



House of Commons

European Scrutiny Committee

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# **Forty-sixth Report of Session 2010–12**

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**Documents considered by the Committee on 9 November  
2011, including the following recommendation for debate:**

EU Structural and Cohesion Funds





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EU Structural and Cohesion Funds

*Report, together with formal minutes*

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## Notes

### Numbering of documents

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

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

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

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

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

### Abbreviations used in the headnotes and footnotes

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

### 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](http://www.parliament.uk/escom). The website also contains the Committee's Reports.

Explanatory Memoranda (EMs) can be downloaded from the Cabinet Office website:  
<http://europeanmemorandum.cabinetoffice.gov.uk/search.aspx>.

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

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## 1 EU Structural and Cohesion Funds

(33217) 15243/11 COM(11) 615	Draft Regulation of the European Parliament and Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006
+ ADDs 1–4	Commission staff working papers

<i>Legal base</i>	Article 177 TFEU; co-decision; QMV
<i>Document originated</i>	6 October 2011
<i>Deposited in Parliament</i>	13 October 2011
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	EM of 2 November 2011
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	16 December 2011
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate in European Committee C

### Background

1.1 One of the objectives of the European Union is to “promote economic, social and territorial cohesion, and solidarity among Member States.”<sup>1</sup> Successive enlargements of the EU have significantly increased differences in levels of development against a variety of economic and social indicators. The EU’s cohesion policy seeks to reduce these disparities by using the EU’s Structural and Cohesion Funds to provide targeted financial assistance to Member States and their regions. These Funds account for more than one third of the EU’s budget and amount to €347 billion for the period 2007–13.<sup>2</sup> They comprise the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund.

1.2 The current objectives of EU cohesion policy are set out in a Regulation adopted in 2006.<sup>3</sup> Most of the Funds (€212 billion for 2007–13) are earmarked for programmes supporting the Convergence objective. This objective seeks to increase the competitiveness of the least-developed regions (those where GDP per head is less than 75% of the EU average) through higher growth, productivity and rates of employment. The remaining Funds are divided between the Regional Competitiveness and Employment objective (€55 billion), which promotes growth and employment in regions not covered by the

1 See Article 3(3) of the Treaty on the European Union.

2 The current conversion rate is €1 = £0.8731.

3 Council Regulation (EC) No 1083/2006, OJ No. L 210, 31.07.2006, pp. 25–78.

Convergence objective, and the European Territorial Cooperation objective (€7.8 billion) which encourages cross-border cooperation. The Cohesion Fund provides nearly €70 billion to support investment in transport and environmental infrastructure in the 15 Member States (not including the UK) which currently have a GDP per head of less than 90% of the EU average.

1.3 In November 2010, the Commission published a Communication on the future of EU cohesion policy which highlighted the challenges facing the EU in light of a deep economic crisis, rising unemployment and poverty, and the need to switch to a low-carbon economy. It proposed a number of significant reforms to EU cohesion policy which, if agreed, would take effect in the next financial period (2014–20). These included a greater concentration of resources on the objectives and headline targets set out in the Europe 2020 Strategy on jobs and growth, a clearer focus on delivery and results, stronger economic conditionality, and more effective monitoring and evaluation systems.<sup>4</sup>

## The draft Regulation

1.4 The draft Regulation is one of a package of measures proposed by the Commission to align expenditure for the EU's cohesion policy with the objectives and headline targets set out in the Europe 2020 Strategy.

1.5 The draft Regulation is based on Article 177 of the Treaty on the Functioning of the European Union (TFEU) which provides for the adoption of EU Regulations to “define the tasks, priority objectives and the organisation” of the Structural and Cohesion Funds as well as “the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with other existing financial instruments.” It would repeal the 2006 Regulation and establish new objectives for EU cohesion policy during the next financial period from 2014–20.

1.6 The draft Regulation proposes the creation of a Common Strategic Framework (“CSF”) to govern the EU's existing Structural and Cohesion Funds (the ERDF, ESF and Cohesion Fund) as well as the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF). These funds are referred to collectively as the “CSF Funds” and Part Two of the draft Regulation sets out the common provisions which apply to all of them. Part Three of the draft Regulation establishes the general provisions which apply only to the ERDF, ESF and the Cohesion Fund. More detailed provisions for each of the CSF Funds will be included in separate Regulations.

1.7 The Commission says that its proposal follows a process of extensive consultation with stakeholders, including Member States, regions, social and economic partners, academics and international institutions which indicated that there was a need to:

- focus on fewer, more strategic objectives which are in line with the Europe 2020 Strategy;

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4 (32199): see HC 428–xi (2010–11), chapter 6 (15 December 2010) and HC 428–xviii (2010–11), chapter 6 (2 March 2011).



- concentrate resources on developing the conditions for sustainable development and growth;
- improve coordination between the different Funds and other EU policies and financial instruments and ensure that they complement each other;
- set clear and measurable targets and improve monitoring and evaluation systems; and
- seek to reduce administrative costs and burdens while also minimising the risk to the EU budget.

1.8 The Commission notes that its proposal for the next EU Multiannual Financial Framework suggests a total allocation of €376 billion for economic, social and territorial cohesion for the period 2014–20, broken down as follows:

- €162.6 billion for the less-developed regions;
- €53.1 billion for the more developed regions;
- €38.9 billion for in-between (transition) regions;
- €11.7 billion for territorial cooperation;
- €68.7 for the Cohesion Fund;
- €0.926 billion for outermost and sparsely populated regions; and
- €40 billion for a new transport, energy and ICT Connecting Europe Facility.<sup>5</sup>

This global figure does not include financial assistance under the EAFRD and the EMFF for rural development and fisheries.

***Part Two of the draft Regulation — common provisions applicable to the CSF Funds***

1.9 The draft Regulation sets out a number of common principles which underpin the provision of CSF Funds and identifies eleven broad thematic objectives which the Funds are intended to support. The principles include a commitment to:

- work in partnership with a broad range of stakeholders in order to develop, implement, monitor and evaluate national programmes which are financed by CSF Funds—the Commission may produce a European code of conduct to provide guidance on implementing the partnership principle;<sup>6</sup>
- promote gender equality and prevent discrimination on grounds of sex, race, ethnic origin, religion or belief, disability, age or sexual orientation; and

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5 See p. 6, para 4 of the Commission's explanatory memorandum.

6 Article 5 of the draft Regulation identifies the following partners: regional, local, urban and other public authorities; economic and social partners; and representatives of civil society, including environmental and non-governmental organisations, as well as bodies responsible for promoting equality and non-discrimination.

- ensure that CSF Funds are used for sustainable development and to protect and improve the environment.

1.10 The thematic objectives are all designed to support the EU's Europe 2020 Strategy and focus on investment in education, research and innovation; ICT; competitiveness; resource efficiency and the transition to a low-carbon economy; sustainable development; employment and labour mobility; social inclusion and measures to tackle poverty; and more efficient public administration. Suggested priority actions for achieving these objectives will be set out in separate Regulations establishing specific rules for each CSF Fund.

1.11 In order to provide a more strategic framework for implementing the thematic objectives, the Commission says that it will propose a Common Strategic Framework which will highlight the "key actions" which each CSF Fund is intended to support. This Common Strategic Framework will provide the basis for each Member State to develop its own Partnership Contract, agreed with the Commission, setting out how it intends to use CSF Funds to achieve the thematic objectives. The Partnership Contracts will, in turn, provide the framework for the development of operational programmes containing detailed information on how EU Structural and Cohesion Funds are to be utilised in a given region.

1.12 The draft Regulation includes a number of conditionality provisions which are intended to create incentives for Member States to establish the necessary policy, regulatory or institutional conditions at a national level to ensure that programmes supported by CSF Funds deliver the Europe 2020 objectives and targets. So, for example, Member States must ensure that their Partnership Contracts are consistent with the EU's integrated guidelines on economic and employment policy. They must also include a "performance framework" establishing clear and measurable targets for different stages of the programming period.

1.13 Attainment of these targets is linked to the introduction of a new "performance reserve." The draft Regulation specifies that 5% of the total allocation for each Member State (by category of region and by Fund) must be set aside and then allocated, following a mid-term performance review, to programmes which have successfully met their targets. A failure to meet the targets set out in each Member State's performance framework may lead to a suspension or cancellation of payments from the CSF Funds.

1.14 In addition, the draft Regulation seeks to establish a much closer linkage between EU cohesion policy and economic governance, on the grounds that sound economic policies are essential to ensure that CSF Funds are spent effectively. So, for example, the Commission may ask a Member State to amend its Partnership Contract to bring it into line with recommendations issued within the framework of the EU's broad economic or employment guidelines or excessive deficit procedure, and may suspend CSF payments if a Member State fails to do so. In some cases, some or all of a Member State's CSF payments must be suspended until it has taken effective action to correct macroeconomic imbalances. However, any suspension of payments must be "proportionate and effective" and take into account the economic and social circumstances of the Member State concerned.

1.15 The power to suspend payments is complemented by a provision enabling Member States to request an increase of 10% in the EU's contribution to their CSF programmes if they are experiencing temporary liquidity problems and are receiving assistance from one of the EU's financial support mechanisms.

1.16 The draft Regulation includes provision for CSF Funds to support community-led local development involving coalitions of local action groups, and seeks to simplify and streamline rules concerning eligibility for CSF Funds, financial management, and monitoring and evaluation of the use of CSF Funds. It also proposes greater flexibility to invest CSF Funds in a broader range of innovative financial instruments, as a means of leveraging additional sources of funding.

***Part Three of the draft Regulation — general provisions applicable to the European Regional Development Fund, the European Social Fund and the Cohesion Fund***

1.17 Part Three of the draft Regulation focuses specifically on the objectives of EU cohesion policy, as implemented through the EU's Structural Funds — the European Regional Development Fund (ERDF) and the European Social Fund (ESF) — and the Cohesion Fund, and includes provisions on the geographical coverage of support, financial assistance, monitoring and evaluation, and management and control systems.

1.18 The draft Regulation proposes two objectives for EU cohesion policy:

- *Investment for growth and jobs*, to be supported by all three Funds, and accounting for 96.52% of the available resources (€324 billion); and
- *European territorial cooperation*, to be supported exclusively by the ERDF, and accounting for 3.48% of the available resources (€11.7 billion).

1.19 All Member States and regions would qualify for support from the ERDF and ESF, but the levels of support would vary according to GDP levels. The draft Regulation identifies three categories of regions:

- *Less developed regions* with a GDP per capita of less than 75% of the average EU-27 GDP — these regions would receive the bulk of EU funds (just over 50%, or €162.6 billion);
- *Transition regions* with a GDP per capita between 75–90% of the average EU-27 GDP — these regions would receive around 12% of EU funds (€38.9 billion); and
- *More developed regions* with a GDP per capita above 90% of the average EU-27 GDP — these regions would receive just over 16% of EU funds (€53.1 billion).

