it feels that liabilities would be more appropriate in determining the amounts that may be needed to resolve a bank. For the scope and size of fund expenditure the Commission proposes that the levy should apply to banks and investment firms. But it does not take a firm position on the target size for funds, noting that they should be designed in the context of other planned regulatory reforms affecting the financial sector. On governance of bank resolution funds the Commission proposes that they should remain separate from the national budget and be dedicated only to resolution costs. And it will make further proposals on how coordination between funds, in a cross-border resolution scenario, would work in practice.

70.5 The Commission intends to publish a Communication in Autumn 2010, which will set out concrete policy options on crisis management, including funding options, and expects to propose legislation for crisis management and resolution funds in early 2011.

The Government’s view

70.6 The Financial Secretary to the Treasury (Mr Mark Hoban), noting that this document is closely linked to work flowing from the Commission’s Communication, An EU framework for cross-border crisis management in the banking sector, says on wider crisis management policy, that the Government:

• welcomes the Commission’s efforts to ensure that all Member States can coordinate actions and have the appropriate tools for intervening quickly to avert or manage the failure of a bank;

• supports, therefore, measures that ensure Member States have minimum resolution toolkits to reduce the cost of failure;

• advocates firm-specific recovery and resolution plans, as a means of enabling supervisors to better understand large and complex firms and identify in advance potential barriers to resolution;
• holds that responsibility for such arrangements falls on national authorities in order to reflect national characteristics, such as the shape of the local banking market and legal systems;

• holds that it is important that EU proposals facilitate rather than hinder appropriate action by national authorities; and

• awaits the Commission’s forthcoming Communication, in Autumn 2010, on crisis management for further detail on the Commission’s plans.

70.7 Turning to resolution funds, the Minister says that the Government has a number of concerns about the Commission’s plans to establish a network of national resolution funds in the EU. He comments that the Government:

• believes that establishing resolution funds will reinforce the “too important to fail” problem and entrench moral hazard in countries with global banks;

• thinks it would be difficult as things stand in practice not to use funds to protect creditors, that is, for bail-outs, as Member States need to do further work to strengthen their resolution regimes and toolkits;

• notes, that although the Commission links the discussion on bank levies directly with the objective of establishing ex-ante resolution funds, the current EU and international debate on bank levies is actually cast more widely, with other equally relevant objectives for and opinions on the role of bank levies that merit further and more serious consideration;

• believes it is important that EU consensus on levies is consistent with discussion at the international level, given that many major EU banking groups are global in reach;

• believes a network of national resolution funds should be seen as part of a wider package of options for reform of financial regulation, has urged the Commission to link the analysis on resolution fund costs with the wider cumulative impact assessment of all regulatory reforms;

• has pledged to introduce a bank levy, and indicated that proceeds will go into general taxation, while noting that the destination of proceeds in other countries is a matter for them to determine, given that fiscal responsibility ultimately lies with Member States with accountability to national parliaments; and

• intends to continue to advance these arguments in both European and international fora as this debate develops.

70.8 The Minister tells us also that the responsible UK authorities — the Bank of England, the Financial Services Authority — wrote to the Internal Market and Services Commissioner on 9 June 2010 offering opinions and expressing technical concerns in relation to the Commission’s proposals for a network of national resolution funds. He comments that, given the fast moving pace of the EU debate on resolution funds and the speed with which the Commission wanted to invite ECOFIN and European Council endorsement of its ideas ahead of the Toronto G20 meetings on 26–27 June 2010 and
despite lack of time for a full discussion, the Government felt it was necessary to submit this joint letter then. It was intended to ensure the UK authorities had an opportunity to maximise influence on this discussion at an early stage given the importance of these issues to the programme of financial regulatory reform at domestic, EU and international level.

**Conclusion**

70.9 The Commission’s developing ideas on bank resolution funds are important, and in some aspects unwelcome. So, whilst we clear this document, it is likely that we will in due course recommend the Commission’s forthcoming Communication, on concrete policy options on crisis management, including funding options, and any proposed legislation for crisis management and resolution funds, for debate.

**71 Financial services**

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**Legal base**

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<td>11 June 2010</td>
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**Background**

71.1 Since the inception of problems in the financial services in 2008 the Commission has proposed a range of temporary and permanent responses, many of which have been or are being adopted. Some of the most important of these proposals relate to changing the regulatory and supervisory regimes for the financial services sector.

**The document**

71.2 In this Communication the Commission says that its aim is for a safe, sound, responsible and transparent financial services sector targeted at serving the real economy and that it intends to deliver various proposals, informed by consultation and impact assessment, over the next nine months. It also highlights the need for an assessment of the
cumulative impact on the financial sector of the regulations. It then very briefly reviews actions already completed and outlines the need it perceives to complete regulatory and supervisory change by the end of 2011.

71.3 The Commission next lists proposals currently under discussion which it urges the Council and the European Parliament to adopt very soon:

- the new EU supervisory architecture consisting of a European Systemic Risk Board and three European Supervisory Authorities;\(^\text{304}\)

- the draft Alternative Investment Fund Managers Directive;\(^\text{305}\)

- the third revision of the Capital Requirements Directive, related to remuneration and capital requirements for trading book positions.\(^\text{306}\)

71.4 In the third section of the Communication the Commission identifies four themes for the financial services legislative proposals it plans — ‘enhanced transparency’, ‘effective supervision and enforcement’, ‘enhanced resilience and stability of the financial sector’ and ‘strengthened responsibility and consumer protection.’ The matters the Commission plans to address in the next nine months are:

- in relation to enhanced transparency, the need for greater transparency for supervisors, investors and the general public, with work on credit rating agencies, derivatives markets and improvements to the Markets in Financial Instruments Directive as intrinsic to this;

- in relation to effective supervision and enforcement and the supervisory architecture, the need for revision of the Credit Rating Agencies Regulation to give direct oversight of these agencies registered in the EU to the European Securities and Markets Authority and a Communication on greater harmonisation of sanctions in the financial services sector;

- in relation to enhanced resilience and stability of the financial sector, the need for amendments to the Capital Requirements Directive to improve the quality and quantity of capital held by banks, to introduce an effective liquidity regime and capital buffers and to address excessive reliance on leverage, the need for greater resilience for central counterparties clearing over the counter derivatives, the need for a better crisis management framework, the need for tools for prevention and resolution of failing and failed banks and the need for global convergence around one set of accounting standards; and

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71.5 The Commission concludes the Communication by reiterating the need for:

- well calibrated and proportional regulation, agreed in consultation with industry and stakeholders to ensure that economic growth is not stunted and that procyclical effects are limited; and
- prompt action, with the final pieces of legislation adopted by the end of 2011, where possible with global convergence of standards.

**The Government’s view**

71.6 The Financial Secretary to the Treasury (Mr Mark Hoban) notes that the Communication is a summary of the Commission’s workplan and says that it has no policy implications.

**Conclusion**

71.7 As the Minister says this Communication merely outlines a Commission workplan. And we agree that of itself it has no policy implications. But, given the importance of the financial services sector and of the measures that will come forward, whilst clearing the document we draw it to the attention of the House.
72 Stability and Growth Pact: excessive deficit procedure

Commission Communication: Assessment of the action taken by Belgium, the Czech Republic, Germany, Ireland, Spain, France, Italy, the Netherlands, Austria, Portugal, Slovenia and Slovakia in response to the Council Recommendations of 2 December 2009 with a view to bringing an end to the situation of excessive government deficit

Legal base —
Document originated 15 June 2010
Deposed in Parliament 25 June 2010
Department HM Treasury
Basis of consideration EM of 26 July 2010
Previous Committee Report None
Discussed in Council 13 July 2010
Committee’s assessment Politically important
Committee’s decision Cleared

Background

72.1 The Stability and Growth Pact adopted by the Amsterdam European Council in June 1997 emphasised the obligation of Member States to avoid excessive government deficits, defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a “reference value” of 3%. Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State. These Opinions, which are not binding on Member States, are based on a recommendation from the Commission. The economic content of the programmes is assessed with reference to the Commission’s current economic forecasts. If a Member State’s programme is found wanting, it may be invited by ECOFIN, in a Recommendation, to make adjustments to its economic policies, though such Recommendations are likewise not binding on Member States. This whole procedure is essentially the Pact’s preventative arm.

72.2 On the other hand, the Pact also endorsed a dissuasive or corrective arm involving action in cases of an excessive government deficit — the excessive deficit procedure provided for in Article 126 TFEU (formerly Article 104 EC) and the relevant Protocol. This procedure consists of Commission reports followed by a stepped series of Council Recommendations (the final two steps do not apply to non-members of the eurozone). Failure to comply with the final stage of Recommendations allows ECOFIN to require publication of additional information by the Member State concerned before issuing bonds

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

308 The 16 Member States (Austria, Belgium, Cyprus, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain) that have adopted the euro have Stability Programmes, whereas the other 11 Member States (including the UK) produce Convergence Programmes.
and securities, to invite the European Investment Bank to reconsider its lending policy for
the Member State concerned, to require a non-interest-bearing deposit from the Member
State concerned whilst its deficit remains uncorrected, or to impose appropriate fines on
the Member State concerned.

72.3 In October 2009 the European Council endorsed a fiscal exit strategy, incorporating
four principles:

- it should be coordinated across countries and should be consistent with the values
  of the Stability and Growth Pact;
- a timely withdrawal of fiscal stimulus measures and, providing that economic
  forecasts indicate the recovery is strengthening, fiscal consolidation should start no
  later than 2011;
- the planned pace of fiscal consolidation should be ambitious; and
- crucial supplementary policies should be implemented, which should include
  strengthened national budgetary frameworks and efforts to support long-term
  fiscal sustainability.\(^{309}\)

72.4 On 2 December 2009 the Council adopted excessive deficit procedure
Recommendations for Belgium, the Czech Republic, Germany, Ireland, Spain, France,
Italy, the Netherlands, Austria, Portugal, Slovenia and Slovakia.\(^{310}\)

The document

72.5 In this Communication the Commission presents an assessment of the action taken
by the Member States concerned in response to the Recommendations of 2 December
2009. In the document the Commission:

- warns against an undifferentiated rush for strong fiscal consolidation and
  recommends a coordinated, differentiating approach to enhance market
  confidence and contribute to fiscal sustainability, in order to avoid jeopardising
  the recovery;
- says countries at risk should do more as the cost of inaction could be larger than
  the short-term impact of consolidation on growth;
- notes the developments leading to the extraordinary ECOFIN Council of 9 May
  2010\(^{311}\) and stresses the need for additional policy measures; and
- asks vulnerable countries to frontload consolidation measures to reverse adverse
debt dynamics.


The Commission’s overall judgement is that all Member States have taken action representing adequate progress and no further steps in the excessive deficit procedure are needed.

72.6 The bulk of the document is taken up by two annexes. The first outlines, for each Member State, the measures taken to date and concludes that progress made so far is satisfactory. Each assessment also identifies areas of concern originally identified in the Recommendations on which governments still need to make progress. In his Explanatory Memorandum the Financial Secretary to the Treasury (Mr Mark Hoban) helpfully summarises the individual assessments which we reproduce:

"Belgium

"Has taken effective taken action, in particular by: (i) broadly implementing the deficit-reducing measures in 2010 as planned in the draft budget; and (ii) outlining in some detail the consolidation strategy, by setting targets and indicating a number of measures supporting them.

" Recommendations under Article 126(7) of TFEU still to be addressed: (i) specify the measures underpinning the envisaged consolidation path from 2011 onwards; and (ii) further strengthen monitoring mechanisms to ensure that fiscal targets are respected.

"No further steps in the EDP [excessive deficit procedure] are needed at present.

"Czech Republic

"Has taken action representing adequate progress towards correcting the excessive deficit by 2013. In particular, the Czech authorities have: (i) implemented the deficit-reducing measures in 2010 as planned; and (ii) taken some additional measures to reach the 2010 deficit target.

“To meet the correction deadline the Czech Republic should: (i) ensure “rigorous budgetary execution” in 2010, and if necessary adopt further measures to reach the deficit target; (ii) adopt a budget for 2011 consistent with Council recommendations; and (iii) specify in more detail the consolidation measures in 2012 and 2013.

“ The Commission also find that some progress has been made towards improving the monitoring of budget execution, but that further measures to improve the enforcement of the budgetary framework will be needed.

"No further steps in EDP are needed at present.

"Germany

"Has taken effective action, in particular by: (i) implementing the fiscal stimulus measures in 2010 as planned, including the additional tax relief measures introduced by the Act to Accelerate Economic Growth; and (ii) outlining in some detail a medium-term budgetary strategy to correct the excessive deficit by 2013.
“The Commission acknowledges the additional budgetary consolidation measures announced for the period 2011–2014, but notes that the national budgetary rule is still to be transposed to the sub-federal level.

“All recommendations under Article 126(7) of TFEU have been addressed.

“No further steps in the EDP are needed at present.

“*Ireland*

“Has taken effective action, in particular by: (i) implementing a significant savings package for 2010 of 2.5% of GDP, broadly in line with the Council’s recommendation; and (ii) outlining in some detail a medium-term consolidation strategy by laying out deficit targets and quantifying packages to reach them with a view to correcting the excessive deficit by 2014.

“Recommendations under Article 126(7) of TFEU still to be addressed: (i) spell out the measures underlying the consolidation efforts; and (ii) address the downside risks to the budgetary targets, also to ensure that the debt ratio would embark on a downward path before the end of the programme period.

“Regarding the Council’s previous recommendations to limit the risks to long-term sustainability, the Commission notes the efforts underway to: (i) strengthen the budgetary framework; and (ii) reform the social security system, including government proposals to reform the budgetary framework and pensions. The Commission invites the authorities to further develop these.

“No further steps in the EDP are needed at present.

“*Spain*

“The Commission concludes that Spain has taken action representing ‘adequate progress’ by undertaking measures that represent an annual fiscal effort of more than 1½% of GDP in both 2010 and 2011.

“Beyond 2010, Spain has outlined detailed plans for a correction by 2013 by announcing a number of new measures in mid-May 2010. This amounts to additional fiscal consolidation effort of 1% of GDP in 2011.

“Spain should: (i) specify as soon as possible the consolidation effort for reaching the 2011 target, estimated at some 1½ percentage points of GDP, in the context of the 2011 budget preparatory work; (ii) part of this consolidation would be achieved by respecting the expenditure ceilings announced on 28 May 2010; and (iii) for outer years, additional efforts will be required for the debt ratio to embark on a downward path by 2013. Efforts would have to be designed considering the fiscal restraint might take a toll on economic growth over the short and medium term, before the benefits of more sustainable public finances and a sounder macroeconomic setting materialise.

“No further steps in the EDP are needed at present.
"France"

"Has taken effective action, in particular by: (i) broadly implementing the deficit-reducing measures in 2010 as planned, notably the partial withdrawal of the recovery plan — the French deficit target for 2010 was also revised down by 0.5% of GDP compared to the budget target, taking into account a better outcome for 2009; and (ii) outlining in some detail the consolidation strategy necessary to progress towards the correction of the excessive deficit by 2013.

"Recommendations under Article 126(7) of TFEU still to be addressed: (i) specify measures backing the consolidation strategy; and (ii) given the risks related to the growth scenario and assumptions as regards tax elasticities, the consolidation strategy may have to be strengthened and further consolidation measures backing this strategy may have to be taken to achieve a correction of the excessive deficit by the deadline.

"No further steps in the EDP are needed at present.

"Italy"

"Has taken effective action, in particular by: (i) broadly implementing the consolidation measures for 2010, taken in the context of the summer 2008 package for the period 2009–2011; and (ii) spelling out the budgetary strategy to reduce the deficit below 3% of GDP by 2012, based on an additional consolidation effort of 0.8% of GDP in 2011 and again in 2012.

"The Commission welcomes the adoption by the Italian government of a decree law specifying the measures that underpin these efforts.

"Recommendations under Article 126(7) of TFEU still to be addressed: ensure a strict implementation of the planned expenditure restraint and address possible tax revenue shortfalls.

"No further steps in the EDP are needed at present.

"The Netherlands"

"Has taken effective action, in particular by: (i) implementing the fiscal measures in 2010 as envisaged in the 2010 budget; and (ii) outlining in some detail the consolidation strategy that is necessary to progress towards the correction of the excessive deficit by 2013.

"The Commission notes that, with respect to 2011, there is a fully specified consolidation strategy leading to a fiscal effort of ¾% of GDP, which is in line with the annual fiscal effort as requested in the Council Recommendation.

"Recommendations under Article 126(7) of TFEU still to be addressed: (i) outline the adjustment path and the broad measures underpinning the envisaged consolidation in the outer years will be needed; and (ii) strengthen the consolidation effort to secure the required average annual fiscal effort for the period 2011–2013.
“No further steps in the EDP are needed at present.

"Austria"

“Has taken effective action, in particular by: (i) implementing the fiscal stimulus measures as planned in 2010, including relief for families with children and tax cuts for the self-employed; and (ii) outlining in some detail a medium-term budgetary strategy to correct the excessive deficit by 2013. For the years 2011–2014, the authorities have set spending limits for the main parts of the federal budget.

“Although all recommendations under Article 126(7) of TFEU have broadly been addressed, some further progress will be needed in order to: (i) translate the spending limits into concrete measures; and (ii) agree details concerning the consolidation on the revenue side with the government coalition partners.

“No further steps in the EDP are needed at present.

"Portugal"

“The Commission concludes that Portugal has taken action representing ‘adequate progress’ by taking measures that represent an annual fiscal effort of significantly more than 1¼% of GDP in both 2010 and 2011.

“Portugal has announced with detail a number of fiscal consolidation measures to underpin the consolidation path up to 2013, for which implementation has already started in some cases.

“Plans for correction crucially rely on quick and effective implementation of measures announced in the March 2010 stability programme. Portugal should: (i) include further corrective efforts in the 2011 Budget Law to attain the annual deficit targets, and to ensure that the debt ratio is on a downward path before 2013; and (ii) efforts will have to be designed considering that fiscal restraint might take a toll on economic growth over the short and medium term. The timing of additional measures can only benefit from bearing in mind the need to bolster confidence and credibility at early stages of the consolidation process. Steps have been taken to strengthen the budgetary framework, notably to develop its multi-annual elements.

“No further steps in the EDP are needed at present.

"Slovenia"

“The Commission concludes that Slovenia has taken action representing ‘adequate progress’ as: (i) consolidation measures in the budget for 2010, estimated to generate expenditure savings of around 1¼% of GDP in 2010; and (ii) adopted a supplementary budget to reconfirm the targeted deficit ratio for central government in cash terms in the light of worse economic and budgetary developments.

“To achieve the targets Slovenia should: (i) spell out and adopt the underlying measures in its 2011–2013 consolidation strategy; and (ii) address possible expenditure slippages or revenue shortfalls. To reduce the risks to the long-term
sustainability of public finances, a comprehensive two-step pension reform is currently being negotiated.

"The Commission considers that no further steps are needed at present.

"Slovakia

"The Commission concludes that Slovakia has taken action representing 'adequate progress' by implementing several deficit reducing measures in 2010.

"Slovakia has outlined in some detail a medium-term consolidation strategy envisaging correction by 2012, a year ahead of the deadline. To achieve this Slovakia should: (i) implement the 2010 budget and stand ready to adopt additional measures if necessary to reach the deficit target of 5.5% of GDP; and (ii) the 2011 budget should include measures necessary to reach the fiscal targets presented in the stability programme and avoid cuts in public investment. Slovakia has initiated work to strengthen the enforceability of the medium-term fiscal framework through the introduction of expenditure ceilings, a limit on general government debt, and stronger budget execution monitoring.

"The Commission considers that no further steps are needed at present."

72.7 The 9 May 2010 ECOFIN Council:

- gave strong support to Spain and Portugal’s plans to carry out significant additional consolidation measures in 2010 and 2011; and

- agreed that the adequacy of these measures would be assessed by the Commission in this present assessment.\(^{312}\)

In the second annex the Commission presents that assessment of Spain and Portugal’s new targets and additional measures. The Minister also summarises this:

"Spain

"Spain announced on 12 May a series of additional consolidation measures. The fiscal targets are now a deficit of 9.3% of GDP for 2010 and one of 6% of GDP for 2011 (revised from previous deficit targets of 9.8% and 7.5% of GDP for 2010 and 2011 respectively in the February 2010 stability programme).

"Expenditure cuts constitute all of the measures, with the most significant being, for example, government wages, a freeze on pensions and transfers to local and regional government. Despite these announced measures, the conclusion is that they might not suffice in reaching the revised targets for 2011. The implementation of structural measures is key to increasing GDP growth potential, and of particular importance to Spain are reforms aimed at addressing labour-market segmentation. The assessment states that it would be advised to announce details of reforms without further delay, and Spain is expected to announce labour-market measures shortly.

\(^{312}\) Ibid.
“Portugal

“In response to the agreement at the 9 May ECOFIN Council, Portugal revised its deficit targets to 7.3% of GDP for 2010 and 4.6% of GDP for 2011 (revised from previous deficit targets of 8.3% and 6.6% of GDP for 2010 and 2011 respectively in the stability programme). They also announced additional consolidation measures for 2010, mainly aimed at revenue raising including, for example, increasing the rate of VAT and surcharges on personal and corporate income tax.

“The variety of expenditure cuts includes introducing tolls on some public-private partnership motorways and a freeze in hiring by central government. As with Spain, the conclusion is that Portugal might not suffice in reaching the revised targets for 2011. Although the consolidation needs of Portugal are such that they need to contain both revenue and expenditure measures, it would be advisable that further consolidation is focused on expenditure cuts.

“Also like Spain, Portugal is advised to carry out structural measures to help address the drop in economic activity that results from sizeable fiscal consolidation. Suggested measures include reforms to the labour market.

“Finally, the assessment emphasises the need for Portugal’s consolidation efforts to urgently stabilise its debt ratio before 2013. This is highlighted by the fact that in 2011 the debt ratio may increase by almost 4 percentage points to over 88.5% of GDP.”

The Government’s view

72.8 The Minister tells us that the 17 June 2010 European Council agreed, in line with the view of the G20, on a coordinated and differentiated exit strategy to ensure sustainable public finances. And he comments that the Government believes that Member States should take forward fiscal consolidation as a priority to reduce their deficits and support recovery.

Conclusion

72.9 We are grateful to the Minister for his full description of the Commission’s Communication. We have no questions to raise and clear the document.

73 Stability and Growth Pact: excessive deficit procedure

Legal base

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Background

73.1 The Stability and Growth Pact adopted by the Amsterdam European Council in June 1997 emphasised the obligation of Member States to avoid excessive government deficits, defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a “reference value” of 3%. Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State. These Opinions, which are not binding on Member States, are based on a recommendation from the Commission. The economic content of the programmes is assessed with reference to the Commission’s current economic forecasts. If a Member State’s programme is found wanting, it may be invited by ECOFIN, in a Recommendation, to make adjustments to its economic policies, though such Recommendations are likewise not binding on Member States. This whole procedure is essentially the Pact’s preventative arm.

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

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securities, to invite the European Investment Bank to reconsider its lending policy for the Member State concerned, to require a non-interest-bearing deposit from the Member State concerned whilst its deficit remains uncorrected, or to impose appropriate fines on the Member State concerned.

73.3 The UK was put into the excessive deficit procedure in July 2008 and received recommendations proposed by the Commission and endorsed by Council Decision to reduce its deficit and received a further round of revised recommendations in April 2009. On 2 December 2009 the Council adopted a further excessive deficit procedure Recommendation for the UK. This Recommendation:

- asked the Government to put an end to the excessive deficit by financial year 2014/15, bringing the general government deficit below 3% of GDP in a credible and sustainable manner by taking action in a medium term framework;
- recommended, specifically, that the Government should implement the fiscal measures planned in its 2009 Budget during 2009/10 and start consolidation in 2010/11 in order to bring the deficit below the reference value by 2014/15;
- recommended, therefore, that the Government should make an average annual fiscal effort of 1.75% of GDP between 2010/11 and 2014/15 (which would also contribute to bringing the government gross debt ratio onto a satisfactory declining path);
- recommended the Government to seize opportunities beyond the fiscal effort, including from better economic conditions, to accelerate the reduction of the gross debt ratio back towards the reference value;
- recommended that the UK’s revised fiscal framework should limit risks to correcting the excessive deficit and underpin sustained budgetary consolidation thereafter; and
- established a deadline of 2 June 2010 for the Government to implement the fiscal measures as planned in the 2009 Budget and to outline in some detail the consolidation strategy that will be necessary to progress towards the correction of the excessive deficit.

The document

73.4 In this Communication the Commission presents an assessment of the action taken by the UK in response to the Recommendation of 2 December 2009, first commenting that most Member States currently have general government deficits above the 3% of GDP reference value required by the Stability and Growth Pact. The assessment takes account of economic developments compared to the Commission’s autumn 2009 forecast and of whether the UK has achieved the annual improvement of its cyclically adjusted balance (net of one-off and other temporary measures) initially recommended by the Council.

317 (31396) 15765/09: see HC 5–xviii (2009–10), chapter 8 (7 April 2010).
Because of the general election and the subsequent presentation of the new Government’s Budget on 22 June 2010 the Commission assessed the UK on 6 July 2010, in order to take these developments into account.

73.5 In its assessment of action taken the Commission says that:

- in financial year 2009/10 output contracted by 0.5% more than had been expected in autumn 2009, in part due to a negative impact from poor weather;

- for 2010/11, however, the spring 2010 Commission forecast projected real output growth of 1.75%, 0.5% higher than the autumn 2009 forecast, primarily reflecting prospects for positive growth in household consumption expenditure;

- the forecast for consumer price inflation was revised upwards, contributing to a 0.75% increase in the projection for nominal GDP growth in 2010/11;

- the spring 2010 forecast confirmed the autumn 2009 projection of an expansion in real activity in 2011/12 of 2.25%;

- the spring 2010 forecast projected a reduction in the Government deficit from an estimated 12.25% of GDP in 2009/10 to 11.5% in 2010/11;

- it estimated that the structural budget deficit in 2010/11 would decline by only 0.25% of GDP from 2009/10 reflecting low revenue expenditure as a result of continued weak activity in the financial and housing markets which had hitherto been major sources of revenue;

- since the release of the Commission’s spring 2010 forecast, the new Government has established an Office for Budget Responsibility that “will provide independent forecasts for public finances and the economy to inform fiscal policy decisions” and which will additionally assess the likelihood of the Government’s fiscal policy mandate being achieved;

- additionally a significantly downwardly revised estimate of the Government deficit for 2009/10 has been published giving a figure of 11.3% of GDP, 1.75% lower than the autumn 2009 projection and almost 1% lower than the spring 2010 forecast (though still one of the highest deficits in the EU);

- the new Government has announced immediate spending cuts that will reduce the 2010/11 deficit by 0.4% of GDP (and in 2011/12 will compensate for non-implementation of the previous Government’s planned increase in National Insurance contributions), the cancellation of a number of projects costing 0.1% of GDP and the suspension of projects which would have cost 0.6% of GDP over their lifetime;

- the June 2010 Budget contained substantial additional fiscal consolidation measures estimated by the Office for Budget Responsibility to reduce the Government deficit by an additional 0.5% of GDP in 2010/11, 1.0% of GDP in 2011/12, 1.5% of GDP in 2012/13, and 2.25% of GDP by 2014/15;
• taking account of these and other measures already announced in the March 2010 Budget, the Office for Budget Responsibility projects a reduction in the deficit from 11.3% of GDP in 2009/10 to 10.25% in 2010/11 and 7.75% in 2011/12;

• by the Council’s 2014/15 deadline the deficit is projected by the Office for Budget Responsibility to reach 2.25% of GDP, compared to 4.25% of GDP based on the pre-election March 2010 Budget announcement;

• the Government debt ratio is plausibly projected by the Office for Budget Responsibility to peak at around 85% of GDP in 2012/13, before falling to almost 80% of GDP in 2015/16;

• the new measures announced in June 2010 will contribute to an improvement in the estimated structural budget balance, as re-estimated using the commonly agreed methodology, in 2010/11 by 0.75% of GDP and between 2010/11 and 2014/15 by an annual average of around 1.5% of GDP;

• this is slightly lower than the 1.75% recommended by the Council but this is nevertheless appropriate given the significantly lower-than-expected budget deficit in 2009/10 (11.3% of GDP compared to 13.0% in the autumn 2009 forecast) and is therefore consistent with reducing the headline deficit to well below the reference value by 2014/15;

• the June 2010 macroeconomic projections independently produced by the Office for Budget Responsibility are significantly more in line with the Commission services’ spring 2010 forecast for 2010/11 and 2011/12 than those set out in the UK Convergence Programme or the March Budget and with current consensus estimates beyond these to 2014;

• that output growth, however, may be weaker than expected (possibly as a result of the stronger impact on demand of the additional measures and possibly from a weaker external environment);

• if output growth did turn out weaker than expected, this could affect public finances;

• given their size, the implementation of the planned spending cuts will be a challenge; and

• if these cuts are not achieved, this will reduce the likelihood of compliance with the Council Recommendation unless compensatory measures are taken.

73.6 The Commission concludes that:

• the Government has announced a new fiscal mandate “to achieve cyclically-adjusted current (that is net of capital spending) balance by the end of the rolling, five-year forecast period”, complemented by a target requiring a reduction of net debt as a percentage of GDP by 2015/16;

• this new mandate is a clear improvement over the previous golden rule given its clearly identifiable end point and reduced scope for manipulation. Although the
definitions of the fiscal targets are not directly comparable (the deficit target does not take explicit account of capital spending and the debt target refers to net, rather than gross, debt) the new approach should contribute to greater consistency with the EU framework;

- the June 2010 Budget measures will further increase the size of fiscal consolidation in 2010/11 and significantly strengthen the planned pace of deficit reduction over the medium-term;

- publication of the Spending Review on 20 October 2010, providing detailed departmental spending limits to back-up the overall spending targets for the entire term of the present Parliament, will be another important step in the efforts of the authorities to restore sustainable public finances in the UK;

- the new Office for Budget Responsibility and the new fiscal mandate announced by the Government should however contribute to improve the fiscal framework and limit the risks to the adjustment;

- while risks are substantial, at this stage the UK appears to be on track to achieve a deficit below 3% of GDP by the recommended deadline, with the planned deficit of 2.25% of GDP in 2014/15 providing a buffer against slippages;

- overall the UK has taken action representing adequate process towards the correction of its excessive deficit within the Council’s time limits (standard wording);

- thus the Commission considers that no further steps in the excessive deficit procedure are needed at present; and

- it will continue to closely monitor budgetary developments in the UK in accordance with the Treaty and Stability and Growth Pact.

The Government’s view

73.7 The Financial Secretary to the Treasury (Mr Mark Hoban) tells us that the Government believes that tackling the deficit and continuing to ensure economic recovery is the most urgent issue facing the UK. He comments further that:

“The Government has created a new and independent OBR. Fiscal policy decisions will be based on independent forecasts for the economy and public finances, prepared by the OBR. This reform introduces independence, greater transparency and credibility to the fiscal framework.

“The June Budget set out a comprehensive set of policies to bring the public finances back under control by setting (i) additional consolidation plans to restore the public finances to a sustainable path, and (ii) a clear and measurable fiscal mandate to guide fiscal policy decisions over the medium term.

“The Budget announced the Government’s forward-looking fiscal mandate to achieve cyclically-adjusted current balance by the end of the rolling, five-year
forecast period, supplemented by a target for public sector net debt as a percentage of GDP to be falling at a fixed date of 2015/16. These targets will guide fiscal policy decisions over the medium term, ensuring that the Government sets plans consistent with accelerating the reduction in the structural deficit so that debt as a percentage of GDP is restored to a sustainable, downward path. The Government welcomes the Commission’s acknowledgment that its new fiscal mandate is a clear improvement over the previous Golden Rule.

“The June Budget delivered additional consolidation on top of the plans set in the March Budget for the period to 2014/15, predominantly through spending reductions of £40 billion for the period to 2014/15, on top of the plans set out in the March Budget. This results in plans for total consolidation of £128 billion per year by 2015/16.

“The greatest contribution to the Government’s fiscal consolidation will come from public spending reductions, rather than tax increases. This approach is consistent with OECD and IMF research, which suggests that fiscal consolidation efforts that largely rely on spending restraint promote growth. The Government welcomes the Commission’s assessment that no further steps in EDP are necessary at present.

“As a result of the action the Government is taking, the OBR projects that public sector net borrowing will decline from its peak of 11.0% of GDP in 2009/10 to 1.1% of GDP in 2015/16. The Treaty deficit is projected to fall to 2.2% in 2014/15 and the Treaty debt ratio will be set on a downward path from 2013/14.

“The Budget announced the path of public spending for the period until 2015/16 and the forthcoming Spending Review on 20 October 2010. An engagement programme has been launched, giving public sector workers and members of the public an opportunity to feed in their ideas for how to reduce spending while protecting the quality of public services.”

Conclusion

73.8 We are grateful to the Minister for his full description of the Commission’s Communication. We have no questions to raise and clear the document.
74 Growth and Stability Pact: statistical data

(a) Draft Council Regulation (EU) No ... amending Regulation (EC) No 479/2009 as regards the quality of statistical data in the context of the excessive deficit procedure

(b) Opinion of the European Central Bank of 31 March 2010 on a proposal for a Council Regulation amending Regulation (EC) No 479/2009 as regards the quality of statistical data in the context of the excessive deficit procedure

Legal base
(a) Article 126(14) TFEU; consultation; unanimity
(b) —

Document originated
(b) —

Deposited in Parliament
(b) 25 May 2010

Department
HM Treasury

Basis of consideration
Minister’s letter of 18 June 2010 and EM of 7 July 2010

Previous Committee Report
(a) HC 5–xiv (2009–10), chapter 2 (17 March 2010)
(b) None

Discussion in Council
8 June 2010

Committee’s assessment
Politically important

Committee’s decision
Cleared

Background

74.1 The Stability and Growth Pact adopted by the Amsterdam European Council in June 1997 emphasised the obligation of Member States to avoid excessive government deficits, defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a “reference value” of 3%. Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State. These Opinions, which are not binding on Member States, are based on a recommendation from the Commission. The economic content of the programmes is assessed with reference to the Commission’s current economic forecasts. If a Member State’s programme is found wanting, it may be invited by ECOFIN, in a Recommendation, to make adjustments to its economic policies, though such Recommendations are likewise not binding on Member States. This whole procedure is essentially the Pact’s preventative arm.

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74.3 The Commission’s economic forecasts and recommendations related to the Pact, and therefore the Council’s subsequent decisions, depend on economic and financial statistics from the Member States. In January 2010 the Commission published a report about Greek Government deficit and debt statistics. The report was broadly factual but delivered highly critical assessments of the Greek statistical system. It identified two main problems which have had effects on debt and deficit reporting over the past few years, most notably in the context of the excessive deficit procedure:

- statistical weaknesses and unsatisfactory technical procedures in the Greek statistical institute, the NSSG, and in the several other services that provide data and information to the NSSG, including the General Accounting Office and the Ministry of Finance; and
- inappropriate governance — poor cooperation and lack of clear responsibilities between institutions, diffuse personal responsibilities and ambiguous empowerment of officials and absence of written instruction and documentation.

This poor practice had led to severe irregularities in the reporting of debt and deficit statistics under the excessive deficit procedure.

74.4 The Commission’s overall assessment was that the current set-up of the Greek statistical system “does not guarantee the independence, integrity and accountability of the national statistical authorities” and it outlined a list of broad goals which Greece should aim to achieve:

- clarifying and “personalising” the responsibilities of the different statistical entities involved;
- respecting the European Statistics Code of Practice,\(^\text{320}\) and
- making the NSSG independent, through the revision of the current law on statistics.

However, it did not outline any explicit next steps.\(^\text{321}\)

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\(^{321}\) (31253) 5175/10 + ADDs 1–6: see HC 5–x (2009–10), chapter 10 (9 February 2010).
74.5 The generality of statistical production in the EU is governed by the Statistics Regulation, Regulation (EC) No 223/2009, which provides guidelines on the quality of EU statistics. However, production of statistics in relation to the excessive deficit procedure is governed by a narrower provision, Regulation (EC) No 479/2009.

74.6 In February 2010 the Commission proposed a draft Regulation, document (a), to amend Regulation (EC) No 479/2009 to give power to Eurostat to undertake a monitoring visit to a national statistical authority or finance ministry in cases where there appear to be problems with the quality of that Member State’s statistical data relating to government debt or deficit figures. When the previous Committee considered this matter it did not clear the document but said that while the purpose of the draft Regulation seemed unexceptionable, it had noted that, although the Government supported the thrust of the proposal, it had a number of issues to deal with during negotiations, related both to subsidiarity and proportionality and to staff for Eurostat’s new power. Before considering the proposal further it asked to hear about negotiating progress on these issues. It asked also for as prompt a response as possible, given the eight-week timeframe for national parliaments under the Subsidiarity Protocol.

The new document

74.7 In its Opinion, document (b), on the draft Regulation the European Central Bank:

- notes that it is supportive of the Commission proposals, but believes that the list of information that could be required from a Member State should be more exhaustive and that Eurostat should have full access to the most up-to-date and relevant information held by national statistical authorities;
- states that it would be helpful to have examples of scenarios that would require special monitoring visits by Eurostat;
- suggests that the current definition of “government deficit” used to report deficits under the excessive deficit procedure should be brought into line with international statistical standards, so making it much harder for a country to misreport or manipulate its true deficit figures by clouding them with financial transactions; and
- believes that the Commission should have more time to assess the data that it receives from Member States, with four weeks rather than one to look at the figures, by aligning submission deadlines with reporting deadlines under Regulation (EC) No 2223/96 on EU national and regional accounting.

The Government’s view

74.8 In his letter the Commercial Secretary to the Treasury (Lord Sassoon), noting the previous Committee found the basic purpose of the draft Regulation, document (a), unexceptional, says that the Government shares this view and believes that, in light of the problems in Greece, such EU level checks are necessary to ensure that any possible

322 See headnote.
irregularities with statistical data of this kind can be swiftly identified and remedied. Turning to our predecessors’ comments about the subsidiarity and proportionality of the original Commission proposals the Minister reports that there has been considerable progress in the negotiations on this proposal. He notes that a revised text of the proposal, which he sends us, has improvements to the original draft:

- there is now a limitation on the type of data to which Eurostat may have access — the original proposals sought to extend the scope of this information beyond the statistical domain, whereas the revised text provides that Eurostat should only be able to request “relevant statistical information”, limited to that strictly necessary to check compliance with international statistical rules;

- the revised text contains a non-exhaustive list of criteria by which the quality of a Member State’s national statistics could be judged — whilst Eurostat has discretionary power to examine other factors outside this list, it provides a very clear indication of the standards expected from a Member State and allows for some flexibility on the part of the Member State, for example by stating that revisions to the debt or deficit figures should not necessarily give cause for concern unless these revisions are frequent, sizeable and without clear explanation;

- there is a new provision in the recitals that confirms the need for Eurostat to respect existing EU provisions on the independence of national statistical authorities when undertaking audit visits to Member States;

- the revised text now differentiates between the routine biannual “dialogue” visits that are already made by Eurostat to Member States to check methods used to generate excessive deficit statistics and the audit visits (defined as “methodological visits” in the draft Regulation); and

- the text now requires Eurostat to inform the Committee on Monetary, Financial and Balance of Payments, a statistical committee composed of the Member States’ government and central bank statistical experts, prior to making audit visits and to provide updates on visits to the Economic and Financial Committee.