1.20 A safety net provision seeks to ensure that regions which are eligible for assistance under the Convergence objective in the current period (2007–13), but whose GDP per capita exceeds 75% of the GDP average across 27 Member States, would receive a Structural Funds allocation for 2014–20 equal to at least two-thirds of their 2007–13 allocation.

1.21 The draft Regulation proposes ring-fencing a proportion of Structural Fund resources for allocation to the ESF, with the proportion rising from 25% for less developed regions to

52% for the more developed regions to help tackle “social polarisation” resulting from the economic downturn.<sup>7</sup> This is intended to ensure that at least 25% of the EU’s cohesion policy budget — or €84 billion — is allocated to the ESF. This figure would include €2.5 billion for the EU’s “food for deprived people” programme which is currently funded under the EU’s Common Agricultural Policy.

1.22 The Cohesion Fund would account for 21.19% (or €68.7 billion) of available resources and would continue to support Member States whose gross national income (GNI) per capita is less than 90% of the EU-27 average. The draft Regulation proposes ring-fencing €10 billion of this sum to help fund transport infrastructure projects under a new Connecting Europe Facility.

1.23 The draft Regulation maintains the principle of co-financing, with better-off Member States expected to make a higher contribution (50%) than poorer Member States (15%). The Commission also intends to cap Structural and Cohesion Fund receipts at 2.5% of a Member State’s GNI, not least to make it easier for Member States to absorb structural funding and raise the necessary co-financing.<sup>8</sup>

1.24 The draft Regulation includes detailed provisions on the content and adoption of operational programmes which implement the Funds at a regional level and which should be based on a model to be developed by the Commission. There is flexibility to combine the Funds in multi-funded programmes in order to harness resources to Europe 2020 objectives and national and regional growth plans.

1.25 The Commission proposes two new instruments — joint action plans and integrated territorial investments — which seek to gear funding towards the achievement of specific outputs and results and to provide integrated funding for challenges affecting particular functional economic areas, such as cities. The draft Regulation also seeks to simplify and streamline rules on eligibility for funding and to ensure that financial management and control provisions are proportionate.

## The Government’s view

1.26 The Minister of State for Business and Enterprise (Mr Mark Prisk) notes that the draft Regulation establishes common provisions for all of the CSF Funds, which include the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund, and says that the Government will raise with the Commission the need to include additional legal bases to cover the specific objectives of these two funds.

1.27 The Minister explains that the budgetary aspects of the draft Regulation will be considered as part of a much broader negotiation on the EU’s overall budget for the period 2014–20. He continues:

“At a time of major fiscal consolidation for Member States, we need to see similar budget discipline at the EU-level. The maximum acceptable expenditure increase

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7 See p. 11 of the Commission’s explanatory memorandum.

8 See (32994), HC 428–xxxv (2010–12), chapter 1 (7 September 2011)—Commission Communication, *A Budget for Europe 2020—Part II, Policy Fiches*, p. 24.

through the next Multiannual Financial Framework overall is a real freeze in payments. Significant reductions are required to the overall SCF [Structural and Cohesion Fund] envelope proposed by the Commission to achieve this.”<sup>9</sup>

1.28 The Government’s longer term goal is for richer Member States to fund their own regional policy but the Minister recognises the need for transitional arrangements and accepts that all regions should receive funding for the period 2014–20. He adds, however, that the focus of funding should be on poorer Member States and the burden of reductions should fall on richer ones.

1.29 The Government supports the inclusion of provisions on proportionality, sound financial management and the lessening of administrative burdens, but believes that there is scope to do more. The Government also welcomes the emphasis placed on the principle of partnership, provided that it is sufficiently flexible to reflect national rules and practices and differing institutional and constitutional arrangements across Member States, but questions the need for a Commission code of conduct on the grounds that it might impose excessive requirements on Member States.

1.30 The Government broadly welcomes the Commission’s attempts to create a framework providing “a clear line of sight from strategic priorities in the EU 2020 Agenda to the national and regional level” while emphasising the need to ensure that the development of a Common Strategic Framework and individual Partnership Contracts with each Member State does not generate excessive bureaucracy or burdens.<sup>10</sup> The Minister notes that “the separate processes and timeframes for developing the Common Strategic Framework, Partnership Contract and Operational Programmes will need to run concurrently” if programmes are to start promptly in 2014, and that too much over-specification of detail “at the top of the strategic tree” may result in delays.<sup>11</sup>

1.31 Turning to the development of operational programmes to implement CSF Funds within the UK, the Minister explains that arrangements will need to be consistent with “the new economic development landscapes in England, Scotland, Wales and Northern Ireland.” He continues:

“Economic development and the management of European structural funds are devolved functions for Scotland, Wales and Northern Ireland; all of which have separate programmes for Government and economic development approaches. England’s new approach features the introduction of bottom-up Local Enterprise Partnerships and greater roles for cities, and national programmes for employment and skills. The Regulations, including provisions for the Partnership Contract, will need to contain sufficient flexibility to reflect these considerations. The UK believes the Partnership Contract has to be at Member State level to reflect properly the connection to National Reform Programmes, the Country specific recommendations and the integrated guidelines for Employment.”<sup>12</sup>

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9 See para 24 of the Minister’s Explanatory Memorandum.

10 See para 28 of the Minister’s Explanatory Memorandum.

11 See para 29 of the Minister’s Explanatory Memorandum.

12 See para 30 of the Minister’s Explanatory Memorandum.



1.32 The Minister says that the Government will examine closely the Commission's proposals for macroeconomic conditionality, but is clear that any conditionality related to the Excessive Debt Procedure cannot apply to the UK as Protocol No. 15 (which sets out the UK's opt out from the single currency) disapplies the Treaty provision authorising the Council to sanction a Member State which has failed to take effective action to reduce its deficit.

1.33 More generally, the Government will seek to ensure that conditionality provisions respect the principles of subsidiarity and proportionality, especially in areas such as education and employment in which competence rests primarily with Member States. The Government will also consider whether provisions conferring powers on the Commission to adopt delegated or implementing acts are appropriate.

1.34 The Government questions the feasibility of redistributing the 5% performance reserve to the best performing programmes at a relatively late stage in the programming cycle (after a review in 2019). The Minister suggests that the proposal to ring-fence part of each Member States' Structural Fund allocation to fund ESF programmes may make it harder to base investment decisions on a thorough assessment of the needs of Member States and regions. He sees little added value in the Food for Deprived Persons Programme, doubts whether it fits with ESF objectives, and believes that the aims of the Programme can be better achieved by Member States.

1.35 The Minister notes that the proposed new Joint Action Plans are optional and supports the focus on payment by results but suggests that the process for developing the plans may be too complex and bureaucratic. He considers that the proposed integrated territorial investment instruments offer interesting opportunities for more strategic programming, but adds that their use should also be optional.

1.36 Finally, the Minister says that the Government will launch a further consultation on the draft Regulation and the various sectoral Regulations accompanying it. The Minister expects negotiations to continue during 2012 and indicates that final agreement is only likely to be reached once the EU's Multiannual Financial Framework for 2014–20 has been settled.

1.37 The Minister's Explanatory Memorandum is accompanied by a check list which provides a preliminary assessment of the draft Regulation's implications for the UK. This suggests (on the basis of the latest GDP figures for 2006–08) that only one UK region — West Wales and the Valleys — will be categorised as a less developed region for the period 2014–20 as its GDP per capita is less than 75% of the EU average. Nine UK regions have a per capita GDP between 75% and 90% of the EU average and may therefore be categorised as transition regions. These are Cumbria (90%), Devon (90%), South Yorkshire (89%), Shropshire and Staffordshire (89%), the Highlands and Islands (88%), Merseyside (83%), Lincolnshire (83%), Tees Valley and Durham (82%), and Cornwall and the Isles of Scilly (76%). Those with a lower GDP per capita would receive proportionally more of the budget for this category of regions. All the remaining UK regions would be categorised as more developed regions.

1.38 In determining the final categorisation of regions for the 2014–20 period, the Commission is likely to use more up-to-date GDP figures which could mean that some UK

regions — especially those close to the boundaries for transition regions — could move to a different category. The check list notes that, in comparison with structural funding for 2007–13, per capita funding is likely to increase from €187.9 to €193.9 for less developed regions (West Wales and the Valleys) during 2014–20 but to decrease from €105.6 to €70.4 for transition regions. Per capita funding for more developed regions is likely to increase from €21.4 to €25.5.

1.39 The check list indicates that the UK is likely to remain a net contributor to EU cohesion policy during the period 2014–20. EU Structural Funds will contribute a maximum of 50% of eligible expenditure in more developed UK regions, 60% in transition regions and 75–85% in less developed regions, with the remaining funds to be provided from other public or private sources. Whilst evidence to date indicates that Structural Funds have been very successful in raising match funding, the current economic climate may constrain the ability of Member States and private sector bodies to continue to do so.

## Conclusion

1.40 **Under the Commission’s proposals for the next Multiannual Financial Framework, EU expenditure to support the objective of economic, social and territorial cohesion would continue to account for approximately one third of the EU’s total budget for the period 2014–20. It is, therefore, not surprising that the Government believes that significant reductions will be needed in the level of expenditure proposed for EU Structural and Cohesion Funds in the draft Regulation if the objective of an overall real freeze in payments is to be achieved.**

1.41 **Whilst the Government welcomes efforts to concentrate funding on the strategic priorities identified in the Europe 2020 Strategy, to simplify the operation of the Funds and to reduce administrative burdens, it clearly has reservations about the Commission’s proposals to apply increased conditionalities to the receipt and use of Structural and Cohesion Funds and highlights the risk that too much top-down control may reduce the flexibility available to Member States and regions to make investment decisions based on an assessment of need.**

1.42 **We welcome the fact that the Government intends to consult fully on the draft Regulation and accompanying measures and look forward to receiving further information on the outcome of that consultation. However, we think that a debate in European Committee is merited at this stage in order to consider the size of the budget proposed in light of the current economic climate, as well as the concerns highlighted in the Minister’s Explanatory Memorandum.**

## 2 Enforcement of patent rights

(a) (31127) 7928/09 —	Draft Agreement on the European and Community Patents Court and draft Statute
(b) (32604) — —	Opinion 1/09 of the European Court of Justice on the Draft Agreement on the European and Community Patents Court and draft Statute
(c) (33058) 11533/11 —	Draft Agreement on a Unified Patent Court and draft Statute

<i>Legal base</i>	(a) Article 81 and 218(8) TFEU; co-decision; QMV (b) Article 218(11) TFEU (c) —
<i>Document originated</i>	(c) —
<i>Deposited in Parliament</i>	(c) 8 September 2011
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	(c) EM of 21 September 2011
<i>Previous Committee Report</i>	(a) HC 5–iv (2009–10), chapter 4 (15 December 2009); HC 5–xi (2009–10), chapter 3 (24 February 2010) (b) HC 428–xxiii (2010–11), chapter 2 (5 April 2011) (c) None
<i>Discussion in Council</i>	(a) and (b) Not applicable (c) No date set
<i>Committee’s assessment</i>	(a) and (c) Legally and politically important (b) Legally important
<i>Committee’s decision</i>	(a) and (b) Cleared (c) Not cleared; further information requested

### Background

2.1 In parallel with discussions to establish a single EU-wide patent, there have been separate discussions aimed at creating a single European patent court. In 2009 these discussions led to proposals for a European and Community Patent Court (ECPC). The proposed ECPC agreement, document (a), was considered by the Committee in December 2009 and February 2010, and held under scrutiny.<sup>13</sup>

<sup>13</sup> See headnote.



2.2 Following concerns raised by some Member States, the Council requested the opinion of the Court of Justice, under Article 300(6) EC (now Article 218(11) TFEU), on the compatibility of the envisaged ECPC Agreement with the provisions of the EC Treaty. That Opinion (1/09), document (b), was issued on 8 March 2011. We reported on it in April 2011, and held it under scrutiny.<sup>14</sup>

2.3 The Court found that the draft agreement establishing the ECPC was incompatible with the EU Treaties for two reasons. Firstly, it would deprive national courts of the power or, as the case may be, obligation, to refer a question of EU law (including under the EU Patent Regulation) to the Court for a preliminary ruling under Article 267 TFEU — such preliminary rulings were “indispensable to the preservation of the very nature of [EU] law”.<sup>15</sup> And secondly, if a decision of the unified patent court were to be in breach of EU law, it could not be subject to infringement proceedings by the Commission nor could it give rise to financial liability on behalf the EU Member States — two essential characteristics of EU law according to the Court.

## Previous scrutiny

2.4 The Committee last wrote to the Parliamentary Under Secretary of State and Minister for Intellectual Property at the Department for Business, Innovation and Skills (Baroness Wilcox) on 22 June, when it noted that the Commission’s non-paper on the unified patent court suggested that, in order to meet the requirements of the Court’s Opinion of 8 March, the ECPC should have jurisdiction for EU Member States only, so excluding non-EU Member States which are party to the 1973 European Patent Convention, and which number 38 (including 27 EU Member States). Pending the deposit of the revised agreement, the Committee asked the Minister for a more in-depth analysis of how a unified patent court would affect the European patent, and how likely it was to meet the requirements of the Court of Justice’s Opinion.

2.5 The Minister replied on 7 July in the following terms:

“The Commission recommends that the unified patent court have exclusive jurisdiction over infringement and validity for both the unitary European Union patent and for (bundle) European patents granted under the EPC. Participation in the proposed agreement would only be open to Member States of the European Union.

“EU Member States not taking part in the unitary patent would be free to participate in the court agreement but the court would only have jurisdiction over (bundle) European Patents in respect of those countries.

“The operation of European bundle patents in respect of non-EU EPC Contracting States would be unaffected. Disputes relating to (bundle) European patents in such States would still be heard by the relevant national court as is current practice.

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<sup>14</sup> See headnote.

<sup>15</sup> Para 85.

“This system will still provide significant savings to UK businesses because they would not need to litigate their patents in as many different national courts as they do now.

“You also asked how likely it is that the Commission’s recommended approach will meet the concerns of the Court of Justice of the European Union (ECJ). In its opinion of 8 March the ECJ (the ‘Court’) objected to conferring jurisdiction on a court created by international agreement which would deprive Member States’ courts of their task of implementing Union law or referring questions to the Court of Justice for a preliminary ruling. The Court distinguished this from the Benelux Court of Justice as “a court common to a number of Member States, situated, consequently, within the judicial system of the European Union, its decisions are subject to mechanisms capable of ensuring the full effectiveness of the rules of the European Union.

“The Commission recommends addressing this point by limiting participation in the new patent court agreement to EU Member States. As you note in your letter, the Commission goes on to state that as consequence it would seem possible for infringement proceedings then to be initiated against all Member States jointly were the unified patent court to violate Union law and for any financial liability arising to be applicable to all Member States jointly.

“By limiting participation in the proposed agreement to EU Member States we are satisfied that the Commission’s recommended approach addresses the issues raised by ECJ Opinion 1/09. This approach received support from the vast majority of Member States when it was discussed at the Competitiveness Council on 30 May 2011, so I am confident it will be adopted.

“The Presidency has produced a revised draft agreement for the Court system based on the Commission’s recommendations. This draft has now been published and I will deposit the new draft agreement and submit an Explanatory Memorandum accordingly.

“UK industry has not yet had an opportunity to comment on the detail of the new draft agreement. The Government regularly consults UK stakeholders on developments with both the unitary patent and unified patent court negotiations and we will continue to engage positively with industry.”

## The Unified Patent Court Agreement

2.6 This new draft international agreement on what is now called the Unified Patent Court (UPC), document (c), has been revised to take account of the opinion of the Court of Justice. It nonetheless preserves much of what was in the previous agreement establishing the ECPC. Similarities include the fact that the Unified Patent Court (UPC) would comprise a Court of First Instance and a Court of Appeal; the Court of First Instance would be composed of local, regional and central divisions; the local divisions would be hosted by the Contracting States; a regional division may be set up by two or more Contracting States (the seat of the central division has yet to be decided). The UPC would have exclusive jurisdiction concerning the infringement and validity of both European

bundle patents (granted by the European Patent Office according to the European Patent Convention) and European patents with unitary effect, established under two Regulations implementing enhanced cooperation in the creation of unitary patent protection.<sup>16</sup>

2.7 There are two major differences between the UPC and the ECPC agreements, however. The UPC agreement is restricted to EU Member States only — non-EU Contracting States of the European Patent Convention are no longer parties to the agreement. And the EU, as a legal entity separate to its Member States, is no longer a party to the agreement. The new UPC agreement also introduces provisions on joint Member State liability for any failure of the proposed patent court to apply EU law, including that set out in the patent Regulations.

### ***Basic provisions of the Agreement and Statute text***

2.8 Article 1 establishes the creation of the UPC as a court common to the Contracting Member States with exclusive jurisdiction for European patents and European patents with unitary effect. Article 2 provides definitions for certain terms used in the agreement. Article 3 describes the scope of the UPC's jurisdiction. Articles 3a and 3b deal with legal status and liability of the UPC. Article 4 specifies that the UPC will be made up of a Court of First Instance, a Court of Appeal and a Registry. Articles 5–9 outline the functions of these parts of the Court.

2.9 Articles 10–14 outline the requirements for the judges of the UPC, including the eligibility criteria, how judges are appointed, and how they are trained.

2.10 Article 14a specifies that the UPC shall respect the primacy of EU law and apply the entire body of EU law. Article 14b makes provisions to ensure the proper application and uniform interpretation of EU law. Specifically, provisions are made to ensure the UPC refers questions on the interpretation of EU law to the Court of Justice of the European Union. Article 14c sets out joint liability of the Contracting Member States should the UPC fail to apply EU law. Article 14d requires that the Contracting Member States ensure the UPC complies with their obligations under EU law. Decisions of the UPC will be directly attributable to the Contracting Member States.

2.11 Articles 14e–14i set out the applicable law for the UPC, including listing allowable defences within the Court. Articles 15–16 describe the jurisdiction of the UPC. Article 17 allows for the creation of mediation and arbitration centres.

2.12 Articles 18–21 set out the financing requirements of the UPC. The court shall be self-financing with fees set and reviewed periodically by an Administrative Committee. Any shortfall in the budget of the court would be provided by the Contracting Member States.

2.13 Articles 21a–28 set out the organisational and procedural provisions relating to the UPC; this includes outlining who is responsible for representing parties in the UPC.

2.14 Articles 29–31 describe the language arrangements of the Court. Articles 32–34 set out the procedures before the UPC and the rules for evidence.

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<sup>16</sup> The Committee maintained a scrutiny reserve on both of these proposals in its Report on 18 May 2011. See (32700) 9224/11 and (32701) 9226/11: chapters 2 and 3, (18 May 2011) HC 428-xxvii (2010-12).

2.15 Articles 34a-44a deal with the powers of the UPC, including the provision of temporary and permanent injunctions. Articles 45–47 set out how appeals will be dealt with in the system.

2.16 Articles 49–56 describe the method that the UPC will use to reach decisions and to then to ensure that the decisions are enforced.

2.17 Articles 57–57b present the details of how the UPC will be implemented and operated following agreement.

2.18 Article 58 outlines the transitional arrangements for pre-existing European patents. In particular, it allows holders of European patents applied for or granted before the UPC is created to opt-out of the jurisdiction of the UPC.

2.19 Articles 58a-60 set out the requirements for the entry into force of the agreement.

### **Draft Statute**

2.20 The draft statute is incomplete but currently outlines the institutional and financial arrangements for the UPC. Articles 2–9a set out the requirements for judges, including the eligibility criteria, their appointment and how they should serve in office. Articles 10–12a outline the arrangements for governing the new court system. Articles 13–15 set out how the Court of First Instance should function including the composition of panels. Article 16 sets out the requirements for the composition of panels of the Court of Appeal. Articles 17–20 define the functions of the Registrar. Articles 22–32 present the financial arrangements for the UPC. This includes the framework for adopting the budget each year. Articles 33–37 deal with the process of reaching decisions within the UPC and how dissenting opinions will be dealt with. Annex II to the Statute lists the topics to be included within the Rules of Procedure.

### **The Government's view**

2.21 The Parliamentary Under-Secretary of State and Minister for Intellectual Property at the Department for Business, Innovation and Skills (Baroness Wilcox) deposited an Explanatory Memorandum on the draft agreement on 21 September.

2.22 In its introduction she says the UK sees an effective patent litigation system as a crucial part of the overall package to deliver a business-friendly unitary patent in Europe. She then sets out some of the Government's concerns.

2.23 On funding, the Minister explains that the fact that the EU is no longer a party to the agreement means that there will not be an EU contribution to the setting up costs of the UPC. The UK favours a system whereby the UPC will be self-funded primarily through court fees. Contracting Member States will be expected to subsidise the operating costs initially but the level of contributions may be expected to fall as the UPC begins to recoup costs through court fees.