The Minister adds that UK officials have made it clear throughout the negotiations that the Government would expect the Commission and Eurostat to keep the number of staff working on these audits to a minimum and, in the interests of budget neutrality, to use existing Commission or Eurostat personnel rather than bidding for new resources.

74.9 The Minister says that, overall, the Government believes that the agreed amendments are satisfactory, as they:

- provide helpful clarification of the scope of the audit visits;

- limit the amount of information that may be required from Member States, which satisfies concerns about the subsidiarity and proportionality of these visits;

- make clearer the amendments to Regulation (EC) No 479/2009; and
• contain helpful references to the importance of both Eurostat and the Member State respecting EU rules on confidentiality of statistical data in the course of the audits.

Noting that the Office for National Statistics has been closely involved in the negotiations on the proposal, and is in full agreement with the Presidency revised text, the Minister comments further that:

• the Statistics Authority has the statutory objective for independent monitoring and assessment of all official statistics produced in the UK, including data on the national debt and deficit;

• the Office for National Statistics is committed to the production of high quality, independent statistical data, and would be happy to explain its methodologies or revisions to data to Eurostat; and

• the Government therefore believes that the quality of UK national debt and deficit statistics is extremely high and that it is unlikely that Eurostat would find it necessary to make an audit visit to the UK.

74.10 The Minister tells us that:

• at the 8 June 2010 ECOFIN Council a general approach on the revised text was agreed by a qualified majority vote;

• as Parliament had not yet been able to complete scrutiny of the proposal the Government retained its scrutiny reserve and abstained from voting;

• a statement in the minutes of the Council was laid to clarify an abstention by the UK on the grounds that its position had not yet been cleared by Parliament;

• the Government is, however, satisfied with the content of the final text; and

• the final draft Regulation will be formally adopted at a forthcoming Council meeting once the European Parliament has issued its opinion and is expected to enter into force this autumn.

The Minister adds that he regrets that the Committee did not have sufficient time to complete scrutiny on this document prior to an agreement being reached at Council.

74.11 In his Explanatory Memorandum on the European Central Bank’s Opinion, document (b), the Minister says that:

• the Government agrees with the bank’s Opinion that the original Commission proposals needed to be amended to include examples of situations that could require a monitoring visit by Eurostat;

• the final text was amended to include criteria which could trigger a monitoring visit;

• the Government broadly agrees that Eurostat should have access to any data that is necessary and relevant to conduct the investigation, but feels that Eurostat should
work on the basis of published audited reports and other records held within the national statistical authority or finance ministry, where available, rather than requiring direct access to other bodies;

- the Government does not, however, agree with the bank’s view that this draft Regulation should be used to re-examine the definition of “government deficit”, which is a complex legal issue — the aim of the amendments to Regulation (EC) No 479/2009 is to deter Member States from manipulating statistical information and to establish a mechanism to identify and resolve possible problems with the quality of statistical data on debts and deficits; and

- the Government believes, therefore, that the issue of how government deficit is defined in EU legislation is less urgent and can be examined at a later opportunity, if the Commission or Member States believe it is necessary to make changes.

Conclusion

74.12 We note that the amendments to the draft Regulation, document (a), meet earlier concerns about subsidiarity and proportionality and now clear the document. And we note also the Government’s abstention from the vote on the draft Regulation, so avoiding a breach of the scrutiny reserve resolution. However we are concerned that the (previous) Government failed to meet our predecessors’ request for as prompt a response as possible, given the eight-week timeframe for national parliaments under the Subsidiarity Protocol. We trust that when there is the possibility of subsidiarity issues arising the Government will, for the future, react more quickly in relation to the eight-week timeframe.

74.13 As the European Central Bank’s Opinion, document (b), is overtaken by the conclusion of the Council’s consideration of the draft Regulation we also clear this document.
### Stability and Growth Pact

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**Legal base**

Article 126(5) TFEU; —; QMV (excepting the Member State concerned)

**Documents originated**

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**Deposited in Parliament**

(a)-(y) 25 May 2010

(z) 11 June 2010

**Department**

HM Treasury

**Basis of consideration**

(a)-(x) and (z) EM of 26 July 2010

(y) EM of 26 July 2010

**Previous Committee Report**

None

**Discussed in Council**

(a)-(y) 26 April 2010

(z) 6 June 2010

**Committee’s assessment**

Politically important

**Committee’s decision**

Cleared

**Background**

75.1 The Stability and Growth Pact adopted by the Amsterdam European Council in June 1997 emphasised the obligation of Member States to avoid excessive government deficits,
defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a “reference value” of 3%. Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State. These Opinions, which are not binding on Member States, are based on a recommendation from the Commission. The economic content of the programmes is assessed with reference to the Commission’s current economic forecasts. If a Member State’s programme is found wanting, it may be invited by ECOFIN, in a Recommendation, to make adjustments to its economic policies, though such Recommendations are likewise not binding on Member States. This whole procedure is essentially the Pact’s preventative arm.

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

The documents

75.3 These documents are the annual Council Opinions on the stability or convergence programmes of all the Member States except Greece. The conclusions of the Opinions can be grouped together by similarity:

- Bulgaria, Estonia, Hungary, Romania, Slovenia and Sweden all received favourable conclusions, with their Opinions stating that the programmes were deemed adequate and that they had implemented an appropriate consolidation of public finances that were in line with the relevant Council Recommendation;

- Belgium, the Czech Republic, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland and Slovenia all received generally satisfactory conclusions. For these Member States, the Opinions note that, although their programmes were appropriate overall and in line with the relevant Council Recommendation, risks still remain and in some examples more information is needed before a more conclusive judgement can be made;

- for Austria, Cyprus, Denmark, Finland, France, Germany, Ireland and the Netherlands, the Opinions were less positive and stated that the public finances

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

324 The 16 Member States (Austria, Belgium, Cyprus, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain) that have adopted the euro have Stability Programmes, whereas the other 11 Member States (including the UK) produce Convergence Programmes.
have deteriorated significantly. For these Member States major risks still remain and the introduction of further consolidation measures was essential; and

- for Portugal and Spain, the Opinions were critical and highlighted high deficits and mounting debt levels. They reiterated the importance of further fiscal consolidation measures in achieving the aims of their ambitious programmes.

75.4 The recommendations of the Opinions can also be grouped together by similarity:

- many Member States, including Austria, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, Slovenia and the Netherlands, were asked to both refine and substantiate their consolidation measures;

- Cyprus, Denmark, France, Ireland, Latvia, Lithuania, Portugal and Spain were recommended to take even more direct action and be on stand-by to adopt additional new consolidation measures;

- all the Member States, bar Bulgaria, Denmark, Luxembourg, Slovenia and Sweden, were recommended to strengthen and improve their budgetary framework, focusing particularly on the medium-term;

- some Member States whose public finances are deemed to be in the most severe state — Italy, Ireland and Spain — were advised to rigorously implement their budgetary and fiscal plans with urgency;

- in a similar vein, Bulgaria was advised to implement a strict fiscal policy and Belgium was recommended to ensure a high primary surplus;

- more indirect recommendations include Bulgaria, Malta, Portugal and Slovenia strengthening the efficiency of public spending and France, Poland and the Netherlands allocating windfall revenue to deficit reduction;

- Austria, Belgium, Cyprus, Ireland, Italy, Portugal and Spain were advised to seize any opportunities beyond the fiscal effort, including from unexpected better economic conditions, to accelerate the reduction of the gross debt ratio back towards the 60% of GDP reference value;

- recommendations on structural reform measures, including in areas such as education and employment, were made to Cyprus, the Czech Republic, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Romania, Slovakia, Slovenia, Spain and the Netherlands;

- Italy, Germany, Spain and Sweden were advised to improve their data compliance;

- Austria and Germany were invited to submit in time for the assessment of the effective action under the excessive deficit procedure an addendum to the programme to report on progress made in the implementation of the relevant Council Recommendation; and
• the Czech Republic, Denmark, France, Germany, Ireland, Italy, Malta, Poland and the Netherlands were asked to provide additional information in the next update of their convergence programmes.

75.5 As for the individual Opinions, in his first Explanatory Memorandum the Financial Secretary to the Treasury (Mr Mark Hoban) helpfully summarises all them, except that for the UK, document (y), which is the subject of his second Explanatory Memorandum. We reproduce these summaries:


“After Austria’s worst post-war recession, the programme has general government deficit reaching 3.5% of GDP (up from 0.4% of GDP in 2008) and public debt at 66.5% of GDP in 2009. The programme also predicts a pick up in real GDP growth from -3.4% in 2009 to 1.5% in 2010–11 and around 2% thereafter. The structural balance is expected to narrow from 3.9% of GDP in 2010 to 2.2% of GDP in 2013, corresponding to an average annual fiscal effort somewhat below ¾% of GDP over the period 2011–2013. Government gross debt is estimated at 66.5% of GDP in 2009, up from 62.5% in the year before.


“The downturn has had a significant adverse impact on Belgian public finances, and the general government deficit deteriorated from 1.2% of GDP in 2008 to 5.9% of GDP in 2009. The programme also predicts that real GDP will grow by 1.1% in 2010 and accelerate to 1.7% in 2011 and then 2.2% in 2012. Annual GDP growth is expected to turn slightly positive in 2010 (0.6%) and to increase to 1½% in 2011. These projections are cautious given the better-than-expected outcome for the second half of 2009.


“Prior to the crisis, Bulgaria had witnessed strong real GDP growth. The programme envisages that real GDP growth will improve from -5% in 2009 to 0.3% in 2010 before recovering to an average rate of 4¾% over the rest of the programme period. The revenue to-GDP ratio is expected to increase to almost 39¾% of GDP (from 37¾% of GDP in the previous year), supported by higher indirect taxes and other revenue. The medium-term budgetary objective (MTO) adequately supports a surplus of ½% of GDP, which the programme aims to achieve from 2010 onwards. The government gross debt ratio is well below the Treaty reference value throughout the programme period and is estimated at around 15% of GDP in 2009.


“In 2009 economic activity contracted by 1.7% of GDP — the first time Cyprus has experienced negative growth in the last thirty-five years. The programme envisages that real GDP growth will increase from -1.7% in 2009 to 0.5% in 2010 and will then recover to an average rate of around 2.6% over the rest of the programme period. The primary aim of the programme is to bring the general government balance below the 3% of GDP reference value by 2013. The programme projects the nominal
budget deficit to decline to 4.5% of GDP in 2011 (from 6.1% in the previous year) and 3.4% in 2012 before it eventually reaches 2.5% in 2013. The government gross debt-to-GDP ratio is estimated at 56.2% of GDP in 2009, up from 48.4% in the year before. The debt ratio will breach the reference value of 60% of GDP in 2010 and is projected to remain above the reference value throughout the programme period. It is projected to increase to around 63% of GDP in 2011 and 2012, thereafter slightly declining.

*Czech Republic — Council Opinion on the updated convergence programme, 2009–2012

“After a three-year period of growth above 6%, real GDP grew by only 2.5% in 2008 and declined by 4% in 2009. The main challenge is to reduce the high structural government deficit, estimated at around 6% of GDP in 2009 to a sustainable level, and the programme projects the general government deficit at 5.3% of GDP in 2010 and then to 4.8% and 4.2% of GDP in 2011 and 2012 respectively. The programme also envisages real GDP growth at 1.3% in 2010, 2.6% in 2011 and 3.8% in 2012 and when assessing against currently available information, this seems plausible until 2011. Government gross debt is estimated at 35% of GDP in 2009, up from 30% in the year before. The debt ratio is projected to increase by further 7 percentage points over the programme period, reaching 42% of GDP in 2012.

*Denmark — Council Opinion on the updated convergence programme, 2009–2015

“The economic crisis hit the Danish economy hard in 2009, and resulted in the country’s worst recession since the Second World War. The large fiscal stimulus packages that were implemented are expected to result in a deficit that is set to exceed the 3% of GDP reference value of the Stability and Growth Pact (SGP) between 2010 and 2012. Public debt is still expected to remain below 60% of GDP reference value. Real GDP growth in 2009 was –4.3% but is expected bounce back to 1.3% in 2010, and then accelerating at an average of 2.2% over the remainder of the programme period. General government deficit is expected to widen to 5.3% of GDP in 2010.


“The programme predicts that real GDP growth, following a drop of around 14.5% in 2009, will be -0.1% in 2010, recovering to an average growth rate of 3.7% over the rest of the programme period. It also envisages the general government deficit in 2009 at 2.6% of GDP. The structural balance amounted to 3½% of GDP suggesting a significantly restrictive fiscal stance. Government gross debt ratio is 7.8% of GDP in 2009 and is projected to increase to 14.3% of GDP by the end of the programme period.

*Finland — Council Opinion on the updated stability programme, 2009–2013

“Government finances were weakened by over 6% of GDP on 2009. The programme envisages that after a sharp contraction by 7.6 % in 2009, real GDP growth will resume to 0.7% in 2010, accelerating to 2.4% and 3.5% in 2011 and 2012 respectively, before moderating to 3% in 2013. A general government deficit of 2.2% of GDP is
expected for 2009 after a significant deterioration from a surplus of 4.4% of GDP in 2008. Government gross debt is estimated at 41.8% of GDP in 2009, up from 34.2% in the year before and the debt ratio is projected to increase by a further 14.6 percentage points over the programme period, up to 56.4% of GDP by 2013.


“Economic activity in France lost its dynamism in the course of 2008, declining sharply in the fourth quarter of 2008 and in the first quarter of 2009. After a contraction by 2.2% in 2009 real GDP will grow again by 1.4% in 2010 before recovering to an average rate of 2.5% over the remainder of the programme. The programme estimates the general government deficit in 2009 at 7.9% of GDP. The major deterioration from a deficit of 3.4% of GDP in 2008 reflects to a large extent the impact of the crisis on government finances. The programme then expects the general government deficit in 2010 to deteriorate even more to 0.3% of GDP and reach 8.2% of GDP in 2010. The programme suggests that the government gross debt is on an increasing trend until 2012, estimated at 77.4% of GDP in 2009, up from 67.4% in 2008. A further increase by a 9.2 percentage points is projected over the programme period, reaching the level of about 87% of GDP, mainly driven by continued high government deficits.

“Germany — Council Opinion on the updated stability programme, 2009–2013

“The programme envisages that after a slump of 5% in 2009, real GDP growth will be restored, moving from 1.4% in 2010 to an average rate of 2% over the rest of the programme period. According to the programme, the nominal general government deficit will increase from 3.2% of GDP in 2009 to 5½% in 2010. Government gross debt is estimated at 72½% of GDP in 2009, up from 65.9% in the year before and the debt ratio is projected to increase by a further 9½ percentage points over the programme period up to 82% of GDP. This is mainly driven by continued government deficits and to a lesser extent by unspecified debt-increasing stock-flow adjustments of around ½% of GDP per annum between 2011 and 2013.


“The programme envisages that after a contraction of 6.7% in 2009, real GDP will decline further by 0.3% in 2010 and then resume growth by 3½% in 2011 and 2012. The programme estimates the general government deficit in 2009 at 3.9% of GDP in 2009, after 3.8% in 2008. The programme aims to reduce the general government deficit from 3.8% of GDP in 2010 to 2.8% by 2011 and then further to 2.5% in 2012. The 2011 and 2012 deficit targets result in a recalculated structural deficit of 1½% and 2½% of GDP, respectively. It means that a structural improvement by around 3 percentage points of GDP in 2009 is projected to be followed by a 0.1% of GDP improvement in the period 2010–2011 and in 2012 the structural balance would even deteriorate by 1% of GDP. Government gross debt is estimated at 78% of GDP in 2009, up from around 73% in the year before and a further rise to 79% of GDP in 2010 is projected before it would start declining to 77% and 73½% in 2011 and 2012, respectively.

The programme envisages that after declines in real GDP by 7.5% in 2009 and 1.4% in 2010, the economy will return to positive growth averaging 4% over 2011–2014. The programme estimates the general government deficit in 2009 at 11.7% of GDP. The significant deterioration from a deficit of 7.2% of GDP in 2008 to a large extent reflects the substantial knock-on effect that the broad-based recession has had on the public finances. General government deficit widened further in 2009 but is planned to stabilise in 2010, at 11.6% of GDP. From 2011 onwards, the programme envisages a reduction of the deficit to below the 3% of GDP reference value by 2014. The government gross debt ratio is projected to be on an increasing trend until 2012. Specifically, the debt-to-GDP ratio soared to nearly 66% of GDP in 2009 from 44% of GDP in 2008. The programme projects a further steep increase in the debt ratio to a peak of nearly 84% of GDP in 2012, followed by a gradual decline to below 81% of GDP by the end of the programme period in 2014.

“Italy — Council Opinion on the updated stability programme, 2009–2012

The programme envisages that real GDP will return to positive growth of 1.1% in 2010, from -4.8% in 2009 (-5% according to the statistical office’s estimate released on 1 March 2010), and accelerate to a rate of 2% over the rest of the programme period. The programme estimates the general government deficit in 2009 at 5.3% of GDP with a significant deterioration from a deficit of 2.7% of GDP in 2008. The primary balance is planned at 1.3% of GDP in 2011, and 2.7% in 2012. The planned annual consolidation amounts to ½ percentage point of GDP in 2011 and ¾ percentage points in 2012 in structural terms. The general government gross debt-to-GDP ratio is projected to be on an increasing trend until 2010. After rising in 2008, the debt ratio is estimated in the programme to have increased by 9.3 percentage points, to 115.1% of GDP in 2009 (115.8% in the statistical office’s estimate released on 1 March 2010), mainly due to the high interest burden and sharp contraction in real GDP. The debt ratio is then projected to follow a declining path in 2011 and 2012, to 114.6% of GDP, mainly thanks to the planned positive primary balances and the assumed acceleration in real GDP growth.


The programme envisages that after an estimated exceptionally severe 18.0% fall in output in 2009, real GDP will decrease by a further 4.0% in 2010 before growing by 2.0% in 2011 and 3.8% in 2012. The programme estimates the general government deficit in 2009 at 10.0% of GDP and a significant deterioration from a deficit of 4.1% of GDP in 2008. They want deficits limited to 6% and 3% of GDP in 2011 and 2012 and therefore consistent with the Council Recommendation of 7 July 2009 of correcting the excessive deficit by 2012 at the latest. Government gross debt is estimated at 34.8% of GDP in 2009, up from 19.5% in the year before. The debt ratio is projected to increase sharply by a further 22 percentage points over the programme period, driven by significant fiscal deficits, and consequently there are risks surrounding the programme projection showing the debt ratio peaking at slightly below 60% in 2011. The projection for the final programme year of 2012 is 56.8% of GDP.
“**Lithuania — Council Opinion on the updated convergence programme, 2009–2012**

The programme envisages that real GDP, after dropping by 15.0% in 2009, grows by 1.6% in 2010, accelerating to 3.2% in 2011, but slowing back to 1.2% in 2012. The programme estimates the general government deficit in 2009 at 9.1% of GDP. The significant deterioration from a deficit of 3.2% of GDP in 2008 mainly reflects a substantial tax shortfall. Government gross debt is estimated at 29.5% of GDP in 2009, substantially up from 15.6% in the year before. The debt ratio is projected to increase by a further 11.5 percentage points over the programme period to 41% of GDP in 2012, mainly driven by continued high government deficits.