2.24 On jurisdiction, she says that in the UK and most EU Member States related validity and infringement actions on a patent case are generally dealt with together. Current proposals allow for these actions to be dealt with separately, however. She explains that UK

industry generally opposes hearing these actions being heard separately as it could mean that cases are more expensive and/or could reach inconsistent decisions.

2.25 Current proposals state that the new Court will have exclusive jurisdiction over actions involving European and unitary patents. There is a transitional period of five years during which time litigants will have the option of using national patent jurisdictions instead. The Minister reports that some industry stakeholders have commented that the transitional period is not long enough because it can take five years or longer to take an application from filing to grant at the European Patent Office (EPO).

2.26 There are a number of related issues which impact on the affordability of the UPC for users, the Minister says. These include the costs of accessing the UPC, who is allowed to represent parties in court and whether parties will be able to get legal aid. UK stakeholders have raised concerns that the costs of the UPC might be prohibitively high now that there will not be a contribution from the EU budget to the setting up costs of the court.

2.27 The first instance of the UPC will be regional, to allow local access, but European in character. Achieving this means local/regional court divisions (not national courts) at first instance which follow the same procedures and meet uniform standards of quality, consistency, efficiency. Large regional divisions and mixed judicial panels would encourage this. Local (national) divisions in each State could mean national practices would continue, which is likely to be inefficient.

2.28 There are a number of language issues to be resolved. These include the operational language of the division, the language of proceedings, the language of court documents and the language of judgments. Related is the issue of translation and interpretation. Different solutions could apply to each. Some Member States have concerns that their nationals may not be able to use their own language in the UPC, and judgments may not be available in their language. However, UK industry is concerned that complex language requirements will create cost and uncertainty.

2.29 Patents are highly technical documents and this can present difficulties for judges if they do not have the technical know-how to understand the invention. Some European States use technically-qualified (non legally-qualified) judges and others, such as the UK, use technical experts to provide the necessary technical knowledge. UK industry is concerned that there are currently not enough suitably qualified judges to populate all of the panels of the Court of First Instance and Court of Appeals in their local, regional and central divisions.

2.30 Current proposals for the Court do not state the location of the central division of the Court of First Instance, the Court of Appeal and the Mediation Centre.

## Conclusion

2.31 **We report earlier in this chapter previous and helpful correspondence with the Minister on how a unified patent court could be established whilst respecting the primacy of EU law, as set out in the Opinion of the Court of Justice, and on how it would have jurisdiction over European patents granted under the 1973 European Patent Convention as well as unitary EU patents. We note that negotiations on the**

draft agreement are at an early stage. So rather than asking further questions now, we would be grateful for an update on the negotiations when the details of how the UPC will operate in practice for EU and European patents become clearer, such update to cover whether the concerns raised by the Minister above have been allayed. We would also be grateful for a summary of the views of UK industry on the UPC. In the meantime, the draft agreement on the UPC, document (c), remains under scrutiny.

2.32 We now clear the previous agreement on the ECPC, document (a), and the Opinion (1/09) of the Court of Justice, document (b), from scrutiny.

### 3 Investment for growth and jobs

(33219) 15249/11 COM(11) 614	Draft Regulation of the European Parliament and the Council on specific provisions concerning the European Regional Development Fund and the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006
+ ADDs 1–4	Commission staff working papers: Impact assessment and summary of impact assessment

<i>Legal base</i>	Articles 178 and 349 TFEU; co-decision; QMV
<i>Document originated</i>	6 October 2011
<i>Deposited in Parliament</i>	13 October 2011
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	EM of 2 November 2011
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	16 December 2011
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

#### Background

3.1 The European Regional Development Fund (ERDF) is the largest of the EU’s Structural Funds. Its purpose, as described in Article 176 of the Treaty on the Functioning of the European Union (TFEU), is to “redress the main regional imbalances in the Union through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.” The ERDF is one of the principal funding instruments for strengthening economic, social and territorial cohesion across the EU. Article 174 TFEU specifies that EU cohesion policy should pay particular attention to “rural areas, areas affected by industrial transition and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions.”



3.2 In addition, Article 349 TFEU highlights the structural social and economic situation in some of the EU's outermost regions and provides for the adoption of specific measures setting out conditions of access to EU Structural Funds for these regions.<sup>17</sup>

3.3 In November 2010, the Commission published a Communication on the future of EU cohesion policy which proposed a number of significant reforms for the next financial period (2014–20). These included a greater concentration of EU resources on the objectives and headline targets set out in the Europe 2020 Strategy on jobs and growth, a clearer focus on delivery and results, stronger economic conditionality, and more effective monitoring and evaluation systems.<sup>18</sup>

## The draft Regulation

3.4 The draft ERDF Regulation forms part of a broader package of measures proposed by the Commission to align expenditure on the EU's cohesion policy with the Europe 2020 Strategy. It is intended to supplement the Commission's proposal for an all-encompassing draft Regulation ("the draft General Regulation") which would establish a Common Strategic Framework and a set of common provisions to govern all of the EU's instruments of cohesion policy, including the ERDF, for the period 2014–20.<sup>19</sup> It would also establish the total amount of EU resources available for allocation to the EU's Structural and Cohesion Funds, as well as the criteria for their distribution between regions across the EU.

3.5 The draft General Regulation proposes two objectives for EU cohesion policy:

- *Investment for growth and jobs* which would account for 96.52% of the available resources; and
- *European territorial cooperation* which would account for 3.48% of the available resources.

3.6 All Member States and regions would qualify for support from the ERDF and from the EU's other Structural Fund, the European Social Fund (ESF), but the levels of support would vary according to GDP levels. The draft General Regulation identifies three categories of regions:

- *Less developed regions* with a GDP per capita of less than 75% of the average EU-27 GDP — these regions would receive the bulk of EU funds (just over 50%);
- *Transition regions* with a GDP per capita between 75–90% of the average EU-27 GDP — these regions would receive around 12% of EU funds; and
- *More developed regions* with a GDP per capita above 90% of the average EU-27 GDP — these regions would receive just over 16% of EU funds.

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17 The regions identified in Article 349 TFEU are Guadeloupe, French Guiana, Martinique, Réunion, Saint Barthélemy, Saint Martin, the Azores, Madeira and the Canary Islands.

18 (32199): See HC 428–xi (2010–11), chapter 6 (15 December 2010) and HC 428–xviii (2010–11), chapter 6 (2 March 2011).

19 (33217): See chapter 1 of this Report.

3.7 In its explanatory memorandum accompanying the draft ERDF Regulation, the Commission notes that its proposal for the EU's next Multiannual Financial Framework for the period 2014–20 makes provision for an allocation of €267 billion for the EU's Structural Funds.<sup>20</sup> At least 25% (or €84 billion) would be reserved for programmes implementing the European Social Fund, leaving a maximum of €183 billion for the ERDF for 2014–20.

3.8 The draft ERDF Regulation sets out the types of investment which the ERDF may support and includes a list of investment priorities which broadly mirror the headline targets and flagship initiatives agreed as part of the Europe 2020 Strategy. They include investment which seeks to:

- strengthen research, technological development and innovation;
- improve access to, and use of, good quality ICT;
- enhance the competitiveness of SMEs;
- support moves towards a low-carbon economy;
- promote climate change adaptation, risk prevention and management;
- protect the environment and promote resource efficiency;
- promote sustainable transport and remove bottlenecks in key network infrastructures;
- promote employment and support labour mobility;
- promote social inclusion and measures to combat poverty;
- encourage education, skills and lifelong learning; and
- enhance institutional capacity and efficient public administration.

3.9 Certain activities would not be eligible for ERDF support. These include the decommissioning of nuclear power stations, the reduction of greenhouse gas emissions from particular installations, investment in tobacco and tobacco products, and forms of support which are incompatible with EU State aids rules.

3.10 The Commission believes that increased targeting and concentration of ERDF resources should improve “the efficiency, effectiveness and EU added value of funding.”<sup>21</sup> The draft Regulation would therefore require more developed and transition regions to concentrate at least 80% of ERDF resources allocated at national level on three objectives:

- strengthening research, technological development and innovation;
- enhancing the competitiveness of SMEs; and

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20 The current conversion rate is €1 = £0.8731.

21 See p. 3 of the Commission's accompanying explanatory memorandum.



- supporting the shift to a low-carbon economy (with at least 20% ring-fenced for this objective).

3.11 The percentages are lower for less developed regions (50% for all three objectives, of which 6% must be ring-fenced for low carbon initiatives) as, according to the Commission, their development needs are greater and so justify greater flexibility in determining how to use their share of the national allocation of ERDF funding to support a wider range of investment priorities.

3.12 The draft Regulation includes a number of provisions which are intended to address the territorial dimension of economic, social and territorial cohesion. These include:

- the setting aside of at least of 5% of ERDF resources allocated at national level to fund sustainable urban development within cities in order to tackle economic, environmental, climate and social challenges — the funds would be delegated to cities and managed as an “integrated territorial investment” (a new type of instrument proposed in the draft General Regulation);
- the creation of an urban development platform comprising a maximum of 300 cities (up to 20 per Member State) to promote capacity-building and networking between cities and to encourage the exchange of information on urban policy initiatives;
- the provision of up to 0.2% of the total annual ERDF allocation to support innovative actions (including studies and pilot projects) in the field of sustainable urban development; and
- specific provisions on the use of ERDF funds for the outermost regions listed in Article 349 TFEU.

3.13 An Annex to the draft Regulation sets out a range of common indicators which are intended to establish a baseline for measuring the impact and outcome of ERDF funding supporting the Investment for growth and jobs component of EU Structural Funds. These provide the basis for establishing targets for ERDF-funded programmes on such matters as the number of jobs created in assisted SMEs or the amount of private investment secured for innovation or R&D projects.

## The Government’s view

3.14 The Minister for Business and Enterprise (Mr Mark Prisk) notes that HM Treasury has overall responsibility for the Government’s policy on the EU’s Multiannual Financial Framework, which will determine the overall size of the EU budget for 2014–20 and the proportion to be made available to support economic, social and territorial cohesion.<sup>22</sup> He adds:

“At a time of major fiscal consolidation for Member States, we need to see similar budget discipline at the EU level. The maximum acceptable expenditure increase

<sup>22</sup> See (32986) 12478/11 +ADDs 1-2, (32987) 12474/11, (32988) 12480/11, (32989) 12483/11, (32994) 12475/11 + ADDs 1-3 and (32998) 12484/11: HC 428–xxxv (2010–12), chapter 1 (7 September 2011).

through the next Multiannual Financial Framework overall is a real freeze in payments. Significant reductions are required to the overall SCF [Structural and Cohesion Funds] envelope proposed by the Commission to achieve this.”<sup>23</sup>

3.15 The Minister expresses the Government’s support for the overall aims of the ERDF in promoting economic and social cohesion and “agrees in principle” with the proposal to concentrate funding on a limited number of objectives. He continues:

“However, the Government feel it is important that Member States maintain the flexibility to design the most appropriate ERDF programmes for their territory in order to maximise the benefit of funds and to achieve the strongest possible outcomes.”<sup>24</sup>

3.16 The Government, while recognising the important role that cities can play in fostering growth, questions the need to prescribe a minimum allocation of 5% of ERDF resources for integrated investments in cities and advocates greater flexibility for Member States. The Government also questions whether the Commission’s proposals to allocate a small proportion of ERDF resources to innovative actions in the field of sustainable urban development and to set up a new urban development platform represent value for money. The Minister indicates that the Government will examine closely the proposed conferral of implementing powers on the Commission to make the final selection of cities eligible to participate in the new platform.

3.17 The Minister notes that the proportion of ERDF resources ring-fenced for measures to support a low-carbon economy is significantly lower for the less developed regions, and questions whether this is appropriate when the intensity of carbon emissions is generally higher in Central and Eastern European Member States. He suggests that these Member States “should look to focus more of their spending on low carbon objectives where there is a clear case for public intervention.”<sup>25</sup>

3.18 Finally, the Minister explains that negotiations are expected to continue throughout 2012 and that final agreement is only likely to be reached once the EU’s Multiannual Financial Framework for 2014–20 has been settled.

## Conclusion

**3.19 We note that the Commission has proposed a dual legal base for the draft Regulation. Whilst it is clear that the ordinary legislative procedure (co-decision with the European Parliament and QMV in Council) applies to Article 178 TFEU, Article 349 TFEU contemplates the use of a special legislative procedure in certain circumstances, but appears to leave open the possibility that the ordinary procedure may apply in others. The Minister’s Explanatory Memorandum indicates that the ordinary legislative procedure applies in this case. We would, however, welcome a more detailed explanation of the reasons why.**

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23 See para 19 of the Minister’s Explanatory Memorandum.

24 See para 21 of the Minister’s Explanatory Memorandum.

25 See para 22 of the Minister’s Explanatory Memorandum.

3.20 The Government appears to support the broad thrust of the draft Regulation, whilst also making clear that significant reductions are needed in the funding levels proposed by the Commission for economic, social and territorial cohesion in order to achieve a real freeze in EU expenditure for the period 2014–20. The eventual size of the EU budget for Structural and Cohesion Funds will inevitably affect the feasibility of the thematic objectives and investment priorities proposed for each of the individual Funds, including the ERDF. We are therefore retaining the draft Regulation under scrutiny and ask the Government to provide us with progress reports on the negotiations.

## 4 Protection against ionising radiation

(33082) 14450/11 + ADDs 1–3 COM(11) 593	Draft Council Directive laying down safety standards for protection against the dangers arising from ionising radiation
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<i>Legal base</i>	Article 31 Euratom; QMV
<i>Document originated</i>	29 September 2011
<i>Deposited in Parliament</i>	6 October 2011
<i>Department</i>	Energy and Climate Change
<i>Basis of consideration</i>	EM of 19 October 2011
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information awaited

### Background

4.1 Ionising radiation occurs naturally, but can also be produced artificially, and workers, medical patients, and members of the public, as well as the environment, can be exposed to emissions from a radioactive substance or from a generator, such as an X-ray machine. Exposure to harmful levels of such radiation can cause organ damage and lead to diseases such as cancer, but, on the other hand, the use of radioactive substances and radiation generators is an essential part of work activity in many areas, including the nuclear industry; medical, dental and veterinary sectors; manufacturing; construction; engineering; food & drink; paper; and the oil and gas industries.

4.2 Because of this, basic standards for the protection of workers and the general public have been laid down in EU legislation since 1959, and have since been subject to periodic amendment, with the measures currently in force being set out in Council Directive 96/29/Euratom. These provisions — which reflect the recommendations of the International Commission on Radiological Protection (ICRP) — apply to both normal and

emergency situations, and have been supplemented by more specific legislation in the following areas:

- Council Directive 97/43/Euratom on health protection of individuals against the dangers of ionising radiation in relation to medical exposure;
- Council Directive 89/618/Euratom on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency;
- Council Directive 90/641/Euratom on the operational protection of outside workers exposed to the risk of ionising radiation during their activities in controlled areas;
- Council Directive 2003/122/Euratom on the control of high-activity sealed radioactive sources and orphan sources.

### The current proposal

4.3 The Commission says that, over time, a number of inconsistencies have arisen between these various acts, whilst certain other provisions are now obsolete. In addition, it suggests that scientific progress is not fully reflected, and in particular that the current legislation does not fully cover natural radiation sources or the protection of the environment. It therefore believes that these concerns should be addressed in four specific ways — the introduction of the amendments needed to take into account the latest scientific data and operational experience; clarification of the requirements and coherence within the body of European legislation; coherence with international recommendations; and extending the current measures to cover the whole range of exposure situations and categories of exposure.

4.4 It is accordingly proposing in this document to simplify the existing arrangements for radiological protection by bringing all these measures, including those in Council Directive 96/29/Euratom, into a new Basic Safety Standards Directive, together with the provisions of Commission Recommendation 90/143/Euratom on the protection of the public against indoor exposure to radon (which it describes as “far more important than exposure from any other radiation source”). In doing so, it also incorporates the latest recommendations from the ICRP, including new methodology to calculate doses based on the latest knowledge of radiation risks), and seeks to harmonise the EU regime with the Basic Safety Standards of the International Atomic Energy Agency (IAEA).

### The Government’s view

4.5 In his Explanatory Memorandum of 19 November 2011, the Minister of State at the Department of Energy and Climate Change (Mr Charles Hendry) says that the proposal builds on a lengthy history of European work based on protection from ionising radiation, and that combining five existing Directives and a Recommendation has inevitably resulted in a wide-ranging measure which covers radiological protection from a number of different perspectives, including medical, occupational and environmental. He says that this involves:

- ensuring that each different use of ionising radiation is justified by weighing the benefits the use brings against any harm caused by radiation exposure, optimising exposures to ensure they are as low as reasonably practicable, and establishing dose limits for each type of exposure to workers and the public;
- setting exposure measurements and recording requirements to ensure that those most at risk are monitored the most closely;
- establishing the framework for service providers — authorities, services and experts — which can contribute towards regulatory control, such as dose monitoring services, radiation protection experts and medical physics experts; and
- authorising uses of ionising radiation and the disposal of radioactive wastes.

4.6 The Minister says that, whilst the Government and industry have worked closely to try to influence the Commission’s proposal so as to ensure that any additional burdens or restrictions placed on UK industry are justified and proportionate, the final proposal was not produced until some 18 months after the last draft was seen by the UK. Consequently, although the overall principle of simplification has not changed since the earlier draft, the final proposal makes a number of significant changes to the existing regime.

4.7 In particular, although the Government welcomes the attempt to simplify these various measures, it considers that the proposal goes beyond this, and includes new additional requirements. It also believes that the existing regulatory regime in this area, although requiring some updating, is generally fit for purpose and provides a balance between essential business usage, occupational risks and high levels of societal concern regarding ionising radiation. Furthermore, whilst the proposal represents a further iteration of several long standing Directives, all its Articles would be subject to negotiation and amendment, and, as the previous Directives were laid down in EU law before the 2004 and 2007 enlargements, the proposal gives some Member States their first opportunity to negotiate on the conditions laid down: this may present challenges as it could lead to a push for more restrictive requirements, particularly following the accident at the Fukushima nuclear power plant.

4.8 The Government also says that, whilst some updating is required, its discussions with industry, professional bodies and other regulators have identified several areas where the proposal goes beyond this, and appears to seek to establish requirements which are disproportionate to the risks they address. In particular it uses language which, when applied to the UK regulatory system, would place disproportionate requirements on those subject to it and/or require significant changes to the UK regime which thus far has proved to be robust in providing protection against radiological risks. For example, it would establish a requirement to “eliminate” factors, which in the course of any operation involving ionising radiation, create a risk of exposure to members of the public, but does not take account of the significance of the risk or the “so far as is reasonably practicable” principle.

4.9 The Government says that it will be scrutinising the proposal in more detail and will be developing a negotiating position for the proposal as a whole and addressing the specific issues identified. In the meantime, its initial assessment is that, should the proposal be

adopted as drafted, it will place disproportionate, additional burdens on UK industry over and above the existing requirements. A detailed analysis of the financial impact will be carried out, and the Government intends to work throughout the negotiations to ensure that any financial costs are proportionate to the risks they address. In addition, a detailed UK impact assessment is being developed, which will assess the costs to the UK, and this will be sent to Parliament as soon as it is ready (and also be brought to the attention of the Commission and other Member States).

## Conclusion

**4.10 In our experience, proposals which seek to combine a number of highly technical measures into a single piece of legislation present particular difficulties in establishing precisely what changes of substance are being made, and this document is no exception. We would therefore have found it helpful if the Minister’s Explanatory Memorandum had provided more details of the “significant changes” being made to the existing regime, and in what ways he considers the proposal goes beyond mere simplification and updating. We have noted that the Government will be producing a UK Impact Assessment, and we would be glad if, in doing so, it could expand on these various points. In the meantime, we are holding the document under scrutiny.**

## 5 Fisheries: catch quotas and effort limitation for 2012

(33176) 14751/11 COM(11) 586	Draft Council Regulation fixing for 2012 the fishing opportunities available to Union vessels for certain fish stocks and groups of fish stocks which are not subject to international negotiations or agreements
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<i>Legal base</i>	Article 43(3)TFEU; QMV
<i>Document originated</i>	26 September 2011
<i>Deposited in Parliament</i>	30 September 2011
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 26 October 2011
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	See para 5.10 below
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information awaited

## Background

5.1 The EU Total Allowable Catches (TACs) for particular fish stocks in the following calendar year are based on advice provided by the International Council for the Exploration of the Sea (ICES), and the Commission’s Scientific, Technical and Economic



Committee for Fisheries (STECF), and then have to be agreed by the Fisheries Council (and allocated between Member States according to a predetermined key) on the basis of a proposal put forward by the Commission. Since such an agreement is needed before the start of the calendar year to which it applies, this has habitually presented scrutiny difficulties, in that the requirement to take into account the scientific advice means that official texts have often been available too late for them to be considered properly beforehand: and this has been a particular problem for those stocks which are jointly managed with third countries, since the EU share has to be negotiated with the countries concerned, notably Norway.