The Luxembourgish economy was severely hit by the crisis: real GDP, after zero growth in 2008, dropped by 3.9% in real terms in 2009, according to the most recent estimates. The programme then envisages real GDP to grow by 2.5% in 2010, after a contraction by 3.9% in 2009, and by 2.9% a year on average over the rest of the programme period. On the deficit, the programme estimates the general government deficit in 2009 at 1.1% of GDP. This significant deterioration from a surplus of 2.5% of GDP in 2008 in due to a surge by almost 5 percentage points of GDP in public expenditure. The debt ratio doubled from 6.6% of GDP in 2007 to 13.5% in 2008, largely as a result of the financial support to the financial sector. The programme projects a further rise from 14.9% of GDP in 2009, to 37.4% in 2014. This increase will exceed the sum of the projected deficits, due to sizable transfers from central government to social security.

“**Malta — Council Opinion on the updated stability programme, 2009–2012**

The impact of the downturn and some non-recurrent expenditure-increasing items in 2008 led to a significant widening of the general government deficit in 2008–2009 compared to 2007. The programme envisages that real GDP will return to positive growth in 2010, at 1.1%, after a 2% contraction estimated for 2009, followed by a further recovery, to an average rate of 2.6% over the rest of the programme period. The programme estimates the general government deficit in 2009 at 3.8% of GDP. In structural terms, the budgetary position would improve by ¾ pp. of GDP in 2011 but worsen again by ½ percentage points in 2012. The debt ratio is projected to remain above the Treaty reference value throughout the programme period. The programme estimates government gross debt at 66.8% of GDP in 2009, up from a level below 64% in 2008. The debt ratio is projected to increase further in 2010, by almost 2 percentage points, before declining to around 67% of GDP in 2012.

“**The Netherlands — Council Opinion on the updated stability programme, 2009–2012**

After a severe contraction of 4% real GDP will grow again by 1¼% in 2010 before further recovering to an average rate of 2% over the rest of the programme period. Assessed against currently available information, this opinion states that the scenario appears to be based on favourable growth assumptions for 2010 and 2011 and plausible assumptions for 2012. According to the programme the general government deficit deteriorated strongly from a surplus of 0.7% of GDP in 2008 to a
deficit of 4.9% of GDP in 2009. The budgetary target for 2010 in the update of the programme is a deficit of 6.1% of GDP. The government gross debt-to-GDP ratio was above the Treaty reference value in 2009 and is on an increasing trend over the whole programme period. It is estimated at 62.3% in 2009, up from 58.2% in the year before. The debt ratio is projected to increase by a further 10% of GDP over the programme period to 72.5% in 2012, mainly driven by continued high government deficits.

"Poland — Council Opinion on the updated convergence programme, 2009–2012"

"Poland was the only EU country that recorded positive growth in 2009 with real GDP estimated to have increased by 1.7%. The programme envisages that real GDP growth will accelerate from 1.7% in 2009 to 3% in 2010, 4.5% in 2011 and 4.2% in 2012. Assessed against currently available information, the opinion records that the assumption for real GDP growth in 2010 appears slightly favourable and the assumptions for 2011 and 2012 seem favourable. The programme presents an alternative, “risk scenario” with lower real GDP growth, at 2.7% in 2010, 3.7% in 2011 and 3.5% in 2012, which appears more plausible. The programme estimates the general government deficit in 2009 at 7.2% of GDP and the significant deterioration from a deficit of 3.6% of GDP in 2008 reflects to a large extent the impact of the crisis on government finances. The programme projects a slight decline in the government deficit to 6.9% of GDP in 2010. Government gross debt is estimated to have reached 50.7% of GDP in 2009, up from 47.2% in 2008. This ratio is projected to increase by 5 percentage points over the programme period reaching the level of around 56% of GDP in 2012 but remaining below the Treaty reference value, mainly driven by high government deficits.

"Portugal — Council Opinion on the updated stability programme, 2009–2013"

"The programme assumes that real GDP growth will gradually improve from 0.7% in 2010 to 1.7% by 2013. The programme estimates the general government deficit in 2009 at 9.3% of GDP, which is a significant deterioration from a deficit of 2.8% of GDP in 2008. The main goal of the medium-term budgetary strategy is to bring the deficit below the 3% of GDP reference value by 2013 and government deficits of 6.6%, 4.6% and 2.8% of GDP for 2011, 2012 and 2013 respectively. Government gross debt is estimated at 77.2% of GDP at the end of 2009, up from 66.3% in 2008, reflecting both the sizeable increase in the deficit and the decline in nominal GDP. The debt ratio is projected to increase by a further 12½ percentage points over the programme period, to reach 90.7% of GDP in 2012, before declining slightly to 89.8% of GDP in 2013.

"Romania — Council Opinion on the updated convergence programme, 2009–2012"

"With an average annual GDP growth rate of 6.8% between 2004 and 2008, Romania was one of the fastest growing EU Member States. The programme envisages that real GDP growth will return to positive in 2010 (1.3%) and gradually accelerate to 3.7% by 2012. Assessed against currently available information and in particular the worse-than-expected outcome for the fourth quarter of 2009, this scenario appears to be based on slightly favourable growth assumptions for 2010. The programme
estimates that the general government deficit in 2009 equalled 8.0% of GDP, which is slightly above target (7.8%) due to an increase in government payment arrears and is a significant deterioration from the 5.5% of GDP deficit recorded in 2008. The 2010 budget targets a deficit of 6.3% of GDP. The programme sets out a gradual path for bringing down the headline deficit from 6.3% of GDP in 2010 to 4.4% of GDP in 2011 and 3.0% of GDP in 2012. Government gross debt is estimated at 23% of GDP in 2009, up from 13.6% the year before. While remaining well below the Treaty reference value, the debt ratio is projected to increase by a further 6.7 percentage points over the programme period, to 29.7% of GDP in 2012.

*Slovakia — Council Opinion on the updated stability programme, 2009–2012*

“The programme projects real GDP growth at 1.9% in 2010, 4.1% in 2011 and 5.4% in 2012. The programme estimates the government deficit in 2009 at 6.3% of GDP, up from 2.3% of GDP in 2008. For 2010 the programme targets a general government deficit of 5.5% of GDP. The headline deficit is expected to fall from 5.5% of GDP in 2010 to 4.2% and 3.0% of GDP in 2011 and 2012, respectively. The government gross debt increased from 27.7% of GDP in 2008 to 37.1% of GDP in 2009. The increase reflects the high deficit and the significant contraction of real GDP in 2009. While remaining well below the Treaty reference value, the debt ratio is projected to increase further in 2010 and 2011, when it would reach 42.5% of GDP, and to slightly decline in 2012, to 42.2% of GDP.

*Slovenia — Council Opinion on the updated stability programme, 2009–2013*

“The programme envisages that real GDP will return to positive growth in 2010, at 0.9%, from -7.3% in 2009 and accelerate to an average rate of 3.2% over the rest of the programme period. The programme estimates the general government deficit to have increased from 1.8% of GDP in 2008 to 5.7% in 2009. For 2010, the programme plans for the general government deficit to stabilise at 5.7% of GDP. The main aim of the programme’s medium-term budgetary strategy is to reduce the deficit below the 3% of GDP deficit reference value by 2013, with deficit targets set at 4.2%, 3.1% and 1.6% of GDP for 2011, 2012 and 2013 respectively. Government gross debt is estimated in the programme to have increased markedly from 22.5% of GDP in 2008 to 34.4% of GDP in 2009. The debt ratio is projected to remain below the Treaty reference value throughout the programme period, but to increase by more than 8 percentage points by 2012, to almost 43% of GDP, mainly on the back of primary deficits and improving nominal GDP outlook, and to record a modest fall in 2013.

*Spain — Council Opinion on the updated stability programme, 2009–2013*

“The programme assumes that GDP will contract by 0.3% in real terms in 2010 and recover thereafter to real GDP growth of 1.8% in 2011 and an average of 3% in 2012 and 2013. The programme estimates the general government deficit in 2009 at 11.4% of GDP with a significant deterioration from a deficit of 4.1% of GDP in 2008. According to the programme, the target for the general government deficit in 2010 stands at 9.8% of GDP, which is markedly higher than the deficit of 8.1% of GDP projected in the 2010 budget. This deterioration by 1.7 percentage points of GDP reflects a base effect from 2009. They also target a deficit of 7.5%, 5.3% and 3% of
GDP for 2011, 2012 and 2013, respectively. Government gross debt is estimated at 55.2% of GDP in 2009, significantly up from 39.7% in the year before. The debt ratio is projected to increase by a further 19 percentage points over the programme period, to breach the Treaty reference value in 2010 and to reach 74% of GDP by 2013, mainly driven by a continued high government deficit.


“The programme envisages that real GDP growth will pick up from -5.2% in 2009 to 0.6% in 2010 and to average 3.5% over the rest of the programme period. The programme estimates the general government deficit in 2009 to be 2.2% of GDP, which is a significant deterioration from a surplus of 2.5% of GDP in 2008. The budgetary projections are based on a no-policy change assumption for the period after 2010 and foresee the headline general government deficit to gradually narrow from 3.4% of GDP in 2010 to 2.1% of GDP in 2011 and 1.1% of GDP in 2012. The primary balance is expected to have a similar profile, going from a deficit of 2.2% of GDP in 2010 to a deficit of 0.8% in 2011, before swinging into a surplus of 0.4% of GDP in 2012. Government gross debt is estimated at 42.8% of GDP in 2009, up from 38.0% of GDP the year before. The debt ratio is then projected to increase by a further 2.4 percentage points over the programme period to 45.2% of GDP in 2012, mainly driven by continued government deficits.”

75.6 The Council Opinion on the convergence programme of the UK (submitted in January 2010), document (y), was based on an assessment of its economic content with reference to the Commission’s 2010 economic forecasts for the UK. The 2010 economic forecast and the Opinion, were both written prior to the formation of the present Government and subsequent announcements on fiscal consolidation, including in the June 2010 Budget. The Opinion says that:

- the fiscal strategy set out in the January 2010 convergence programme is inconsistent with the Council Recommendation of 2 December 2009 and the UK’s fiscal strategy is not sufficiently ambitious and needs to be significantly reinforced;  
- the UK’s deficit was already at risk of breaching the 3% of GDP reference value before the economic and financial crisis ensued;  
- since then a combination of the operation of the automatic stabilizers, falls in asset prices and the fiscal stimulus have provoked a major deterioration in the public finances;  
- a restrictive fiscal policy in 2010/11 is appropriate, accompanied by a more ambitious consolidation plan for the near and medium term; and  
- with a greater part of the reduction in the deficit in the medium term driven by a tight spending envelope to 2014/15, the absence of detailed departmental spending limits is a source of uncertainty.

75.7 The Opinion then makes several recommendations for the UK:
• avoid any further measures that will result in a further deterioration on public finances in 2010/11 and contain the deficit in 2010/11 to the level forecast in the convergence programme in the event of weaker than expected economic growth;

• target a more ambitious reduction of the deficit to less than the 3% of GDP reference value by 2014/15, including strengthening the planned pace of consolidation from 2011/12 onwards;

• capitalise on any further opportunities, such as favourable economic and market conditions, to accelerate the reduction of the gross debt ratio towards the 60% of GDP reference value;

• publish in 2010 detailed departmental spending limits underlying the overall expenditure projections for at least a three-year period beyond 2010/11;

• implement the expenditure efficiency savings identified;

• improve compliance with data requirements; and

• submit an addendum to the programme which details the progress made in the implementation of the Council Recommendation and outline a detailed consolidation strategy that will progress towards the correction of the excessive deficit.

**The Government’s view**

75.8 In his Explanatory Memorandum on the 25 Opinions in documents (a)-(x) and (z) the Minister:

• notes that, whilst the Council adopts Opinions and Recommendations based on the budgetary plans of national governments as set out in their updated stability or convergence programmes, this year the Opinions have also included progress updates on the fiscal consolidation efforts, which were implemented as part of the European Economic Recovery Plan;

• adds that many Member States have already begun withdrawing their financial stimulus measures;

• recalls that in the June 2010 European Council Conclusions, in line with the view of the G20, Member States agreed on a coordinated and differentiated exit strategy to ensure sustainable public finances; and

• comments that the Government believes that Member States should take forward fiscal consolidation as a priority to reduce their deficits and support recovery.

75.9 In relation to the Council Opinion on the UK’s convergence programme, document (y), the Minister says that:

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the Government has made clear that deficit reduction and continuing to ensure economic recovery is its main priority and, independently of the Council, agrees that accelerated action to put the UK’s public finances back on a sustainable path footing is required, as highlighted in the Opinion;

in its June 2010 Budget the Government announced a comprehensive set of policies to bring borrowing under control and place debt as a percentage of GDP onto a downward path;

that budget delivered additional consolidation of £40 billion on top of the plans set by the previous Government in the March 2010 Budget for the period to 2014–15;

it also introduced a new, forward looking “fiscal mandate” which will guide the Governments budgetary planning for the future;

this mandate is to achieve cyclically adjusted current balance by the end of the rolling, five year forecast period;

this results in plans for total consolidation of £128 billion a year by 2015–16 — 77% delivered by lower spending in 2015–16, the remainder through tax;

this additional tightening is forecast to reduce the deficit to 2.2% of GDP in 2014–15;

this is consistent with the December 2009 Recommendation to the UK to reduce the “Treaty Deficit” below the 3% of GDP Stability and Growth Pact threshold in 2014–15;

to guide fiscal policy decisions over the medium term the budget set out the Government’s forward-looking fiscal mandate to achieve cyclically-adjusted current balance by the end of the rolling, five-year forecast period, supplemented by a target for public sector net debt as a percentage of GDP to be falling at a fixed date of 2015–16; and

the Government has created the Office for Budget Responsibility, which introduces independence, greater transparency and credibility to the economic and fiscal forecasts on which fiscal policy is based.

Conclusion

75.10 We are grateful to the Minister for his full description of these Council Opinions. We have no questions to raise and clear the documents.
76 Action plan to implement the Stockholm Programme

|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------|

Legal base

Document originated 20 April 2010
Deposited in Parliament 25 May 2010
Department Home Office
Basis of consideration EM of 7 June 2010
Previous Committee Report None
Discussed in Council 3 June 2010
Committee’s assessment Politically important
Committee’s decision Cleared

Background

76.1 In 1999, the European Council adopted a five-year programme of action (“the Tampere Programme”) on justice and home affairs (JHA). It included proposals for action on asylum, immigration, visas and police and judicial cooperation.

76.2 In 2004, the European Council adopted a further five-year programme of action on justice and home affairs (“the Hague Programme”). In May 2005, the Commission proposed an Action Plan which set out over 250 measures (such as Green Papers, legislation and agreements with third countries) to give effect to the Programme. It was adopted by the Council in June 2005.

The Stockholm Programme

76.3 In June 2009, the Commission published a Communication setting out its views on what the next five-year programme should contain. The previous Committee recommended it for debate in European Committee B. The debate was held on 26 October 2009.

76.4 In December 2009, the European Council adopted the Stockholm Programme for EU action on justice and home affairs for the five years from the beginning of 2010 to the end of 2014. The Programme is based on the Commission’s Communication but differs from it in some important ways. For example, the Programme puts more emphasis on practical cooperation and calls for the implementation and evaluation of existing EU legislation before new measures are proposed.

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328 (26566) 8922/05: see HC 34–iv (2005–06), chapter 22 (20 July 2005).
330 17024/09.
76.5 The Stockholm Programme makes proposals under the following headings:

- **political priorities** (such as mutual trust between Member States; prompt and thorough implementation of existing EU legislation; evaluation of the effectiveness of existing policies; better training in EU law for the judiciary and law enforcement authorities; and better communications with the public);

- **promoting citizen’s rights: a Europe of rights** (for example, the Programme invites the Commission to make a proposal for the EU’s accession to the European Convention on Human Rights and invites all the EU institutions and Member States to ensure that legal initiatives are and remain consistent with fundamental rights; the Programme also calls for action to improve the protection and support of children, the Roma, victims of crime and other vulnerable groups and to strengthen the protection of personal data);

- **making people’s lives easier: a Europe of law and justice** (the Programme says that the EU should aim to enable citizens to assert their rights anywhere in the EU and to facilitate their access to justice; they should, for example, strengthen mutual trust in Member States’ judicial systems through mutual recognition of a wider range of judicial decisions; establish minimum rules for the definition of certain criminal offences and the penalties for them; and introduce common minimum rules of civil procedure for the cross-border execution of judgements on matters such as the taking of evidence and the service of documents);

- **a Europe that protects** (the Programme calls on the Council and the Commission to define a comprehensive EU Internal Security Strategy to direct and strengthen cooperation between Member States to counter terrorism and other serious cross-border crime; the Programme also calls, for example, for the adoption of EU legislation on cyber-crime, trafficking in drugs and human beings and the sexual exploitation of children);

- **access to Europe in a globalised world** (under this heading, the Programme calls for further action — such as clarifying the mandate of FRONTEX — to facilitate legal access by third-country nationals to the territory of the Member States, coupled with effective measures to protect the external borders from illegal immigration);

- **a Europe of responsibility, solidarity and partnership in migration and asylum matters** (the Programme sets out aims for the next stage in the development of a Common European Asylum System and a common policy on migration, recognising both the benefits to the EU of legal immigration and the need for effective management of migration in cooperation with countries of origin and transit); and

- **Europe in a globalised world — the external dimension of freedom, security and justice** (the Stockholm Programme sets out the principles and priorities which, in
the opinion of the European Council, should guide the EU’s and Member States’ relations with third countries and international organisations on JHA matters).

The European Council invited the Commission to present an Action Plan listing measures to implement the Programme.

**The Action Plan**

76.6 The Communication contains the Commission’s overview of the action that should be taken to implement the Stockholm Programme and the JHA provisions of the Lisbon Treaty. Attached to the Communication is an Action Plan. The Commission invites the European Parliament and the Council to endorse it.

76.7 The Plan covers 50 pages and lists over 350 proposals for action. Under each of the headings used in the Stockholm Programme (see paragraph 76.5 above), the Commission sets out the proposed action, the body responsible for taking it and the timetable. For example, on page 44 of the Action Plan, under the heading Access to Europe in a globalised world, the Commission lists the following proposals:

<table>
<thead>
<tr>
<th>ACTIONS</th>
<th>RESPONSIBLE BODY</th>
<th>TIMETABLE</th>
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<tbody>
<tr>
<td>Frontex to establish regional and/or specialised offices</td>
<td>FRONTEX</td>
<td>2010</td>
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<tr>
<td>Development of a customs approach to protecting citizens’ safety from the risks posed by international trade in dangerous goods</td>
<td>Commission</td>
<td>2010</td>
</tr>
<tr>
<td>Legislative proposal to set up Entry Exit System (EES)</td>
<td>Commission</td>
<td>2011</td>
</tr>
<tr>
<td>Legislative proposal to set up a Registered Traveller Programme (RTP)</td>
<td>Commission</td>
<td>2011</td>
</tr>
</tbody>
</table>

76.8 The Commission lists proposals for Green Papers, evaluations, communications, meetings, guidelines, handbooks and negotiations with third countries as well as proposals for legislation.