### The current proposal

5.2 In view of this, the Commission is putting forward this year a two stage approach in which the Council is being invited to consider now the arrangements for EU internal stocks, in advance of those which are subject to negotiations with third countries, in advance of the latter which will be the subject of a further proposal. In practice, therefore, the current document deals with virtually all stocks of interest to the UK outside the North Sea, and thus covers in particular waters in the English Channel and to the west and south west of the British isles, for which it sets catch limits for 2012 (and, in the case of cod and sole management, efforts limits as well).

5.3 In putting forward its proposal, the Commission notes that, although there have been improvements in some cases, many EU stocks remain in a poor state of health, and it says that the proposals are based on current management plans where these exist, or on the latest scientific advice (though, where data for a stock is poor, the Commission has applied a blanket approach, choosing either 15% or 25% cuts). It also says that, for stocks not subject to management plans, the intention had been to move to the maximum sustainable yield (MSY) on a gradual basis, as set out in the Commission's 2010 policy statement, which assumed four steps (*MSY Transition*) to achieve MSY where possible between now and 2015, in line with the undertaking which the EU made at the World Summit on Sustainable Development in 2002. However, it recalls that this year's policy statement highlighted the Commission's aim to move more quickly to MSY in some cases, under which MSY would be reached in 2012 (*MSY Framework*), and it says that, following consultation on that statement, it is now suggesting an approach which is halfway between the two. This would result in MSY being achieved by 2013, the rationale being that aiming to reach this by 2015 could be unachievable, whereas a 2013 target provides an uncertainty buffer.

### The Government's view

5.4 In his Explanatory Memorandum of 26 October 2011, the Minister for the Natural Environment and Fisheries at the Department for Environment, Food and Rural Affairs (Mr Richard Benyon) says that the UK's general approach to negotiations on TACs and quotas will continue to emphasize the need to be guided by the scientific advice to recover stocks to MSY levels over an appropriate timescale, while safeguarding the economic viability of the fishing industry, adding that the recent economic climate must be considered in this context, whilst being clear not to jeopardise long-term sustainability for short-term gains.

5.5 He observes that this proposal has a direct impact on the UK fishing fleet, and that the application of blanket 15% and 25% reductions (including where the stock position is unclear) would affect a significant number of stocks, an approach to which the Government is opposed, supporting instead the use of all available scientific evidence, with any catch reductions being determined on a case-by-case basis. He says that the majority of Member States are equally against the principle of blanket cuts, and that the UK will work with them to argue for a more pragmatic approach — in particular to ensure that all available evidence is used in the decision-making process.

5.6 The Minister adds that case-by-case approaches for reduced catches would cover proposals for plaice, and anglerfish stocks in the South West, West of Scotland whiting, and Irish Sea haddock and whiting; that achieving rollovers for those stocks, where ICES concludes there should be ‘no increase’ in catches, would cover current proposals for sole, haddock, whiting and pollack in the South West, megrim in the North Sea and west of Scotland; and that achieving an increase for stocks where there is significant supporting scientific evidence would cover proposals for Irish Sea herring.

5.7 The Minister also says that, whilst the UK supports moving towards fishing at MSY for all fisheries where possible, it is concerned that the rate of change proposed by the Commission will in some cases lead to significant changes which cannot be absorbed by fishing businesses. Consequently, the Government considers that a transitional period to reach MSY by 2015, in accordance with international commitments, is more appropriate if MSY cannot be reached next year, and that this would affect current proposals for herring in the south west, and western Channel plaice. However, he notes that the exception to this is west of Scotland haddock, which is not covered by a Long Term Management Plan, and for which ICES advice supports a very large increase (410%), whereas the Commission is proposing that, instead of following the MSY framework approach, there should be a mere 25% increase (which, with haddock increasing rapidly, will only result in more discards). In addition, the Minister points out that significant cuts are proposed for nephrops and cod in the Irish Sea which are likely to pose difficulties for the Northern Irish industry in particular, and the Government is working closely with colleagues in the devolved administrations in developing a negotiating position. In addition, there would be a continuation of successive annual reductions to the maximum allowable fishing effort of Member States under the EU’s Cod Recovery Plan, with fishing effort using specified categories of regulated fishing gears in the sea areas covered by the regulation being subject to a year-on-year reduction of 25%.

5.8 The Minister goes on to note that the UK has since 2010 been trialling a voluntary system of “fully documented” catch quotas (a quota for what is caught rather than landed), which is enforced using remote electrical monitoring technology, with CCTV cameras on board vessels to verify catches, and under which fishermen have to stop fishing once their catch quota limit is reached. He says that this offers the potential to reduce discards and overall fish mortality significantly, and that 24 UK vessels participated for North Sea cod in 2010, with extremely positive results, under which fishermen were observed fishing more selectively in order to maximise the value of their catches. He adds that in 2011 (for which interim results are expected to be published later in the year), the scheme was over-subscribed, with 38 vessels participating (35 for North Sea cod, three for sole in the



Western Channel, one of which is also trialling a mixed fishery approach for sole, anglerfish and plaice in Western waters).

5.9 The Minister says that in 2012 the UK aims to push the principle that the catch quota scheme should be open to any vessel wishing to participate, and not a limited number of vessels created by a restriction of available quota. It would also like to expand the scheme beyond cod fisheries to include a wider range of stocks and vessel types, thus giving a better understanding of how catch quotas will work in a mixed fishery, and providing evidence on the feasibility of using such a system under a reformed Common Fisheries Policy (CFP). In the meantime, he welcomes the fact that the Commission has proposed an additional 5% quota for Member States participating in catch quota trials for sole in south western Channel, which would enable the UK sole pilot to be offered to further vessels in 2012.

5.10 The Minister says that the Commission's intention is that this proposal should be agreed at the November Council, but that there are political pressures based upon general opposition to the approach of splitting the end of year negotiations in this way, which may mean that both this proposal on internal stocks, and the following proposal on shared stocks, will be agreed at December Council in the usual manner.

## Conclusion

5.11 **As we have noted, consideration of annual total allowable catches has in the past presented timing difficulties because of the need both to await scientific advice and to agree catch levels with third countries in the case of shared stocks. To that extent, the Commission's initiative in putting forward these proposals for the EU's "internal" stocks, in advance of those which have to be negotiated internationally, is to be welcomed. On the other hand, the Government has said that Member States may be reluctant to agree one set of proposals in isolation from the other, preferring to consider the package as a whole, and it has suggested that any agreement is unlikely to be reached before the December Council.**

5.12 **In view of this, we feel unable to clear these proposals at this stage, bearing in mind also the reservations which the Government has expressed on their substance, notably as regards the blanket approach which the Commission has adopted to the setting of certain total allowable catches, and the rate at which it is proposing that the maximum sustainable yield should be achieved. We are therefore simply reporting these proposals to the House, and look forward to receiving an update from the Minister in the light of the way in which the negotiations unfold (and the proposal eventually put forward on the remaining stocks subject to discussion with third countries).**

**Annex: Commission proposals for “internal” TACs in 2012**

	2011	UK quota	2012	% change
<b>North Sea</b>				
Hake	1,935	348	1,726	-10
Megrim	1,845	1,775	1,568	-15
Nephrops	23,454	20,315	20,849	-11
<b>Eastern Channel</b>				
Plaice	4,665	1,357	4,179	-10
Sole	4,852	933	5,300	+9
<b>Western Channel</b>				
Cod	4,023	295	9,679	+141
Haddock	13,316	1332	9,987	-25
Whiting	16,568	1,740	12,426	-25
Hake	30,900	5,553	27,575	-10
Sole (English Channel)	710	418	777	+9
Sole (Bristol channel)	1,241	349	1,060	-15
Sole (Western approaches)	423	71	360	-15
Plaice (Bristol Channel)	410	53	308	-25
Plaice (Western approaches)	185	23	139	-25
Monkfish	32,292	5,807	24,219	-25
Megrim	18,300	2,624	13,725	-25
<b>Irish Sea</b>				
Cod	506	146	0	-100
Haddock	1,317	631	988	-25

	2011	UK quota	2012	% change
Whiting	118	46	89	-25
Plaice	1,627	491	1,220	-25
Sole	390	80	220	-43
Pollack	13,495	2,353	10,121	-25
Nephrops	21,759	7,137	17,551	-19
<b>West of Scotland</b>				
Cod	180	110	0	-100
Whiting	323	185	242	-25
Haddock	2,005	1,561	2,506	+25
Plaice	693	408	589	-15
Monkfish	5,456	1,679	4,092	-25
Megrim	3,387	1,062	2,879	-15
Nephrops	13,681	13,357	13,950	+2
<b>Pelagic stocks</b>				
Irish Sea herring	5,280	3,906	3,960	-25

## 6 Increasing the impact of EU development policy

(33244) Commission Communication: *Increasing the impact of EU  
15560/11 development policy: An Agenda for Change*  
COM(11) 637  
+ ADDs 1–2

<i>Legal base</i>	—
<i>Document originated</i>	13 October 2011
<i>Deposited in Parliament</i>	19 October 2011
<i>Department</i>	International Development
<i>Basis of consideration</i>	EM of 28 October 2011
<i>Previous Committee Report</i>	None; but see (32174) 16146/10: HC 428–xi (2010–11), chapter 18 (15 December 2010)
<i>Discussion in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

### Background

6.1 The EU’s development policy is enshrined in the 2005 European Consensus on Development, which was signed jointly by the Council, the Commission and the European Parliament under the UK’s Presidency of the EU. It sets out a clear framework for EU development policy focused on poverty reduction and achieving the Millennium Development Goals (MDGs) and is based on best practice principles for delivering aid.

6.2 The Consensus 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 focussing on the MDGs;
- 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); and
- developing countries to be mainly responsible for their own development (national strategies developed in collaboration with non-government bodies, and mobilising domestic resources; EU aid aligned with these national strategies and procedures).<sup>26</sup>

<sup>26</sup> See [http://ec.europa.eu/europeaid/what/development-policies/european-consensus/index\\_en.htm](http://ec.europa.eu/europeaid/what/development-policies/european-consensus/index_en.htm) for further information. The text of the Consensus is available at [http://ec.europa.eu/development/icenter/repository/european\\_consensus\\_2005\\_en.pdf](http://ec.europa.eu/development/icenter/repository/european_consensus_2005_en.pdf).

## The earlier Green Paper

6.3 In November 2011, the European Commission Development Commissioner, Andris Piebalgs, announced his intention to update the EU's development policy and, depending on the outcome of a Green Paper consultation (which was to run until 17 January 2011), that he might choose to launch a full review of the Consensus in late 2011, aiming to conclude in 2012.

6.4 The Green Paper considered how to update the EU's development policy so as to improve its impact and increase its focus on economic growth as a driver of sustainable development.