**The Government’s view**

76.9 In his Explanatory Memorandum of 7 June, the Parliamentary Under Secretary of State at the Home Office (James Brokenshire) says that the Government recognises the importance of the Stockholm Programme but wishes to make clear that this does not imply that it accepts the Programme in its entirety. It will consider each initiative and decide whether to opt into it.

76.10 The Minister tells us that:
“The Government believes that there are a number of respects in which the Action Plan does not reflect the Stockholm Programme and several that do not reflect the views of the Government.”

He says for example, that:

- page 16 of the Action Plan, which lists action intended to give full effect to the right to free movement within the EU, makes no reference to the presentation of a proposal to tackle the abuse of the right despite the fact that the Stockholm Programme contains a clear commitment to such measures, including an invitation to the Commission to examine “how to assist Member States’ authorities to tackle abuse of this fundamental right effectively”;

- page 19 of the Action Plan says that the Commission will issue a Communication on the establishment of a European Public Prosecutor’s Office, whereas the Stockholm Programme says that the setting up of such an office is only one of a number of possibilities which might be considered to strengthen Eurojust; and

- page 25 of the Action Plan says that in 2011 the Commission will make a legislative proposal for a common frame of reference for European contract law, whereas the Stockholm Programme says that “The European Council reaffirms that the common frame of reference for European contract law should be a non-binding set of fundamental principles, definitions and model rules to be used by the lawmakers at Union level to ensure greater coherence and quality in the lawmaking process. The Commission is invited to submit a proposal on a common frame of reference.” The Minister tells us that, in view of the Stockholm Programme’s recognition that the common frame of reference should be non-binding, the Government is not convinced that the Action Plan’s reference to a “legislative proposal” reflects what was agreed by the European Council.

76.11 The Minister adds that he made it clear at the JHA Council’s meeting on 3 June that the Government does not endorse the Commission’s Action Plan. He encloses with his Explanatory Memorandum the Conclusions agreed by the Council at that meeting. They say that the Council:

“Emphasises strongly that the Stockholm Programme is the only guiding frame of reference for the political and operational agenda of the European Union in the Area of Justice, Security and Freedom.

... 

“Notes … that some of the actions proposed by the Commission are not in line with the Stockholm Programme and that others, being included in the Stockholm Programme, are not reflected in the Communication of the Commission.

332 Minister’s Explanatory Memorandum, page 3, third paragraph, final sentence.
333 Stockholm Programme, page 14, third paragraph, concluding two lines.
334 Stockholm Programme, page 33, first paragraph.
“Urges the Commission in this regard to take only those initiatives that are in full conformity with the Stockholm Programme in order to ensure its complete and timely implementation.

... 

“Calls on all parties concerned to ensure due implementation of all necessary measures and actions stemming from the Stockholm Programme, including those not present in the above Commission proposal, in order to attain the 2010–14 strategic objectives in the Area of Justice, Freedom and Security.”

Conclusion

76.12 We are grateful to the Minister for his comprehensive and robust Explanatory Memorandum. We also thank him for drawing our attention to the Conclusions adopted by the JHA Council on 3–4 June. It is clear from them that the Council has serious reservations about parts of the Commission’s Action Plan. It is most unusual for the Council of Ministers to give the Commission such a public rebuke.

76.13 No doubt the Commission will reflect on the terms of the Action Plan in the light of the Council’s Conclusions. In any event, each of the proposals to implement the Stockholm Programme will come to us for scrutiny and it would be premature for us to comment on any of them at this stage. For these reasons, we have decided to clear the Action Plan from scrutiny.
77 European Pact on Immigration and Asylum

(31596) Commission’s first report on immigration and asylum
9273/10 COM(10) 214
+ ADD 1 Commission staff working document: supporting information

Legal base
Document originated 6 May 2010
Deposited in Parliament 25 May 2010
Department Home Office
Basis of consideration EM of 28 May 2010
Previous Committee Report None
Discussed in Council 3 June 2010
Committee’s assessment Politically important
Committee’s decision Cleared

Background

77.1 The EU has adopted three programmes on justice and home affairs since 1999 (Tampere 1999–2004; Hague 2005–2009; and Stockholm 2010–14). Proposals for common EU policies on asylum and immigration feature in all three programmes. A lot of EU legislation has been adopted on both subjects, such as the Directive on minimum standards for the reception of asylum seekers and the Decision establishing FRONTEX (the EU agency for the coordination of operational cooperation between Member States at the external borders of the EU).

77.2 In 2008, while holding the Presidency of the Council of Ministers, the French Government advocated a fresh impetus for the EU’s policies on immigration and asylum. It proposed an EU Pact on Immigration and Asylum.\(^\text{336}\) The Pact includes five political commitments:

- for legal immigration to take account of the priorities, needs and reception capacities of each Member State and to encourage the integration of legal immigrants;
- to control illegal immigration by ensuring the return of illegal migrants to their countries of origin or transit;
- to make the control of the EU’s external borders more effective;
- to “construct a Europe of asylum” (to complete the establishment of a common European asylum system by, for example, reducing the differences in Member

\(^{336}\) (29937) 12626/08: see HC 16–xxix (2007–08), chapter 17 (10 September 2008).
States’ asylum policies and procedures and introducing a uniform status for refugees and beneficiaries of subsidiary protection); and

- to create EU and Member State partnerships with immigrants’ countries of transit and origin.

77.3 Under each of these headings, the Pact lists action which the EU and Member States might take to give effect to the commitments. For example, in order to give effect to the commitment on the control of illegal immigration, the Pact invites Member States to take vigorous action against employers who exploit illegal immigrants.

77.4 The Pact emphasises that it is for each Member State to decide for itself the conditions for the admission of legal migrants and how many to admit in the light of the requirements of its labour market and demography. It also emphasises the need for each Member State to take account of the effect of its policies and decisions on other Member States.

77.5 The European Council adopted the Pact in October 2008.337

**The Commission’s first report on the implementation of the Pact**

77.6 The report gives the Commission’s assessment of the implementation of the Pact by the EU and Member States between October 2008 and the end of 2009. It views are marshalled under the five headings used in the Pact. The Commission also makes some recommendations.

77.7 For example, under the heading *Construct a Europe of asylum*, the report says that:

- At EU level, as required by the Pact, the Commission made proposals to set up the European Asylum Support Office and to amend the “first phase legislation” on asylum (the Asylum Procedures, Qualification and Reception Conditions Directives and the EURODAC and Visa Information System Regulations). Non-legislative action included the completion of evaluations of the regional programmes to provide protection for refugees close to their regions of origin. Ten Member States (including the UK) agreed to the resettlement in their territories of people who had been granted international protection by Malta.

- At national level, some Member States agreed to the voluntary resettlement of refugees. More Member States took part in practical cooperation activities; for example, the UK and the Netherlands provided training for Malta’s and Greece’s immigration services.

- Overall, while some useful progress was made, the negotiations on the amendment of the first phase legislation had proceeded slowly and the majority of Member States “have not shown much interest in solidarity measures in the form of intra-EU relocation of beneficiaries of international protection”.338

- The Commission recommends that, in the negotiations on the amendment to the EU’s existing asylum legislation, Member States should stand by their commitment to a

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338 First report, page 7, final sentence of fourth paragraph.
common European asylum system; all concerned should give their support to a quick start for the European Asylum Office; and more Member States should help those under most pressure from asylum seekers by accepting the relocation of refugees and providing technical assistance.

- In the Conclusion to the report, the Commission says that its recommendations are intended to identify priorities for the coming year and that “Further impetus will also come from changes under the Lisbon Treaty, notably the enhanced role of the European Parliament, and from the Action Plan Implementing the Stockholm Programme”.

**The Government’s view**

77.8 In his Explanatory Memorandum of 28 May 2010, the Minister for Immigration at the Home Office (Damian Green) tells us that the Commission’s report has no policy, financial or legislative implications for the UK. The Government will carefully examine any proposals stemming from the report.

77.9 The JHA Council discussed the Commission’s report on 3–4 June. The Council welcomed the progress that has been made so far in implementing the Pact. It agreed that more effort would be needed over the next year on, for example, EU policy on legal migration; countering the smuggling and trafficking of third country nationals; the protection of the external borders of the Member States; and cooperation between Member States on asylum.

**Conclusion**

77.10 We draw the report to the attention of the House because of the importance of its subject. There are no questions about the document or the Government’s views on it that we need put to the Minister. We are content, therefore, to clear the report from scrutiny.
78 Unaccompanied minors

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<tr>
<td>9604/10</td>
<td>Commission staff working document: Annex I, overview of relevant EU policy and legislation and the main requirements of the UN Convention on the Rights of the child; and Annex II, bibliography</td>
</tr>
</tbody>
</table>

**Legal base**

- **Document originated**: 6 May 2010
- **Deposited in Parliament**: 25 May 2010
- **Department**: Home Office
- **Basis of consideration**: EM of 28 May 2010
- **Previous Committee Report**: None
- **Discussed in Council**: 3–4 June 2010
- **Committee’s assessment**: Politically important
- **Committee’s decision**: Cleared

**Background**

78.1 The EU has adopted extensive legislation on asylum and immigration. It includes provisions which are specific to children as well as general provisions which apply to children and adults alike. The legislation is summarised in the Commission staff working document at ADD 1 of the Commission’s Communication.

78.2 For the purposes of the Communication, the Commission defines unaccompanied minors as people under the age of 18 who arrive in a Member State unaccompanied by a responsible adult or who are left unaccompanied after they have entered EU territory.

78.3 In December 2009, the European Council adopted the Stockholm Programme. It sets out the EU’s priorities and intentions on justice and home affairs for the next five years. Section 2.3.2 of the Programme calls upon the Commission to identify measures, to which the EU can bring added value, to promote the rights of the child, including unaccompanied minors.

78.4 In section 6.1.7 of the Stockholm Programme, the European Council welcomes the Commission’s intention to:

“develop an action plan, to be adopted by the Council, on unaccompanied minors which underpins and supplements the relevant legislative and financial instruments and combines measures directed at prevention, protection and assisted return. The action plan should underline the need for cooperation with countries of origin, including cooperation to facilitate the return of minors, as well as to prevent further departures. The action plan should also examine practical measures to facilitate the return of the high number of unaccompanied minors that [sic] do not require
international protection, while recognising that the best interests for many may be their reunion with their families and development in their own social and cultural environment.”

The document

78.5 This document contains the Action Plan to which the Stockholm Programme refers.

78.6 The Commission says that unaccompanied minors are highly vulnerable to abuse and exploitation. It believes that a common EU approach to their needs is necessary. It should be based on the United Nations Convention on the Rights of the Child and the EU Charter of Fundamental Rights.

78.7 At present, the statistics on unaccompanied minors in the EU are neither comprehensive nor comparable. In 2007, 8,030 applications for asylum were made by unaccompanied minors in 22 Member States; the comparable figure for 2008 was 11,292, an increase of 40%. But it is not known how many unaccompanied minors have not applied for asylum and are living in the EU without leave to do so.

78.8 Following consultations with Member States, non-governmental organisations and others, the Commission proposes an Action Plan to:

• secure the production, collection and analysis of comprehensive, reliable and comparable data on unaccompanied minors;
• prevent trafficking in minors and unsafe migration by unaccompanied minors;
• improve the reception and protection of unaccompanied minors;
• improve both the assessment of the age of unaccompanied young people who claim to be minors and the tracing of family members in countries of origin; and
• find durable solutions based on an assessment of what would be in the best interests of the individual child.

78.9 The Plan sets out the action the Commission considers necessary achieve each of these aims. Paragraphs 78.10–78.15 below illustrate the proposals.

78.10 The Commission proposes, for example, that data on unaccompanied minors should be improved through, among other things, the exchange of information between Member States in the framework of the European Asylum Support Office and the European Migration Network. The Plan invites the European Asylum Support Office to collect data and develop country of origin information relevant to the assessment of the need for protection of unaccompanied minors.

78.11 The Commission proposes that trafficking in minors and unsafe migration should be prevented by, for example, the use of EU’s and Member States’ existing expenditure...
programmes to support activities in third countries to counter trafficking, protect children from violence and develop birth registration and child protection systems.

78.12 The Commission notes that the existing EU legislation on asylum seekers does not provide illegally resident immigrants and victims of trafficking with consistent standards of reception and assistance. For example, at present Member States are required to provide personal representatives only to unaccompanied minors who are seeking asylum. In the Commission’s view, all unaccompanied minors should be entitled to representatives with the same functions and powers. Moreover, Member States should ensure that unaccompanied minors sever any contact they may have had with traffickers or smugglers; and that unaccompanied minors should be placed in accommodation which is appropriate to their needs. The Action Plan says that the asylum and immigration legislation should be revised to achieve these aims. It also invites FRONTEX to include in its training of border guards a module on how to detect unaccompanied minors and other particularly vulnerable people. 341

78.13 The Commission says that, to improve age assessment and the tracing of family members, it will, for example, issue Best Practice Guidance on assessment and encourage Member States to adopt a common approach to the tracing of family members.

78.14 The Commission says that the durable solutions for unaccompanied minors should be:

- return to and reintegration in the country of origin; or
- grant of international protection or another legal status, paving the way for the unaccompanied minor to become integrated in the host Member State; or
- resettlement.

In the Commission’s view, it is often in the best interests of unaccompanied minors for them to be reunited with their families in their countries of origin or transit. So the Action Plan encourages Member States to develop partnerships with countries of origin and transit and, for example, to fund education, training and re-integration projects.

78.15 The Action Plan also says that, where an unaccompanied minor is granted asylum or other leave to remain, Member States should, for example, make full use of the European Refugee Fund and the Fund for the Integration of third-county nationals. The Commission will encourage Member States to make maximum use of the Refugee Fund to support the resettlement in third countries of unaccompanied minors who are refugees.

78.16 The Commission plans to report in 2012 and by 2015 on the implementation of the Action Plan.

341 FRONTEX is the EU agency for the coordination of operational cooperation between Member States at their external borders.
The Government’s view

78.17 In his Explanatory Memorandum of 28 May, the Minister for Immigration at the Home Office (Damian Green) tells us that:

“The Action Plan has no policy implications for the UK. Like most EU countries, the United Kingdom does not return unaccompanied minors to their countries of origin unless safe arrangements can be made for their reception and care. The difficulty in tracing parents and the lack of suitable national care systems in many of the countries the children come from makes this difficult to achieve. The Government will examine carefully any case put forward for strengthening legislative measures aimed at enhancing support and care systems for the minors while they are in the EU Member States. Such measures may, however, have limited applicability to the United Kingdom given that unaccompanied minors receive the same care and support under children’s legislation as any other child in need.”

Conclusion

78.18 We share the concern of the European Council and Commission about unaccompanied minors who have entered the EU illegally or in search of asylum. They are vulnerable and should receive appropriate care and protection. They are not evenly distributed across the UK and their number is not known. So it is difficult for local authorities to make the plans necessary to meet their needs for education, housing and social services.

78.19 It seems to us that the Commission’s Action Plan contains some useful practical proposals. The Plan outlines a few proposals for new EU legislation. If the proposals are made, they will come to us for scrutiny and we shall reserve comment until we see them. Meanwhile, we have no questions to put to the Minister and we are content to clear the Action Plan from scrutiny with this short report to draw the document to the attention of the House.

342 Minister’s Explanatory Memorandum, paragraph 15.
79 Interpretation and translation rights in criminal proceedings

(a)
(31224) 16801/09 + ADDs 1–3
Draft Directive on the rights to interpretation and translation in criminal proceedings

(b)
(31658)
Draft Directive on the rights to interpretation and translation in criminal proceedings

Legal base
Article 82(2)(b) TFEU; QMV; co-decision

Deposited in Parliament
(b) 4 June 2010

Department
Justice

Basis of consideration
EM of 9 June; Minister’s letters of 19 April, 9 June and 30 June 2009

Previous Committee Report
(a) HC 5–vii (2009–10), chapter 7 (20 January 2010); HC 5–xvi (2009–10), chapter 2 (30 March 2010)
(b) None

To be discussed in Council
No date set

Committee’s assessment
Legally important

Committee’s decision
(a) Cleared (b) Cleared

Previous scrutiny

79.1 This draft Directive is very closely based on a previous Council Framework Decision on the right to interpretation and translation in criminal proceedings. This formed the first step of the procedural rights Roadmap, which was adopted on 30 November 2009. However, the proposal lapsed when the Lisbon Treaty came into force on 1 December 2009. The substantive text of the Framework Decision was reintroduced under Title V343 of the Treaty on the Functioning of the European Union (TFEU) as a Member State initiative for a Directive. It was published on 15 December 2009.

79.2 The previous Committee supported the adoption of the Framework Decision and cleared it from scrutiny in October 2009.344 It reviewed the replacement Directive (document (a)) in January and March of this year, and asked to be kept informed of significant progress in the negotiations. The previous Government opted into the proposed Directive on 8 March.

343 “Area of Freedom, Security and Justice”.
The Document

79.3 Document (b) is the final draft of the Directive as agreed at first reading between the Council and the European Parliament. It supersedes document (a).

Recitals

79.4 The first two recitals recall the establishment (following the Tampere Conclusions) of mutual recognition as the cornerstone for judicial cooperation in the EU and the adoption of that principle in the Hague Programme. The third and fourth recitals make the link between implementation of the principle of mutual recognition and the need for mutual trust between respective criminal justice systems. Recital 4a makes reference to articles of the European Convention on Human Rights (ECHR) and Charter of Fundamental Rights that are relevant to upholding a defendant’s right to translation and interpretation in criminal proceedings.

79.5 The fifth recital notes that being party to the ECHR does not in itself guarantee that trust, whilst 5a states that more consistent implementation of the rights and guarantees helps strengthen mutual trust. The sixth recital refers to Article 82(2)(b) TFEU as a basis for establishing minimum rules in order to improve judicial cooperation through mutual trust. The seventh explains that this measure is the first of a series of procedural rights measures, set out in the Roadmap, and builds upon the proposed Framework Decision and the Commission proposal on the same matter.

79.6 The eighth recital explains that this draft Directive aims to facilitate the application of Article 6 ECHR in practice by guaranteeing suspects’ rights to interpretation and translation to safeguard their right to fair proceedings. The ninth notes that the Directive extends to European Arrest Warrant (EAW) proceedings.

79.7 The tenth recital deals with when a defendant should be able to access free linguistic assistance. 10a to 10c note that the suspect should be able to communicate with his counsel to exercise his defence. Recital 10b provides for a mechanism to ascertain whether the suspected or accused person understands and speaks the language. Recital 10c provides for such interpretation and translation to be in the person’s native language or a language he understands and allows him to fully exercise the right to defend himself. 10d clarifies that the Directive should not compromise any other procedural right available under the Member States’ national law.

79.8 Recital 11 notes that Member States should ensure control is exercised over the adequacy of interpretation and translation. The twelfth provides for a right to challenge a decision finding there is no need for interpretation in accordance with procedures in national law. However, the right does not require a separate mechanism or complaint procedure and should not prejudice time limits relevant to the execution of an EAW. Recital 12a enables a Member State to be able to replace an interpreter when the quality of interpretation is considered insufficient to guarantee the right to a fair trial.

79.9 The fourteenth recital deals with the duty of care towards those in a potentially weak position due to a physical impairment. Member States should take appropriate steps to ensure these persons are able to effectively exercise their rights. 14x notes that when
Member States employ videoconferencing they should be able to rely on tools being developed in the context of European e-Justice. 14a states that the Directive should be evaluated in light of practical experience gained. 15 refers to the need to translate certain essential documents as a minimum. And recital 16a deals with the provision of national databases of translators and interpreters.

79.10 Recital 16b and 18 explain that the Directive respects and promotes ECHR rights, and Member States should ensure that, where provisions of the Directive correspond to ECHR rights, they are interpreted and implemented consistently with the ECHR and its case law. The nineteenth recital explains that this Directive is consistent with the principles of subsidiarity and proportionality. The twentieth confirms that the UK and Ireland have opted in to the measure, and twenty-first confirms that Denmark is not bound by the measure.

**Articles**

79.11 **Article 1** sets out the scope of the Directive: to lay down rules concerning the rights to interpretation and translation in criminal proceedings and proceedings for the execution of an EAW. The rights apply from the time that a person is made aware by the Member State’s competent authorities that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings. Conclusion of the proceedings is defined as the final determination of whether the suspected or accused person has committed the offence, including where applicable sentencing and the resolution of any appeal. The Directive does not extend to proceedings in respect of the imposition of sanctions from an authority other than a criminal court, until on appeal the proceedings are pending before a court with criminal jurisdiction.

79.12 **Article 2** describes the ambit of the right to interpretation. Article 2(1) sets out the circumstances in which interpretation must be given to a suspected or accused person. Article 2(1a) explicitly extends the right to interpretation to communication between the suspected or accused and his legal counsel. Article 2(2) provides for assistance to be provided for those persons requiring interpretation who also have a hearing or speech impediment shall receive assistance. Article 2(3) requires Member States to ensure that a procedure or mechanism is in place to ascertain the person understands and speaks the language of the criminal proceedings and needs an interpreter. Article 2(4) states that the person must have the right to challenge the decision finding that there is no need for interpretation. They must also have the right to complain about the quality of interpretation. Article 2(4a) allows for technology such as videoconferencing, to be used unless the physical presence of the interpreter is required in order to safeguard the fairness of proceedings. Article 2(5) provides that subjects of EAW proceedings who do not understand and speak the language of the proceedings shall be provided with interpretation. Article 2(6) required Member States to ensure that interpretation provided is of a quality sufficient to safeguard the fairness of proceedings.

79.13 **Article 3** sets out the right to translation of essential documents. Article 3(1) provides that Member States shall ensure that a suspected or accused person who does not understand the language of the criminal proceedings is provided with written translations of all documents, which are essential to ensure he is able to defend himself and to safeguard
his right to fair proceedings. By Article 1(4) this does not affect national law rules on access to such documents. Article 3(2) states that the essential documents include decisions depriving a person of his liberty, the charge/indictment and any judgement. Article 3(3) states that the competent authorities shall decide in any given case which are the essential documents. The suspect or accused will also be able to submit a reasoned request to this effect. Article (3a) allows for passages of essential documents which are not relevant, to be omitted from translation. There must be a right to challenge a decision if for example documents or passages of documents are not provided under 3(2) or 3(3). There is also a right to complain about the quality of translation. Article 3(5) states that the executing Member State shall ensure that those who are the subject of proceedings for the execution of an EAW shall be provided with a translation of it. Article 3(6) recognises there should be exception to the general provision in Article 3 and that oral translation or oral summary of the essential documents may be provided instead of a written translation, providing this does not affect the fairness of the proceedings. Article 3(7) states that the suspected or accused person may waive his rights under this Article providing the suspected or accused person has received prior legal advice or has otherwise obtained full knowledge or the consequences and the waiver was unequivocal and given voluntarily. Article 3(8) required Member States to ensure that translation provided is of a quality sufficient to safeguard the fairness of proceedings.

79.14 **Article 4** provides that Member States shall cover the costs of interpretation and translation arising from Articles 2 and 3, irrespective of the outcome of proceedings.

79.15 **Article 5** provides that Member States shall take concrete measures to ensure that interpretation and translation is of sufficient quality so that the suspected or accused person (or person subject to an EAW) is able to exercise his rights. Article 5(2) states that Member States shall endeavour to establish a register or registers of independent translators and interpreters. Article 5(3) requires the independent interpreters and translators to observe confidentiality. Article 5a requires Member States to request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to give special attention to the particularities of communicating with the assistance of interpreters. Finally, Article 5b provides for a record to be kept of certain events of interpretation having taken place.

79.16 **Article 6** is a non-regression clause, which makes clear that nothing in the Directive is to be construed as limiting or derogating from the rights and procedural safeguards that are ensured under the ECHR, other relevant international law or national laws which provide a higher level of protection.

79.17 **Articles 7, 8, and 9** deal with implementation, reporting on compliance and entry into force. Member States will have 36 months to implement the Directive into domestic legislation once it has been published in the Official Journal. This does not preclude countries from implementing the Directive before the deadline.

**The Minister’s Explanatory Memorandum**

79.18 The Lord Chancellor and Secretary of State for Justice (Kenneth Clarke) deposited the agreed final draft of the Directive and an accompanying Explanatory Memorandum on 9 June 2010. In the Explanatory Memorandum he says that the Government continues to
support the adoption of this Directive because it sees a clear need for EU action: discrepancies between how Member States have implemented Articles 5 and 6 ECHR have led to varying standards in the interpretation and translation provided to suspects; and this causes particular concern given EU citizens’ right to free movement, particularly UK nationals in other Member States. The Government also thinks that this Directive would help to ensure that the ECHR rights are fully complied with across the EU. And by improving the trust Member States have in one another’s legal systems, the Government thinks that this Directive would help mutual recognition work more effectively, and promote judicial co-operation. From a financial perspective, the Government does not anticipate that the draft as it currently stands would incur significant increases in costs.

79.19 Turning to the detailed provisions of the Directive, the Minister reports that the Government is content with all of them. He adds that the Government supports recital eighteen in particular: it is important to have clarity about the relationship between this Directive and the ECHR as they both regulate the same area. In relation to Article 3(2) (essential documents to include decisions depriving a person of his liberty, the charge/indictment and any judgement), the Minister says he is content that the drafting is sufficiently specific to guarantee the rights of the defendant are protected, whilst taking account of differences between legal systems such as in the common law systems where, for example, there may not be a “judgment” to be translated.

**Ministers’ letters of 19 April, 9 June and 30 June**

79.20 The previous Parliamentary Under-Secretary of State at the Ministry of Justice (Lord Bach) wrote on 19 April to keep the previous Committee informed of progress in the negotiations. He explained that the intention was for the proposal to be agreed at first reading between the Council and European Parliament, and set out the proposed timetable.

79.21 The Secretary of State at the Ministry of Justice then wrote on 9 June informing the Committee that he had deposited the agreed final draft of the Directive in Parliament and a further Explanatory Memorandum. He also explained that on 27 May COREPER had agreed the final draft of the Directive (document (b)), which was expected to be voted on in plenary in the European Parliament on 14 June. He added:

“It is unfortunate that in the post-election period the Committee has not had the opportunity to consider this later text and I apologise for the fact that agreement to this text was an override of the Scrutiny Reserve Resolutions. I assure you that this was purely due to the exceptional circumstances surrounding the election, allied with the speed of negotiations. Throughout the negotiation progress the UK has taken into consideration the position of the Scrutiny Committees. My officials have also provided updates to the Clerk of the Committee on the progress of the negotiations and explained that it was likely that there would be agreement to a first reading deal before the Committees met following the election”.

79.22 On 30 June the Minister wrote again to confirm that the European Parliament voted on the Directive on 16 June with an overwhelming majority in support: 637 votes in favour to 21 against and 19 abstentions. The draft will be adopted at a future meeting of the Justice and Home Affairs Council. The Minister repeats his regret that scrutiny has been
overridden but reminds the Committee that the Government had taken our predecessors views into account during the negotiations and kept it informed of the progress of the negotiations and the likelihood of a first reading deal.

**Conclusion**

79.23 We thank the previous Minister for his helpful letter and the current Minister for his Explanatory Memorandum and further letters. All are examples of how the Committee should be kept informed of significant developments in negotiations with the European Parliament under the ordinary legislative procedure. Early warning of a first reading deal is particularly important, as the trilogue negotiations are opaque and often hurried.

79.24 Our predecessors stated before that they supported this initiative because there was evidence of a need to improve translation and interpretation rights across the EU, and to minimise the risks of miscarriages of justice, particularly for UK nationals in other Member States.

79.25 We follow the same approach. And we note that the UK’s objectives have either been preserved or met in the negotiations with the European Parliament.

79.26 In the particular circumstances of the election we understand that the scrutiny override was unavoidable.

79.27 We duly clear documents (a) and (b) from scrutiny.
80 Enhanced Co-operation — applicable law in certain matrimonial matters

<table>
<thead>
<tr>
<th>(a)</th>
<th>Draft Council Decision authorising enhanced cooperation in the area of the law applicable to divorce and legal separation.</th>
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<tr>
<td>(31450)</td>
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<td>8143/10</td>
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<td>COM(10) 104</td>
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<tr>
<td>(b)</td>
<td>Draft Council Regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.</td>
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<tr>
<td>(31451)</td>
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<td>8176/10</td>
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<td>COM(10) 105</td>
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Legal base
- a) Article 329(1) TFEU; QMV; consent
- b) Article 81(3) TFEU; unanimity; consultation

Document originated
- a) and b) 24 March 2010

Deposited in Parliament
- a) and b) 25 May 2010

Department
- Ministry of Justice

Basis of consideration
- EM of 25 May 2010 and Minister’s Letter of 21 June 2010

Previous Committee Report
- None

To be discussed in Council
- Political agreement reached, Home Affairs Council 3–4 June 2010

Committee’s assessment
- Legally and politically important

Committee’s decision
- (a) and (b) cleared

Background

80.1 The 1968 Brussels Convention (now Council Regulation 44/2001) prescribes rules on jurisdiction for most civil and commercial matters but does not apply to matrimonial proceedings. Council Regulation 2201/2003 sets out rules concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility. This Regulation does not, however, determine the applicable law in relation to divorce proceedings.

80.2 Whether the law of the EU should also determine rules on applicable law in divorce proceedings was a question first broached in the Vienna Action Plan in December 1999. The Hague Programme, adopted by the European Council in November 2004, called upon the Commission to bring forward a number of proposals in the area of matrimonial law including, in 2005, a draft instrument on the recognition and enforcement of decisions on maintenance together with proposals on the conflict of laws in matters relating to divorce. In April 2005 the Commission published a Green Paper on applicable law and jurisdiction on divorce matters.

80.3 The Commission’s original proposal for a Regulation on choice of law in divorce (also known as Rome III) was published in July 2006 (Document 11818/06). The United
Kingdom did not opt into this proposal, largely on the grounds that family courts in the UK do not apply foreign law. The Government expressed concern that applying the law of a foreign jurisdiction in the UK could involve considerable practical difficulties, cause delay and increase costs because it might be necessary to call expert evidence as to the foreign law. During negotiation of the Rome III proposal it became clear that some Member States had fundamental concerns and the Justice and Home Affairs Council in June 2008 noted that the necessary unanimity could not be reached.

80.4 Subsequently ten Member States (Austria, Bulgaria, France, Greece, Hungary, Italy, Luxembourg, Romania, Slovenia and Spain) addressed requests to the European Commission indicating that they wanted to establish enhanced cooperation between themselves in this area of law. They asked the Commission to submit a proposal to that effect. Documents (a) and (b) are the Commission’s response to those requests.

The Document

80.5 Document (a) is a proposed Council Decision to authorise enhanced cooperation in this area. The Commission argues that the legal conditions for enhanced cooperation have been met. As the Council had agreed that the objectives of the original Rome III proposal could not be attained within a reasonable period the Commission believes that the requirement under Article 20(2) of the Treaty on European Union that enhanced cooperation be a last resort has been met. As ten Member States had made the request the necessary requirement for the participation of at least nine Member States has also been satisfied. The Commission also considers that conflict of law rules in family law constitute an “area” covered by the Treaties as required under Article 329(1) of the Treaty on the Functioning of the European Union (TFEU). By restricting the proposal to conflict of law rules the Commission is satisfied that the proposed enhanced cooperation would not affect the existing acquis, in accordance with Article 326 TFEU. It also believes that such a proposal will not undermine the internal market and economic, social and territorial cohesion; will not constitute a barrier to or discrimination in trade between Member States or distort competition between them; and that it would respect the competences, rights and obligations of those Member States not participating under Articles 327 to 329 TFEU.

80.6 Document (b) is the associated proposed Council Regulation that implements the enhanced cooperation in this area. Unlike the original Rome III regulation this proposal covers only applicable law rules. There are no provisions on jurisdiction. The rules on applicable law are limited to divorce and legal separation and do not apply to annulments. The proposal allows spouses to select the law that will apply to their divorce from a range of four possibilities, which bear a suitable connection to their marriage. There is a specific requirement (contained in Article 3(1) of the proposal) that the law chosen must be in conformity with fundamental EU rights. In the absence of a choice by the parties the applicable law will be determined on the basis of a scale of successive connecting factors, based in the first place on the habitual residence of the spouses. Two particular safeguards are introduced, applicable to all cases. Firstly, where the applicable law makes no provision for divorce or does not grant the spouses equal access to divorce or legal separation on grounds of their sex, the law of the forum will apply. Secondly, a court can disregard a foreign law where the application of that law would be manifestly contrary to the public policy of the State of the court seized. The two safeguards thus partly overlap.
The Government’s view

80.7 In his Explanatory Memorandum the Lord Chancellor and Secretary of State for Justice (The Right Hon Kenneth Clarke) assures us that the Government does not intend to participate in the enhanced co-operation measure. The Minister further comments as follows:

“The UK did not opt in to the original proposal on Rome III as family courts in the UK are not accustomed to applying foreign law. There was concern that applying the law of a foreign jurisdiction in the UK could involve considerable practical difficulties, cause delay and increase costs because it might be necessary to call expert evidence as to the foreign law. The Government wishes the law of the forum to continue to apply to these categories of cases in the UK. It therefore does not intend to participate in the enhanced cooperation implementation measure.

“The Government considers that the legal requirements for the use of enhanced cooperation have been met in the Commission’s proposals. In particular, as it is a requirement that any measure on enhanced cooperation should not affect existing EU law the Government is pleased to see that the Commission’s proposal is restricted to applicable law rules and especially does not include rules on jurisdiction that could have affected the working of Council Regulation (EC) 2201/2003. The Government also believes that no significant legal issues arise in the use of enhanced cooperation in this area. Therefore while it does not intend to participate in the enhanced cooperation it will not object to the authorising measure being agreed.

“The Government regrets that the speed with which the Presidency has taken forward negotiations has meant that the Scrutiny Committees have not been in a position to give opinions on the Commission’s proposals. While the UK did ask the Presidency to allow more time for consideration, the momentum from other Member States has meant that political agreement on both is likely before the Committees are reconstituted. In such circumstances the Government intends to abstain from the decision on the authorising measure. As the Government has no plans to participate in the implementing proposal the UK will not have a vote. The Scrutiny Committees will note that the Government’s position is in line with the decision not to opt in to the original Rome III proposal. However, as a decision to participate in the enhanced cooperation may be made at a later date the Committees will still have an opportunity to provide opinions on this matter.”

80.8 Political agreement on both proposals was reached without a formal vote at the Justice and Home Affairs Council on 3–4 June. The Minister addresses this development in his subsequent letter of 21 June. He informs us that in line with “the position the UK had held for some time, namely that we had decided not to participate in the original proposal in 2006” the Government saw no reason “to prevent others who wished to proceed.” The Minister explains that whilst “a number of Member States intervened to support the use of enhanced cooperation” others, including the UK, made clear that they had Parliamentary scrutiny reservations. Member States reached political agreement to authorise enhanced cooperation without a vote. The Council also endorsed a general approach on key points in the proposed implementing Regulation.
Although the UK is not participating in the planned enhanced cooperation, the Minister nevertheless provides a brief update on the legal and political developments regarding the underlying civil judicial cooperation measure. The Minister informs us that the number of Member States interested in the measure has increased to 14 (Austria, Belgium, Bulgaria, France, Germany, Hungary, Italy, Latvia, Luxembourg, Malta, Portugal, Romania, Slovenia and Spain). He adds:

“In the European Parliament the JURI (Legal Affairs) Committee gave its unanimous support for the proposed authorisation Decision and the LIBE (Civil Liberties, Justice and Home Affairs) Committee has also indicated its approval. The Parliament confirmed its support at its plenary session on 16 June.

“For your information I enclose copies of the latest texts of each of these proposals. The changes that have been agreed to the proposed authorisation Decision are mainly technical. You will see that further changes will be needed to reflect the full list of Member States that have now agreed to participate in the enhanced cooperation.

“The changes to the proposed implementing Regulation are also mainly technical in nature and once again amendments will be necessary to ensure the full list of participating Member States is recorded (Recital 6). The main substantive changes are the introduction of Recital 10a which states that national law will determine how to deal with cases of multiple nationalities; Recital 21a and Article 7a which clarify that a Member State whose law does not provide for divorce or does not recognise the marriage in question will not be required to pronounce a divorce under the Regulation; Article 1(2) which clarifies the process which will allow Member States to join the enhanced cooperation later; and Article 3(2a) which stipulates that if the law of the forum allows, parties may designate the law applicable during the course of proceedings. Negotiations on this proposed Regulation will continue and are likely to conclude under the forthcoming Belgian Presidency. I shall keep your Committee informed of any significant further developments.”

**Conclusion**

80.10 We thank the Minister for his detailed comments. We broadly share the Government’s assessment of the two proposals and support the Government’s decision not to opt in to the enhanced co-operation measure.

80.11 We note that the Government does not directly express a view regarding the test for compliance with the subsidiarity principle and in particular on the issue of whether conflicts of law in this area can only be effectively resolved by Union action. We would welcome it if the Minister could address the question of compliance with the subsidiarity principle directly and in greater detail in future relevant cases. As the United Kingdom will not be participating in this measure, failure to do so in this case does not affect our decision to clear both proposals.
81 Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House

**Department for Business, Innovation and Skills**

<table>
<thead>
<tr>
<th>Reference</th>
<th>Document Title</th>
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<tr>
<td>(31417) 7474/10</td>
<td>Commission Communication — Report on progress in creating the internal gas and electricity market.</td>
</tr>
<tr>
<td>(31482) 8321/10</td>
<td>Commission Communication on Cohesion policy: Strategic Report 2010 on the implementation of the programmes 2007-2013.</td>
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<td>(31529) 8078/10 COM(10) 115</td>
<td>Draft Council Regulation amending Regulation (EC) No. 1001/2008 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel originating, inter alia, in Malaysia.</td>
</tr>
<tr>
<td>(31566) 9114/10 COM(10) 170</td>
<td>Commission Report on the state of data protection in the internal market information system (IMI).</td>
</tr>
<tr>
<td>(31578) 9166/10 COM(10) 179</td>
<td>Draft Directive laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (codified version).</td>
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<tr>
<td>(31598) 9348/10 COM(10) 187</td>
<td>Commission Communication: simplifying the implementation of the Research Framework Programmes.</td>
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Draft Council Decision on the position to be taken by the European Union within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States and the People's Democratic Republic of Algeria as regards the amendment of Article 15(7) of Protocol No. 6 to that Agreement, concerning the definition of the concept of "originating products" and methods of administrative cooperation.

Draft Council Decision on the position to be taken by the European Union within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States and the Republic of Tunisia, as regards the amendment of Article 15(7) of Protocol No. 4 to that Agreement, concerning the definition of the concept of "originating products" and methods of administrative cooperation.

Draft Council Decision on the position to be taken by the European Union within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States and the Kingdom of Morocco as regards the amendment of Article 15(7) of Protocol No. 4 to that Agreement, concerning the definition of the concept of "originating products" and methods of administrative cooperation.