6.5 In his Explanatory Memorandum of 24 November 2010, the Minister of State at the Department for International Development (Mr Alan Duncan) noted that the Green Paper posed questions covering a range of EU development policies, focusing on the following areas:

- *Putting 'High Impact' cooperation into practice*: Should the EU and Member States develop guidance setting out conditions to be met (for example on coordination and results) before any programmes can be implemented? How should different aid flows (for example from public and private sources or different EU budget instruments) be managed together?
- *Growth for human development*: How can the EU and Member States ensure that aid for health and education contributes to human development and growth? How should the EU support skills development, for example through its approach to migration?
- *Promoting Governance*: How should the EU adapt its development policy to support governance reforms in partner countries, with greater incentives for reform? How should the EU promote more robust results monitoring?
- *Security and Fragility*: How should the EU intervene in fragile and conflict-affected States, coordinating short term conflict or crisis response with longer term development?
- *Making coordination of aid a reality*: How can the EU promote aid effectiveness and make European Country Strategy documents a reality?
- *Policy Coherence for Development*: How can policy coherence be improved and measured?<sup>27</sup>
- *Partnerships for inclusive growth*: How should the EU support industrial investments in partner countries, for example in the extractive or post-extractive sectors? How can the

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27 The EU seeks to build synergies between policies other than development cooperation that have a strong impact on developing countries, for the benefit of overseas development (Policy Coherence For Development, or PCD). In 2005, the EU agreed to apply the PCD approach in 12 policy areas that could accelerate progress towards the Millennium Development Goals For Development: trade, environment and climate change, security, agriculture, bilateral fisheries agreements, social policies (employment), migration, research/ innovation, information technologies and transport and energy. The European Commission reports every two years on progress made on PCD by the EU in the 12 areas. The aim is to encourage continual progress, based on feedback from developing countries, Member States, civil society and the European Parliament. For full information on PCD, see: [http://ec.europa.eu/europeaid/what/development-policies/policy-coherence/index\\_en.htm](http://ec.europa.eu/europeaid/what/development-policies/policy-coherence/index_en.htm).

EU better protect social and economic rights, such as labour standards? How can the EU help partner countries to promote a business-friendly environment, especially for small and medium sized enterprises? How can the EU support low cost finance and financial guarantees? How can EU funding promote innovation and technology transfer in partner countries?

- *Fostering regional integration*: How can the EU’s experience inform regions seeking to strengthen their integration?
- *Continuing to ensure trade for development*: How can the EU improve aid for trade provisions and ensure consistency between its trade and development policies?
- *Climate change, biodiversity and development*: How can climate adaptation and disaster risk reduction be mainstreamed into the EU’s development policy?
- *Energy and development*: How can the EU help partner countries to secure sustainable energy for their citizens, combining climate change funding and leveraged loans from Development Finance Institutions?
- *Agriculture and food security*: How can EU development policy better support food security and stimulate sustainable intensification of agriculture, fishing and aquaculture? How can the EU support the fight against malnutrition?

6.6 The Minister went on to say that it was not currently clear whether the Green Paper consultation was intended to focus only on growth, or cover the entire remit of EU development policy. He saw the broad remit of questions as suggesting a wholesale review, although also noted that the title of the Green Paper and discussions with Commission officials put the emphasis on growth.

6.7 The Minister also noted that similar consultations were presently being run on the EU’s approach to Budget Support,<sup>28</sup> while those on the future of the EU’s external financial instruments had yet to be officially launched. The Commission had, he said, indicated that all these consultations would feed into a Communication in autumn 2011, at which point a decision would be taken on whether to open up the European Consensus on Development for a full review.

6.8 The Minister saw this consultation process as an important opportunity to influence emerging EU priorities on development. He welcomed the focus on sustainable growth and wealth creation in the Green Paper and reference to the private sector as a key driver of growth, which he said was an area in which the Department for International Development was stepping up its efforts. He also welcomed the increased focus on demonstrating the impact and results achieved by EU development aid. However, he was concerned that a major review of the Consensus in the current climate could downgrade its poverty reduction focus and undo the achievements of 2005. In addition to focusing on growth and the private sector, he would want any potential review of the Consensus to ensure that EU development policy continued to prioritise poverty reduction and the MDGs, certainly the

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<sup>28</sup> For the Committee’s consideration of that other Green Paper, see (32105) 15240/10: HC 428–viii (2010–11), chapter 11 (17 November 2010). And for its consideration of the subsequent Commission Communication, see (33245) 15561/11: HC 428–xl (2010–2012), chapter 3 (2 November 2011).

most off track ones like maternal mortality, as well as press for a stronger focus on ensuring value for money from the EU's aid budget; and it should also embrace the EU's future role in combating climate change and preventing conflicts across the globe.

6.9 In the short term, the Minister noted that general discussion on the Green Paper was scheduled for the 9 December 2010 “Development” Council, and that the Government would provide written comments on the Green Paper (consulting other Government Departments, including the Foreign and Commonwealth Office and Department for Business, Innovation and Skills) and work closely with the Commission and other EU Member States through experts’ groups and officials’ meetings to steer the emerging Communication.

### **Our assessment**

6.10 We reported this development to the House because of the importance of the subject matter and also drew it to the attention of the International Development Committee.

6.11 We asked the Minister to write to the Committee in due course about the outcome of his Department’s consultations and the Government’s response.

6.12 In the meantime, we cleared the Green Paper from scrutiny.<sup>29</sup>

### **The Minister’s letter of 2 March 2011**

6.13 On 2 March 2011, the Minister wrote to update the Committee on his Department’s responses to the Commission’s recent consultations on development policy and budget support, and to set out the then Hungarian EU Presidency’s development priorities.

6.14 With regard to EU development policy, the Minister said that the Government’s response emphasised that it should:

- stay focused on poverty reduction;
- promote economic growth and the role of the private sector;
- demonstrate clear results;
- improve aid transparency;
- ensure coherence between development and wider EU policies;
- meet commitments on aid volumes; and
- review the EU approach to aid effectiveness and strategic partnerships.

6.15 The Minister also attached a copy of the Government’s full response, as set out in a 3 February 2011 letter to the EU Development Commissioner, Andris Piebalgs.

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<sup>29</sup> See headnote: (32174) 16146/10: HC 428–xi (2010–11), chapter 18 (15 December 2010).

6.16 As the Minister’s lengthy letter and attachments were also copied to the Chair of the International Development Committee, we decided that a further Report to the House at that point would be otiose.

### The Commission Communication

6.17 In his Explanatory Memorandum of 28 October 2011, the Parliamentary Under-Secretary at the Department for International Development (Mr Stephen O’Brien) recalls that the aim of the consultation, to which he says the UK provided significant input, was to launch a public debate on how the EU could best support developing countries in mobilising their economic, natural and human resources in support of poverty reduction strategies. The Minister notes that, as well as providing written comments on the Green Paper, the UK worked closely with the Commission and EU Member States through expert groups and officials’ meetings to steer the direction of the Communication; and in so doing, pushed for a strong focus on demonstrating impact and results achieved by EU development aid as well as ensuring strong engagement with the private sector as a driver of growth.

6.18 The Minister goes on to say that the consultation confirmed the relevance of the existing policy framework, but agreed on the need to increase impact, with a convergence of views on ensuring:

- a strong poverty focus;
- the EU achieves its commitments on ODA;
- greater transparency of EU aid;
- the importance of inclusive growth for human development;
- the adoption of a differentiation approach, with resource allocation based on partner countries needs and capacities;
- the achievement of clear development results;
- good governance;
- the importance of country ownership; and
- private sector engagement.

6.19 The Communication sets out a more strategic EU approach to reducing poverty, including through a more targeted allocation of funding. It notes that the EU is “not simply the 28th European donor”, implementing 20% of the EU effort, but “also acts as coordinator, convenor and policy-maker”.<sup>30</sup> To be fully effective, the Commission says, “the EU and its Member States must speak and act as one to achieve better results and to improve EU’s visibility”.<sup>31</sup>

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30 COM(11) 637, p. 3.

31 *Ibid.*



6.20 Against this background, the Commission contends that the EU must seek to focus its efforts where it can have the greatest impact and concentrate development cooperation in support of:

- human rights, democracy and good governance; and
- inclusive and sustainable growth.

6.21 With this in mind, the Commission lays out an Agenda for Change (see the Annex to this chapter of our Report). To ensure best value for money, this should be accompanied by differentiated development partnerships; coordinated EU action and improved coherence among EU policies. The main proposals are:

- *Differentiation of partnerships and aid allocations and mechanisms*: target aid based on where it is needed for poverty reduction and where it will have the greatest impact. In particular, focus on the EU neighbourhood and sub-Saharan Africa. The Communication details criteria for differentiation which includes: a) Country needs; b) Capacity (the ability of the country to generate financial resources and their aid absorption capacity); c) Commitments and Performance; and d) Potential EU impact;
- *Fragile situations*: specific forms of support for fragile States from the EU should be defined to enable recovery and resilience; country-based decision-making will give the EU the flexibility to respond to unexpected events and shocks;
- *Human Rights, Democracy and Good Governance*: EU support to governance should feature more prominently in all partnerships and further focus on partners' commitments to human rights, democracy and the rule of law; the mix and level of aid should therefore depend on the country's situation, including its ability to conduct reforms;
- *Inclusive and Sustainable Growth for Human Development*: the EU should encourage more inclusive growth through sectors such as social protection, health and education and through doing so promote a "green economy"; there should be continued support for social inclusion and human development, including implementing the Gender action plan;
- *Business Environment, Regional Integration and World Markets*: the EU should support the development of competitive local private sectors with a greater focus on investing in drivers for growth and job creation; also further develop blending mechanisms to boost financial resources for development with a greater focus on innovative financial tools;
- *Coordinated EU action*: the EU should give further consideration to Joint Programming as a way to reduce fragmentation and increase its impact proportionally to commitment levels; programming should be synchronised with the strategy cycles of partner countries where possible; and also work towards a common EU results reporting framework; and
- *Policy Coherence for Development (PCD)*: intensify the EU's joined-up approach with more PCD through new thematic programmes especially in regards to security and poverty.

6.22 The Commission concludes with a section on *Embracing The Agenda For Change*, in which it calls on the Council to endorse the proposed Agenda for Change that it says seeks to:

- equip the EU with high-impact development policy and practice for the coming decade and give it a leading role in setting a comprehensive international development agenda up to and beyond 2015; and
- support the change needed in partner countries to bring about faster progress towards poverty reduction and the MDGs.

6.23 The Commission says its services and the European External Action Service will ensure that the guiding principles set out in this Communication are progressively reflected during the remainder of the current programming cycle and in future programming documents, as well as in the proposals regarding the architecture, legislation and programming of future financial instruments for external action; and urges Member States also implement the Agenda.