Draft Council Decision on the position to be taken by the European Union within the Association Council created by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States and the Arab Republic of Egypt on the amendment of Article 15 (7) of Protocol 4 to that Agreement concerning the definition of the concept of "originating products" and methods of administrative cooperation.
Draft Council Decision on the position to be taken by the European Union within the Joint Committee created by the Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community and the Palestinian Liberation Organisation (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip on the amendment of Article 15 (7) of Protocol 3 to that Agreement concerning the definition of the concept of "originating products" and methods of administrative cooperation.

Draft Council Decision on the position to be taken by the European Union within the Association Council created by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, and the Hashemite Kingdom of Jordan, on the amendment of Article 15 (7) of Protocol 3 to that Agreement concerning the definition of the concept of "originating products" and methods of administrative cooperation.

Draft Council Regulation extending the definitive anti-dumping duty imposed by Council Regulation (EC) No. 1858/2005 on imports of steel ropes and cables originating, inter alia, in the People's Republic of China to imports of steel ropes and cables consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, and terminating the investigation in respect of imports consigned from Malaysia.

Commission Recommendation of 28 April 2010 on the research joint programming initiative on Agriculture, food security and climate change.


Draft Council Decision on the signature on behalf of the European Union of an Agreement between the European Union and Australia amending the Agreement on mutual recognition in relation to conformity assessment between the European Community and Australia.

Draft Council Decision on the conclusion of the Agreement between the European Union and Australia amending the Agreement on mutual recognition in relation to conformity assessment, certificates and markings between the European Community and Australia.
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<td>COM(10) 257</td>
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<td>COM(10) 258</td>
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<td>10610/10</td>
<td>Commission Communication on market reviews under the EU Regulatory Framework (3rd Report) — Further Steps towards the consolidation of the internal market for electronic communications.</td>
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<td>COM(10) 271</td>
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<tr>
<td>9306/10</td>
<td>Draft Council Regulation imposing a definitive anti-dumping duty on imports of silicon originating in the People's Republic of China, as extended to imports of silicon consigned from the Republic of Korea, whether declared as originating in the Republic of Korea or not, following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No. 1225/2009.</td>
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<td>COM(10) 202</td>
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<td>COM(10) 222</td>
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<td>10082/10</td>
<td>Commission Communication: A new impetus for European cooperation in Vocational Education and Training to support the Europe 2020 Strategy.</td>
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<td>COM(10) 296</td>
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<tr>
<td>9932/10</td>
<td>Draft Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cargo scanning systems originating in the People's Republic of China.</td>
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<td>9936/10</td>
<td>Draft Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain molybdenum wires originating in the People's Republic of China.</td>
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<td>11609/10 COM(10) 328</td>
<td>Draft Council Decision authorising the signature of an Agreement between the European Union and the Kingdom of Morocco establishing a Dispute Settlement Mechanism.</td>
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<td>11610/10 COM(10) 326</td>
<td>Draft Council Decision concluding an Agreement between the European Union and the Kingdom of Morocco establishing a Dispute Settlement Mechanism.</td>
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<tr>
<td>— COM(10) 334</td>
<td>Commission Seventh Annual Report on the overview of third country trade defence actions against the European Union (statistics up to 31 December 2009 but commentary on cases and text is updated to March 2010).</td>
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<tr>
<td>11638/10 COM(10) 321</td>
<td>Draft Council Decision authorising the signature of an Agreement in the form of a Protocol between the European Union and the Hashemite Kingdom of Jordan establishing a dispute settlement mechanism applicable to disputes under the trade provisions of the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States and the Hashemite Kingdom of Jordan.</td>
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<tr>
<td>11641/10 COM(10) 322</td>
<td>Draft Council Decision concluding an Agreement in the form of a Protocol between the European Union and the Hashemite Kingdom of Jordan establishing a dispute settlement mechanism applicable to disputes under the trade provisions of the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States and the Hashemite Kingdom of Jordan.</td>
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<td>11711/10 COM(10) 356</td>
<td>Commission Communication on the interim report on the state of development of roaming services within the European Union.</td>
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<td>11901/10 ADD 1 COM(10) 355</td>
<td>Commission Report on retail market monitoring: Towards more efficient and fairer retail services in the internal market for 2010.</td>
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Department for Communities and Local Government

(31489) 8439/10 COM(10) 133
Commission Communication on the social and economic integration of the Roma in Europe.

Department for Culture, Media and Sport

(31460) 8253/10 COM(10) 117
Draft Regulation concerning European Statistics on Tourism.

(31530) 8519/10 COM(10) 178

(31777) 11883/10 COM(10) 352
Commission Communication on Europe, the world’s No. 1 tourist destination — A new political framework for tourism in Europe.

(31781) 11927/10 COM(10) 361

(31819) 12446/10 COM(10) 390
Commission Report on the implementation of the European Agenda for Culture.

Department for Energy and Climate Change

(31442) 7790/10 COM(10) 90
Draft Council Decision on the conclusion, by the Commission, of the Agreement between the European Atomic Energy Community (Euratom) and the Department of the Energy of the United States of America (USDOE) in the field of nuclear security research and development.

(31568) 9141/10 COM(10) 191

(31583) 9354/10 COM(10) 203
Commission Report on the implementation of the Trans-European Energy Networks in the period 2007-2009 pursuant to Article 17 of Regulation (EC) No. 680/2007 and Articles 9(2) and 15 of Decision 1364/2006/EC.
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<tr>
<td>(31672) 10457/10 COM(10) 283</td>
<td>Draft Regulation amending Regulation (EC) No. 663/2009 establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy.</td>
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<tr>
<td>(31755) 11627/10 COM(10) 330</td>
<td>Commission Report on progress concerning measures to safeguard security of electricity supply and infrastructure investment.</td>
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<td>(31454) 8092/10 COM(10) 114</td>
<td>Commission Report assessing progress reported by Italy to the Commission and the Council on recovery of additional levy due by milk producers for the periods 1995/96 to 2001/02 (pursuant to Article 3 of Council Decision 2003/530/EC).</td>
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<tr>
<td>(31457) 8174/10 COM(10) 116</td>
<td>Commission Recommendation authorising the Commission to open negotiations on behalf of the European Union for the renewal of the Protocol to the Fisheries Partnership Agreement with the Federated States of Micronesia.</td>
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<tr>
<td>(31484) 8329/10 COM(10) 131</td>
<td>Commission Recommendation authorising the Commission to open negotiations on behalf of the European Union for the renewal of the Protocol to the Fisheries Partnership Agreement with the Democratic Republic of São Tomé e Principe.</td>
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<tr>
<td>(31490) 8279/10 COM(10) 118</td>
<td>Draft Council Decision on the conclusion of a voluntary partnership agreement between the European Union and the Republic of the Congo on forest law enforcement, governance and trade in timber and derived products to the European Union (FLEGT).</td>
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<tr>
<td>(31499) 8623/10 COM(10) 144</td>
<td>Draft Council Decision on the provisional application of the Fisheries Partnership Agreement between the European Union and Solomon Islands.</td>
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<td>COM(10) 249</td>
<td>Draft Regulation concerning European statistics on permanent crops.</td>
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<td>COM(10) 337</td>
<td>Commission Report on the German Alcohol Monopoly.</td>
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<td>COM(10) 359</td>
<td>Draft Directive on the marketing of material for the vegetative propagation of the vine.</td>
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<td>COM(10) 397</td>
<td>Draft Regulation providing for duty-free treatment for specified pharmaceutical active ingredients bearing an &quot;international non-proprietary name&quot; (INN) from the World Health Organisation and specified products used for the manufacture of finished pharmaceuticals and amending Annex I to Regulation (EEC) No.2658/87.</td>
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<td>SEC(10) 914</td>
<td>Recommendation 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 Guinea Bissau.</td>
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<td>SEC(10) 913</td>
<td>Recommendation 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 Cape Verde.</td>
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</table>
Draft Council Decision on signature of a voluntary partnership agreement between the European Union and the Republic of Cameroon on forest law enforcement, governance and trade in timber and derived products to the European Union (FLEGT).

Draft Council Decision on conclusion of a voluntary partnership agreement between the European Union and the Republic of Cameroon on forest law enforcement, governance and trade in timber and derived products to the European Union (FLEGT).

Food Standards Agency


Draft Council Regulation (EURATOM) laying down maximum permitted levels of radioactive contamination of foodstuffs and of feeding stuffs following a nuclear accident or any other case of radiological emergency.

Draft Council Decision authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize 59122x1507xNK603 (DAS-59122-7xDAS-Ø1507xMON-Ø0603-6) pursuant to Regulation (EC) No. 1829/2003.

Draft Council Decision authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize MON 88017 x MON 810 (MON-88Ø17-3 x MON-Ø081Ø-6) pursuant to Regulation (EC) No. 1829/2003.

Draft Council Decision authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize 1507x59122 (DAS-Ø1507-1xDAS-59122-7) pursuant to Regulation (EC) No. 1829/2003.

Draft Council Decision authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize MON89034xNK603 (MON-89Ø34-3xMON-ØØ6Ø3-6) pursuant to Regulation (EC) No. 1829/2003.

Draft Council Decision renewing the authorisation for continued marketing of products containing, consisting of, or produced from genetically modified maize Bt11 (SYN-BTØ11-1), authorising foods and food ingredients containing or consisting of field maize Bt11 (SYN-BTØ11-1) pursuant to Regulation (EC) No. 1829/2003 and repealing Commission Decision 2004/657/EC.
Draft Council Decision authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize Bt11xGA21 (SYN-BTØ11-1xMON-ØØØ21-9) pursuant to Regulation (EC) No. 1829/2003.

**Foreign and Commonwealth Office**

Draft Council Decision on the position to be adopted by the European Union within the ACP-EC Council of Ministers concerning the accession of the Republic of South Africa to the revised ACP-EC Partnership Agreement.


Council Decision adjusting the allowances provided for in Decision 2003/479/EC and Decision 2007/829/EC concerning the rules applicable to national experts and military staff on secondment to the General Secretariat of the Council.

Draft Council Decision on the release to international organisations and other third parties of EU classified information and documents generated for the purposes of EU missions established by the Council.


First Report on the implementation of the provisions of Protocol No. 3 to the 2003 Act of Accession on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus.


Draft Decision establishing the position to be adopted in the EU-Montenegro Stabilisation and Association Council on its rules of procedure.


Council Decision concerning the signing and conclusion of the Agreement between Montenegro and the European Union on security procedures for exchanging and protecting classified information.


Draft Council Regulation concerning certain restrictive measures in respect of Eritrea.

Commission 2009 Annual Report on the Macao Special Administrative Region.

2009 Annual Report on relations between the European Commission and national parliaments.


Draft Council Decision on the conclusion of a Protocol to the Euro-Mediterranean Agreement between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, on a Framework Agreement between the European Union and the Kingdom of Morocco on the general principles for the participation of Morocco in Union programmes.

Council Decision establishing a European network of independent non-proliferation think tanks in support of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction.

Draft Council Decision on support for activities of the Preparatory Commission of the Comprehensive Nuclear-Test Ban Treaty Organisation (CTBTO) in order to strengthen its monitoring and verification capabilities and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction.
(31810) Council Decision on support for IAEA activities in the areas of nuclear security and verification and in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction

Department of Health


Home Office

(31449) Draft Directive on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA.


(31458) Council Decision on the signing of the Arrangement between the European Union and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen acquis.

(31459) Council Decision on the conclusion of the Arrangement between the European Union and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen acquis.
Draft Council Decisions on the conclusion of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation’s association with the implementation, application and development of the Schengen acquis.

Draft Council Decision on the conclusion of a Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland.

Draft Council Decision concerning the signature of the Agreement between the European Union and Georgia on the readmission of persons residing without authorisation.

Draft Council Decision concerning the conclusion of the Agreement between the European Union and Georgia on the readmission of persons residing without authorisation.

Draft Council Decision concerning the signing of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas.

Draft Council Decision concerning the conclusion of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas.

Draft Regulation on freedom of movement for workers within the Union (codified version).

Draft Council Decision on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation’s association with the implementation, application and development of the Schengen acquis, relating in particular to judicial cooperation in criminal matters and police cooperation.

Draft Regulation amending Regulation (EC) No. 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement.

Draft Regulation amending Regulation (EC) No. 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement.

Commission Communication reaffirming the free movement of workers: rights and major developments.


Department for International Development


Draft Council Decision establishing the position to be adopted on behalf of the European Union within the Food Aid Committee as regards the extension of the Food Aid Convention, 1999.
Draft Council Decision on a EU position concerning the adoption of the decision of the Joint CARIFORUM-EC Council of the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, amending Annex IV to the Agreement for the purpose of incorporating the commitments of the Commonwealth of the Bahamas.

**HM Revenue and Customs**

Draft Council Decision on the position to be taken by the European Union within the Administrative Committee established by the International Convention on the Harmonization of Frontier Controls of Goods on the proposal to amend that Convention with a new Annex on the facilitation of borders crossing procedures for international rail freight.


**Department for Transport**

Commission Communication: Developing an EU civil aviation policy towards Brazil.


Draft Council Decision on the signature and provisional application of the Agreement on certain aspects of air services between the European Union and the Republic of Peru.

Draft Council Decision on the conclusion of the Agreement on certain aspects of air services between the European Union and the Republic of Peru.

Draft Council Decision on the compulsory application of Regulations No.1, 3, 4, 6, 7, 8, 10, 11, 12, 13, 13 H, 14, 16, 17, 18, 19, 20, 21, 23, 25, 26, 28, 31, 34, 37, 38, 39, 43, 44, 46, 48, 55, 58, 61, 66, 67, 73, 77, 79, 80, 87, 89, 90, 91, 93, 94, 95, 97, 98, 99, 102, 105, 107, 110, 112, 116, 118, 121, 122, 123 and 125 of the United Nations Economic Commission for Europe for the type-approval of motor vehicles, their trailers and systems, components and separate technical units intended therefor.

Draft Council Decision on the compulsory application of Regulation No. 100 of the United Nations Economic Commission for Europe for the approval of motor vehicles with regard to electric safety.

Governments of the Member States of the European Union, meeting within the Council on the signature and provisional application of the Common Aviation Area Agreement between the European Union and its Member States and Georgia.

Governments of the Member States of the European Union, meeting within the Council, on the conclusion of the Common Aviation Area Agreement between the European Union and its Member States.


Commission Recommendation of 22 March 2010 on the scope and effects of legal tender of euro banknotes and coins.

Commission Staff Working Document: *Innovative financing at a global level.*

Draft Council Implementing Decision authorising the Federal Republic of Germany and the Grand Duchy of Luxembourg to apply a measure derogating from Article 5 of Directive 2006/112/EC on the common system of value added tax.

Draft Council Implementing Decision authorising the Kingdom of the Netherlands to apply a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax.

Draft amending budget No. 3 to the general budget 2010 — Statement of Expenditure by Section — Section III — Commission.

Draft Decision on the mobilisation of the Flexibility Instrument.

Draft Amending Budget No. 4 to the general budget 2010 — Statement of Expenditure by section — Section III — Commission.

Commission Communication: Adaptation of the ceiling of own resources and of the ceiling for appropriations for commitments following the decision to apply FISIM for own resources purposes.

Commission Communication on Tax and Development — Cooperating with Developing Countries on Promoting Good Governance in Tax Matters.


Draft Council Implementing Decision authorising Germany, Italy and Austria to introduce a special measure derogating from Article 193 of Directive 2006/112/EC and amending Decision 2007/250/EC to extend the period of validity of the authorisation granted to the United Kingdom.


Draft Council Regulation amending Regulation (EC) No. 974/98 as regards the introduction of the euro in Estonia.

Draft Council Decision on the adoption by Estonia of the euro on 1 January 2011.

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<td>(31699)</td>
<td>10859/10</td>
<td>Draft Council Implementing Decision authorising Poland to introduce a special measure derogating from Article 26(1)(a) and Article 168 of Directive 2006/112/EC on the common system of value added tax.</td>
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<tr>
<td>(31705)</td>
<td>11027/10</td>
<td>Draft Council Implementing Decision authorising France and Italy to introduce a special measure derogating from Article 5 of Directive 2006/112/EC on the common system of value added tax.</td>
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<tr>
<td>(31721)</td>
<td>11208/10</td>
<td>Draft amending Budget No. 5 to the general budget 2010 — General statement of revenue.</td>
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<tr>
<td>(31735)</td>
<td>11387/10</td>
<td>Draft Council Implementing Decision authorising Romania to introduce a special measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax.</td>
</tr>
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</table>
Appendix 1: reports on Council meetings

*When the House is sitting, we table a written Question on the day of each meeting of the Council of Ministers asking for a report on the Council meeting and on the activities of UK Ministers in it. However, for Council meetings taking place when the House is in recess we ask Departments to write to us instead. Replies concerning meetings that have taken place since 7 April 2010 are published below.*

*Letter from the Parliamentary under Secretary of State at the Home Office (Admiral the Lord West of Spithead GCB DSC) to the Chairman of the Committee*

*Justice and Home Affairs Council, 23 April 2010*

I am writing to update you on the Justice and Home Affairs (JHA) Council which was held in Brussels on 23 April. Lord Bach from the Ministry of Justice and Kenny MacAskill the Scottish Secretary for Justice were unable to attend due to the problems caused by the volcanic ash cloud. Due to this issue the Council was also reduced to one day and took place in Brussels instead of Luxembourg.

The Council, beginning in Mixed Committee with the Schengen States, was asked to agree Council Conclusions on the Second Generation Schengen Information System (SISII). The Commission explained that the timetable had been followed and the first milestone test had been passed. I supported the Council Conclusions as drafted and said that we should be applauding a successful outcome to the milestone tests. The Commission then confirmed it would present a global schedule in June which would then be agreed at the October Council. The Presidency explained that whilst the Council Conclusions were accepted since the Council was not quorate they would be forwarded to the May 10th General Affairs Council for formal adoption as an "A" point.

Next there was a presentation by the Austrian delegation on lessons learnt following their experience as co-hosts of the European Football Championships in 2008 (Euro 2008). They explained how they had benefited greatly from a European network, and the pan-European training programme had also been important. They were currently providing advice and help to Poland and Ukraine for the Euro 2012 Championships. They felt that the Committee on Internal Security (COST) would be the appropriate body to discuss this type of operation. The UK strongly supported Austria’s approach.

Following Mixed Committee, the Commission presented the draft Stockholm Programme Action Plan — a Communication which sets out their plans and timetable for taking forward the Stockholm Programme (the next five year EU work programme for justice and home affairs). The Council considered interior issues in the morning and justice in the afternoon. Member States welcomed an Action Plan in principle. Discussion centred on the need to ensure that the Action Plan faithfully reflected the content of the Stockholm Programme. The UK supported the implementation of the Stockholm Programme as
agreed by Heads of Government last December, and was pleased to see a timetable for the actions in the Programme.

The Presidency then introduced a draft negotiating mandate for the EU-US Terrorist Finance Tracking Programme agreement, underlining the need to reach an agreement as soon as possible; an outcome also desired by the US. The Presidency also proposed a joint Council and Commission declaration stating the need to establish an acceptable legal basis for the transfer of data to the US. I echoed the need to reach a quick agreement to fill the security gap, noting that not reaching an agreement could have a direct impact on the security of Member States. I believed that the negotiating mandate struck the right balance between protecting security and protecting citizens’ data, and as such supported it, as well as the text of the accompanying declaration. The Presidency concluded that there was political agreement but since the Council was not quorate, the draft negotiating mandate would be forwarded to the May 10th General Affairs Council for formal adoption as an "A" point.

The Presidency then updated the Council on the EU-US JHA Ministerial Troika which took place in Madrid on 8-9 April, which focused predominantly on the post-Toledo Informal Council follow-up which covered aviation security, information sharing, research and international cooperation.

The Commission updated the Council on the Canada-Czech Republic visa issue, stating that it would not be introducing reciprocal measures against Canada for visa imposition on the Czech Republic. On 15 March Canadian, Czech and Commission officials reached agreement on measures that, when fulfilled, would allow Czech Republic nationals visa free access to Canada. The Presidency confirmed this issue has been put on the agenda of the EU/Canada summit on the 5 May.

Over lunch Justice Ministers, Commissioner Reding and I discussed the possible future creation of a European Public Prosecutors Office (EPP). Both the Presidency and Commission argued strongly for setting up the EPP quickly, with an initial mandate covering fraud against the Community budget. I made clear that the UK opposed the creation of an EPP.

After lunch Justice Ministers had an orientation debate about the EU’s Accession to the European Convention on Human Rights. The Presidency is seeking to make progress on a mandate for negotiation with the Council of Europe. A number of Member States, including the UK, noted that the issues involved were important and complex and would need further detailed discussion.

The Presidency then adopted Council Conclusions on actions in the field of justice that can be taken to assist the economic recovery. The Presidency reported that the e-justice portal could be launched in July.

Under AOB problems with visas in third countries caused by the eruption of the Icelandic volcano were discussed. The Commission was disappointed that certain non-EU countries had not responded during the recent crisis. The Commission saw the need for more developed cooperation around Consular affairs for those Member States who are not
ordinarily represented; the ideal forum for this could be via the common consular cooperation group.

29 April 2010

Letter from the Minister of Europe at the Foreign and Commonwealth Office (Chris Bryant MP) to the Chairman of the Committee

General Affairs Council and Foreign Affairs Council, 25-26 April 2010


The agenda items were as follows:

General Affairs Council

The provisional summary of Conclusions adopted, including ’A’ points, can be found at:


External Action Service (EAS)

The Presidency sought Ministers’ views on a draft version of a decision establishing the EAS. Following a discussion, a text was agreed which will allow Baroness Ashton to begin consultations with the European Parliament. It was noted that a number of Member States still needed to conclude their Parliamentary scrutiny requirements. I made it clear that this applied to the UK. The final decision will be taken once the discussions with the European Parliament have been completed.

European Citizens’ Initiative

A number of Ministers set out their views on the European Citizens’ Initiative. The main themes of the discussion were admissibility and verification checks; the number of signatories required from each Member State and the conditions for collecting supporting statements; and verification by Member States about online collection systems.

The Presidency concluded that it would aim to reach a general approach at the June General Affairs Council.

I underlined our commitment to make this as open, as transparent and as readily accessible a process as possible.
Europe 2020

The Presidency set Tout work which was underway in the sectoral Councils to take forward the Conclusions of the Spring European Council. Member’ States would have a further opportunity to express their views at the June General Affairs Council.

Volcanic ash disruption of airspace

The Presidency set out the current situation and the actions taken by the EU. Sweden called on the Council Secretariat to investigate the, rise of video-conferencing to help the PU coordinate its response to such events in the future.

Foreign Affairs Council

Foreign and Defence Ministers met both in joint and separate sessions chaired by Baroness Ashton. The full text of all Conclusions adopted can be found at:


European Defence Agency(EDA)

Defence Ministers heard a presentation by the Chief Executive, on the Agency’s 2011-13 work plan and noted the increased emphasis on cooperation with NATO. They also received a presentation on the work of the team of five admirals on the integration of maritime surveillance systems.

Defence Ministers’ FAC

During an informal discussion over dinner with High Representative Baroness Ashton, Defence Ministers reached broad agreement that they would continue to meet as a formation of the Foreign Affairs Council under the chairmanship of the High Representative to discuss issues falling wholly within their responsibility, as well as joint sessions with Foreign Ministers. Ministers were also briefed by the High Representative on the establishment of the European External Action Service and discussed ongoing EU-led operations in Bosnia, Somalia and the Indian Ocean.

During their formal session, Defence ministered discussed the continuing development of a maritime surveillance strategy and lessons learnt from the EU’s involvement in the Haiti earthquake disaster. On the latter, there was broad agreement that while EU coordination mechanisms for dealing with such circumstances could be improved, the focus should be on achieving effect on the ground rather than creating additional institutions.

Afghanistan

Defence and Foreign Ministers discussed the way forward on the implementation of the EU Action Plan for Enhanced Engagement in Afghanistan and Pakistan and noted the first six-monthly implementation report.
The NATO Secretary General, Anders Fogh Rasmussen, joined the meeting for a discussion of military and civilian cooperation on and prospects for further EU - NATO cooperation in Afghanistan. He set out the recent NATO agreement in Tallinn on the framework for transition to Afghan ownership. He appealed for further contributions to the NATO Training Mission and stressed the importance of coordinating EUPOL's contribution with NATO's, allowing it to focus its efforts on areas that EUPOL were not able to deploy.

**Sudan**

Ministers agreed Conclusions and discussed the recent elections. Although the elections had not met international standards, they were an important milestone in the lead-up to the referendum on the succession of Southern Sudan under the Comprehensive Peace Agreement. A number of Member States expressed a wish to see greater EU engagement on the issue. Baroness Ashton concluded that Ministers would have to discuss the issue again ahead of the referendum of January 2011.

**Kyrgyzstan**

Baroness Ashton set out the EU’s approach in line with the agreed Conclusions. Member States broadly agreed on the need to encourage preparations for new elections and to provide the necessary support.

**Burma**

Member States discussed the worsening situation in Burma and agreed Conclusions, expressing concern over its election laws and calling for genuine dialogue between all ethnic and opposition groups and the release of political prisoners. Restrictive measures were renewed for another 12 months.

I reiterated our commitment to the sanctions and to a tough approach towards the Burmese region.

**EU Resource Allocation**

Ministers had a preliminary discussion on how to align EU resources with strategic priorities. There was agreement for Ministers to revert to this issue at a later date.

**AOB**

**Somalia/Piracy**

Ministers welcomed Baroness Ashton’s plans to engage with those countries in the region in May that could help achieve EU objectives with regard to the prosecution of pirates.

4 May 2010
Letter from the Secretary of State, Department for Transport (Andrew Adonis) to the Chairman of the Committee

EU Transport Council, 4 May 2010

I attended the extraordinary session of the EU Transport Council in Brussels on 4 May.

The Council discussed an information note to the Commission put together by Vice-President Kallas, together with Vice-President Almunia and Commissioner Rehn, on the impact of the volcanic ash cloud on air transport.

The disruption to air travel by the volcanic ash was previously discussed on 19 April at an extraordinary videoconference meeting of EU transport Ministers. During that discussion, Ministers stressed the need to have a coordinated European response through the European Commission and Eurocontrol. On this basis, the Presidency together with the Commission considered that it would be appropriate to convene an extraordinary Council on 4 May to evaluate the European response and to consider the impact of the crisis on the European airspace.

The Commission’s information note provides a preliminary assessment of the European response. It proposes a number of measures including the review the European methodology for safety risk assessments and safety management, particularly in cases of natural disasters such as the Eyjafjallajokull eruption. It also includes a recommendation to accelerate the full implementation of the European Single Sky initiative.

At the Council, I stressed the urgent need to ensure the manufacturers’ technical standards and guidance with respect to aircraft operation in the presence of volcanic ash are reasonable and their implications fully thought through. I further expressed that the work of individual member states in this area needed to be followed-up in a more coordinated manner at EU level with the European Aviation Safety Agency (EASA) playing a more prominent role in engaging with the manufacturers.

The Council recognised that the airlines sustained considerable losses while airspace was closed and took note of the assessment work being undertaken by the Commission. I asked for further work to be undertaken on the financial impact to assess the precise nature of the costs to industry.

I also called for a broader review of the risk assessment and risk management process with respect to aircraft operation, and supported the Commission’s suggestion that work is needed to ensure that we respond in an appropriate way not only to volcanic eruptions, but also more widely to other issues that could lead to airspace closures or major disruption of aviation. I agreed that the EU should work through EASA and the International Civil Aviation Organisation on this issue.

The United Kingdom has taken the position of supporting the Single European Sky initiative since its inception in 2004. Accordingly, I supported the view that Member States and the Commission should work closely together to make as much progress as possible to accelerate its implementation.
In its conclusions, the Council agreed on a series of measures, including the acceleration of the Single European Sky initiative by bringing forward the nomination of Eurocontrol as Network Manager and by accepting a proposal from the Commission for the role of FAB (Functional Airspace Block) Coordinator being established as soon as possible. The Council also agreed on the need to develop a new European methodology for safety risk assessment and risk management in relation to the closure and reopening of European airspace. The Council invited the Commission to present a report, in time for it to be discussed at the next Transport Council on 24 June.

6 May 2010

**Letter from the Minister for Culture, Communications and Creative Industries at the Department for Culture, Media and Sport (Ed Vaizey MP) to the Chairman of the Committee**

**Education, Youth and Culture Council — 10 May 2010**

I am writing to inform you of the outcomes from the Culture, Audiovisual and Sport sections of the Education, Youth and Culture Council of Ministers meeting which took place on 10 May. The UK was represented at the meeting by the UK’s Deputy Permanent Representative to the EU, Andy Lebrecht.

**European Heritage Label – Progress Report**

The Presidency reported to the Council on progress with the establishment of a European Heritage Label.

The European Heritage Label has existed as a voluntary inter-governmental initiative, in which 17 EU member states and Switzerland participate. In November 2008, the Council requested that this initiative be transformed into a Community action in order to extend it and improve its functioning. The Commission proposed a draft decision in March, which is currently being examined in both the European Parliament and the Council.

An Explanatory Memorandum (EM) on the proposal for the European Heritage Label was submitted to your Committee on 9 April for consideration.

**European Capital of Culture events 2014 – Adoption of Council Decision**

The Council designated Riga in Latvia and Umeå in Sweden as European Capitals of Culture for 2014.

An EM was requested on this Council Decision on 28 April. As Parliament was in Dissolution at this time it was not possible to gain scrutiny clearance from your Committee prior to the Council meeting. The policy decision for the inclusion of new Member States in the European Capital of Culture programme was made in 2005 and cleared scrutiny in June 2005. This subsequent draft Council decision was a routine and non-controversial decision on which cities would take part in the European Capital of Culture event for the year 2014 and has no implications for the UK. Therefore, in line with paragraph 3(a) of the 1999 Scrutiny Reserve Resolution, the UK took the decision to override scrutiny on this
occasion. I hope you will understand why it was decided, given all the circumstances, to agree to the Council Decision.

**Contribution of culture to regional and local development – Council Conclusions**

The Council adopted, without debate, conclusions on the contribution of culture to regional and local development. The Council Conclusions suggest how Member States can strengthen the framework for applying public policies adopted nationally and then taken forward locally; improving the basis for investment in culture; how we can progress on sustainable cultural tourism; how culture and creativity can foster human capital and employability; the role of culture in fostering social cohesion; and the value that the EU might be able to provide in these areas.

**A competitive, inclusive and sustainable Europe: contribution of culture and creativity – Exchange of Views**

The Council exchanged views on the contribution of culture and creativity to a competitive, inclusive and sustainable Europe.

Ministers stressed the importance of fully incorporating creativity and the role of cultural industries into the "Europe 2020" strategy for growth and jobs, in particular into the implementation of the flagship initiatives.

Delegations underlined the important contribution of cultural and creative industries to innovation, economic growth and employment in the EU. It was said that a favourable environment for SMEs and reduced bureaucracy as well as adequate protection of intellectual property rights were needed to help the cultural sector fulfil its economic potential.

Some Member States highlighted how cohesion policy instruments could support cultural and creative industries and urged a better use of existing instruments, for instance structural funds or the MEDIA programme.

**Europeana: next steps**

The Council adopted conclusions outlining the next steps for the European digital library, Europeana. It invited the Commission to present a proposal for the sustainable, long-term financing of Europeana, together with a vision — including as regards governance issues — for consolidating Europeana into an essential reference tool for the digital era. The UK intervened to support the voluntary nature of MS financial contributions.

**Treaty of Lisbon and sport**

Ministers discussed EU sports policy for the first time in a formal Council setting, given that the Treaty of Lisbon has added specific EU competence for cooperation on sports issues.
Member States underlined that EU action needed to have clear added value by comparison with national plans, respecting the subsidiarity principle and the specific nature of sport. Ministers suggested the following areas for possible EU action:

- Social and educational functions of sport, e.g. social inclusion through sport and health-enhancing physical activity, dual careers for athletes;
- Sport structures, in particular those based on voluntary activity;
- Fairness and openness in sport, including the fight against racism, discrimination and violence;
- Physical and moral integrity of sportsmen and sportswomen, especially the fight against doping and the protection of minors;
- Dialogue and close cooperation with the sports movement.

Ministers agreed that a possible EU financial programme supporting sports activities for the years 2012 to 2013 ought to have a limited number of priorities.

**Any Other Business**

Under Any Other Business, France raised the role of culture in the reconstruction of Haiti, with some Member States lending their support to the French proposal to restore and modernise Haiti’s one major theatre in Port-au-Prince.

28 May 2010

**Letter from the Minister of Europe at the Foreign and Commonwealth Office (David Lidington MP) to the Chairman of the Committee**

**General Affairs Council and Foreign Affairs Council, 10 May 2010**

I am writing to inform you of the outcome of the General Affairs and Foreign Affairs Councils in Brussels on 10 May. The UK was represented by Sir Kim Darroch, UK Permanent Representative to the EU, at both Councils whilst these met in Foreign Ministers’ format. Anthony Smith, Director for Europe and Development Relations DIFD, attended the Development Ministers’ Foreign Affairs Council.

The agenda items were as follows:

**Foreign Affairs Council**

Somalia and Piracy

Ministers discussed the prosecution of pirates captured by ships taking part in Operation EU NAVFOR Atalanta. There was a broad welcome for Baroness Ashton’s plans to visit the affected region. Ministers also noted that the UN Conference on Somalia, to be held in Istanbul on 22 May, was an opportunity to work with other interested groups and organisations.

Nuclear Non-Proliferation

There was a discussion on nuclear issues focusing on the new START treaty, the Washington Nuclear Security Summit in April and the Nuclear Non-Proliferation Treaty (NPT) review conference that is taking place in New York (3-28 May). Ministers broadly welcomed the comments made by Baroness Ashton at the beginning of the New York meeting.

Iran

The discussion on Iran focused on its nuclear programme, including the EU’s support to the UN Security Council process on new restrictive measures against Iran. Ministers also discussed human rights in Iran.

EU-Russia Summit

The Council looked at priorities for the 25th EU-Russia Summit to be held in Rostov-on-Don on 31 May to 1 June. These include the Partnership for Modernisation; possible progress towards visa liberalisation (for Schengen countries only); the global economic crisis; climate change; energy issues; and Russia’s accession to the World Trade Organisation.

EU Relations with Strategic Partners

Over lunch, Ministers continued their series of discussions on the EU’s relations with strategic partners, this time focusing on China. Baroness Ashton noted these discussions would continue in the lead up to September’s European Council.

Middle East Peace Process

Baroness Ashton issued a declaration on behalf of the EU welcoming the launch of proximity talks between Israel and the Palestinians. The text can be found at:


Madagascar

The Presidency (Moratinos) raised the European Parliament’s concern about the ongoing crisis and the need for the EU to work closely with the African Union and the Southern African Development Community.
Meeting of Development Ministers

EU Development Ministers discussed the EU’s engagement in Haiti, the EU position for the UN High Level Meeting on the Millennium Development Goals (MDGs) in September and the External Action Service.

Development Commissioner Piebalgs and Baroness Ashton briefed Ministers on EU reconstruction efforts in Haiti. During an orientation debate on the MDGs, the Commission set out proposals for a joint EU position including a mechanism for improved transparency on aid volume commitments. These will be explored in the June Foreign Affairs Council. On the EAS, Baroness Ashton and Commissioner Piebalgs briefed Ministers on plans for the new EAS structures and restated their commitment to work together.

General Affairs Council

The provisional summary of Conclusions adopted, including ‘A’ points, can be found at:

June European Council

The Presidency (Moratinos) presented a draft agenda for the 17 June European Council. The agenda includes the Europe 2020 strategy, the G20 Toronto Summit, UN millennium development goals and climate change.

19 May 2010
Formal minutes

Wednesday 8 September 2010

Members present:

Mr William Cash, in the Chair

Mr James Clappison  Michael Connarty  Jim Dobbin  Tim Farron  Nia Griffith  Chris Heaton-Harris  Kelvin Hopkins

Chris Kelly  Tony Lloyd  Penny Mordaunt  Stephen Phillips  Jacob Rees-Mogg  Henry Smith

1. Declaration of Interests

Members declared their interests, in accordance with the Resolution of the House of 13 July 1992 (see Appendix).

2. Election of Chair

Mr William Cash was called to the Chair.

3. Committee working methods

The Committee deliberated.

Resolved, That the Committee’s normal time of meeting be Wednesday at Two o’clock.

Ordered, That the public be admitted during the examination of witnesses unless the Committee orders otherwise.

Resolved, That the Committee approves the use of electronic equipment by Members during public and private meetings, provided that they are used in accordance with the rules and customs of the House.

4. Proposals for overseas travel

Resolved, That the Committee visit Brussels in January 2011 in connection with its work on the scrutiny of European documents.

Resolved, That the Committee visits Budapest in December 2010 in connection with its scrutiny work during Hungary’s presidency of the European Union, and that the Chair seek approval of the Liaison Committee for expenditure in connection with the visit.

5. Scrutiny of Documents

The Committee deliberated.
Draft Report, proposed by the Chairman, brought up and read.

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

Paragraphs 1.1 to 43.43 read and agreed to.

Paragraph 5, Headnote read, amended and agreed to.

Paragraphs 5.1 to 5.18 read and agreed to.

Paragraph 5.19 read, amended and agreed to.

Paragraphs 5.20 to 6.26 read and agreed to.

Paragraph 7, Headnote read amended and agreed to.

Paragraphs 7.1 to 7.11 read and agreed to.

Paragraph 7.12 read, amended and agreed to.

Paragraph 8, Headnote read, amended and agreed to.

Paragraphs 8.1 to 8.17 read and agreed to.

Paragraph 8.18 read, amended and agreed to.

Paragraph 9.1 to 34.13 read and agreed to.

Paragraph 34.14 read, amended and agreed to.

Paragraphs 35.1 to 66.35 read and agreed to.

Paragraph 66.36 read, amended and agreed to.

Paragraph 66.37 to 70.8 read and agreed to.

Jacob Rees-Mogg declared a pecuniary interest in relation to the Commission Communication: Regulating financial services for sustainable growth as set out in his entry in the Register of Members’ Interests.

Paragraphs 71.1 to 81 read and agreed to.

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

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

[Adjourned till Wednesday 13 September 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 Standing Committees); and

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

The expression “European Union document” covers —

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

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

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

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

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

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

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

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

Current membership

Mr William Cash MP (Conservative, Stone) (Chair)
Mr James Clappison MP (Conservative, Hertsmere)
Michael Connarty MP (Labour, Linlithgow and East Falkirk)
Jim Dobbins MP (Labour/Co-op, Heywood and Middleton)
Julie Elliott MP (Labour, Sunderland Central)
Tim Farron MP (Liberal-Democrat, Westmorland and Lonsdale)
Nia Griffiths 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)