### The Government's view

6.24 The Minister begins by noting that the Communication does not represent further decision-making powers granted to the EU — “rather its intention is to improve the effectiveness of existing EU aid”, and “to improve the impact of EU development cooperation in support of a) human rights, democracy and other key elements of good governance, and, b) inclusive and sustainable growth for human development.”

6.25 The Minister says that he supports the emphasis that the Commission puts on improved value for money through a differentiated development partnership based on the needs, capacities and commitment of the partner country and the potential impact of EU's support, and its call for improved coordinated EU action and coherence among EU policies; and that he will work closely with Commission, European External Action Service (EEAS) and Member States to implement these policy changes.

6.26 Overall, the Minister says, the Communication is broadly in line with UK priorities and he professes himself pleased with the focus on poverty reduction and targeting aid to where it will have most impact. The Communication is, he says, in line with the UK priority for aid to be based on individual country needs and priorities.

6.27 The Minister then comments on the notion of greater EU coordination at country level as follows:

“there is a clear value for money rationale in doing so. However, we are not satisfied with the EC's suggested Joint Programming approach in its current form. The UK's view is that the EU approach needs to be country-led, pragmatic, flexible and open to others who are willing to align around partner country led dialogue and coordination. This is reflected in the Communication stating that the process will be country-led and will support partner country strategies. The UK has made this clear to the EC and Member States from the outset that this process should not be led by the Commission in Brussels — there is evidence that this increases transaction costs in partner countries. We will continue to work with the EU, alongside like-minded

Member States such as Sweden, Denmark and the Netherlands, to make sure coordination will be country-owned, transparent and have a focus on results.”

6.28 The Minister then recalls that a key priority for the UK, as outlined in DFID’s Multilateral Aid Review 2011, is improving the results focus, value for money and the transparency of the Commission:

“The Communication has a strong focus on results and the need to develop a results framework and improved monitoring. The UK will continue to engage with the EC and like-minded Member States to ensure that the new emphasis on EU results leads to a more effective EC with the ability to demonstrate development results.”

6.29 Looking ahead, the Minister says:

- there has been no consultation process on his Explanatory Memorandum but he will be consulting with other Government Departments, including the Foreign and Commonwealth Office, in working with the Commission on the policy changes it proposes;
- Council Conclusions are expected in the first half of 2012.

## Conclusion

6.30 **There is a distinct undertone of the Commission calling the other Member States to order in this Communication; witness its description of itself as “not simply the 28th donor” but the “coordinator, convenor and policy-maker”. It is perhaps this tone that the Minister has in mind when notes that he has sought to make it clear that a *dirigiste* approach from Brussels is not the right one. That he does not expect early Council Conclusions on the Communication suggests that this discussion is not yet concluded.**

6.31 **That being so, we shall in the meantime continue to retain the document under scrutiny until the Minister is able to let us know what shape he expects those Conclusions to take, and whether or not he expects them to endorse the proper balance that he is seeking.**

6.32 **Given the importance of the policy under discussion, we are also using our power under Standing Order No. 143 (11) to request an opinion on the Commission’s approach from the International Development Committee.**

## Annex: Commission Agenda for Change<sup>32</sup>

### **“The Commission proposes an Agenda for Change that would lead to:**

- “an increased share of EU country and regional cooperation programmes dedicated to the policy priorities given in sections 2 and 3 below;<sup>33</sup>
- “the concentration of EU activities in each country on a maximum of three sectors;
- “an increased volume and share of EU aid to the countries most in need and where the EU can have a real impact, including fragile states;
- “enhanced importance of human rights, democracy and good governance trends in determining the mix of instruments and aid modalities at country level;
- “continued support for social inclusion and human development through at least 20% of EU aid;
- “a greater focus on investing in drivers for inclusive and sustainable economic growth, providing the backbone of efforts to reduce poverty;
- “a higher share of EU aid through innovative financial instruments, including under facilities for blending grants and loans;
- “a focus on helping reduce developing countries’ exposure to global shocks such as climate change, ecosystem and resource degradation, and volatile and escalating
- “energy and agricultural prices, by concentrating investment in sustainable agriculture and energy;
- “tackling the challenges of security, fragility and transition;
- “joint EU and Member States response strategies based on partners’ own development strategies, with a sectoral division of labour;
- “a common EU results reporting framework;
- “improved Policy Coherence for Development, including through new thematic programmes that build synergies between global interests and poverty eradication.”

32 See pp. 4–5 of the Communication.

33 “Human Rights, Democracy and other key elements of Good Governance” and Inclusive and Sustainable Growth for Human Development”.

## 7 The European Social Fund

(33218) 15247/11 COM(11) 507	Draft Regulation of the European Parliament and the of Council on the European Social Fund and repealing Regulation (EC) No 1081/2006
+ ADDs 1–2	Commission staff working papers: Impact assessment and summary of impact assessment

<i>Legal base</i>	Article 164 TFEU, co-decision; QMV
<i>Document originated</i>	6 October 2011
<i>Deposited in Parliament</i>	13 October 2011
<i>Department</i>	Work and Pensions
<i>Basis of consideration</i>	EM of 26 October 2011
<i>Previous Committee Report</i>	None
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

### Background

7.1 One of the objectives of the European Union is to “promote economic, social and territorial cohesion, and solidarity among Member States.”<sup>34</sup> EU cohesion policy seeks to reduce disparities in the levels of social and economic development by using the EU’s Structural and Cohesion Funds to provide targeted financial assistance to regions across the EU. The European Social Fund (ESF) is one of the EU’s Structural Funds. ESF interventions focus specifically on improving employment opportunities for workers within the EU’s internal market by encouraging geographical and occupational mobility and by helping workers to adapt to change.<sup>35</sup>

7.2 In June 2010, the European Council endorsed the EU’s Europe 2020 Strategy which highlights the social and economic challenges confronting Member States. The Strategy identifies five “headline targets” to help the EU develop as a “smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion.”<sup>36</sup> The targets include:

- lifting at least 20 million people out of the risk of poverty and social exclusion;
- raising education levels by ensuring that fewer than 10% of young people leave school early and that at least 40% complete a course of higher education; and
- improving employment opportunities for all and ensuring that 75% of women and men aged between 20 and 64 have a job.

34 See Article 3(3) of the Treaty on the European Union.

35 See Article 162 of the Treaty on the Functioning of the European Union.

36 See p.3 of Commission Communication on *Europe 2020: A European strategy for smart, sustainable and inclusive growth*; [http://europa.eu/press\\_room/pdf/complet\\_en\\_barroso\\_\\_\\_007\\_-\\_europe\\_2020\\_-\\_en\\_version.pdf](http://europa.eu/press_room/pdf/complet_en_barroso___007_-_europe_2020_-_en_version.pdf).

7.3 In November 2010, the Commission published a Communication on the future of EU cohesion policy which proposed a number of significant reforms for the next financial period (2014–20). These included a greater concentration of EU resources on the objectives and headline targets set out in the Europe 2020 Strategy, a clearer focus on delivery and results, stronger economic conditionality, and more effective monitoring and evaluation systems.<sup>37</sup>

## The draft Regulation

7.4 The draft ESF Regulation forms part of a broader package of measures and is intended to supplement the Commission’s proposal for an all-encompassing draft Regulation (“the General Regulation”) which would establish a Common Strategic Framework and a set of common provisions to govern all of the EU’s instruments of cohesion policy, including the ESF, for the period 2014–20.<sup>38</sup> The General Regulation would establish the total amount of EU resources available for allocation to the EU’s Structural and Cohesion Funds, as well as the criteria for their distribution between regions across the EU. It proposes that at least 25% of the EU’s cohesion policy budget — or €84 billion — should be allocated to the ESF.

7.5 The draft ESF Regulation proposes concentrating ESF support on four thematic objectives which are intended to complement the EU’s integrated guidelines on economic and employment policy and to support Member States in achieving their national Europe 2020 Strategy targets. The four objectives are:

- promoting employment and supporting labour mobility;
- investing in education, skills and lifelong learning;
- promoting social inclusion and combating poverty; and
- enhancing institutional capacity and efficient public administration.

7.6 Each of these thematic objectives is accompanied by “investment priorities” which indicate the types of intervention which the ESF will support. Whilst these focus mainly on the employment, education and poverty reduction headline targets set out in the Europe 2020 Strategy, the draft ESF Regulation states that the ESF should also contribute to other Europe 2020-related objectives, such as strengthening investment in research and innovation, making ICT more accessible, supporting the shift towards a low-carbon economy, and increasing the competitiveness of SMEs.

7.7 The Commission says that the concentration of ESF funding on a more limited number of objectives is necessary to achieve “a sufficient and demonstrable impact.”<sup>39</sup> The draft ESF Regulation therefore proposes that Member States should concentrate the bulk of their ESF funding on no more than four investment priorities, and that at least 20% of ESF resources allocated to each Member State should be dedicated to programmes promoting social inclusion and combating poverty. All ESF programmes should promote equal

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37 ((32199): See HC 428–xi (2010–11), chapter 6 (15 December 2010) and HC 428–xviii (2010–11), chapter 6 (2 March 2011).

38 (33217): See Chapter 1 of this Report.

39 See p.5 of the Commission’s explanatory memorandum.



opportunities for all and target support towards those most at risk of discrimination. Those which support social innovation and transnational cooperation would qualify for a higher EU contribution.

7.8 The draft Regulation seeks to encourage the involvement of social partners and non-governmental organisations in the preparation and implementation of ESF programmes. As their capacity to participate effectively may be limited, the draft Regulation requires less developed Member States to set aside an appropriate amount of ESF resources to support capacity building. It also seeks to simplify eligibility rules to make it easier for smaller beneficiaries to access ESF funds and to encourage and support community-led local development strategies.

7.9 The draft Regulation proposes a set of common indicators to help monitor and assess the impact and effectiveness of ESF interventions. These include indicators on those benefiting directly from ESF funding (for example, the long-term unemployed, migrants, individuals falling into different age categories or levels of educational attainment) and on outcomes (for example, beneficiaries who have obtained employment, gained a qualification, or taken up training).

7.10 Finally, the draft Regulation includes a variety of simplified cost options to reduce the administrative burden on beneficiaries of ESF funding and makes provision for the ESF to support a range of financial instruments in order to leverage additional sources of funding.

## The Government's view

7.11 The Minister for Employment (Chris Grayling) notes that HM Treasury has overall responsibility for the Government's policy on the EU's Multiannual Financial Framework, which will determine the overall size of the EU budget for 2014–20 and the proportion to be made available to support economic, social and territorial cohesion.<sup>40</sup> He adds:

“At a time of major fiscal consolidation for Member States, we need to see similar budget discipline at the EU level. The maximum acceptable expenditure increase through the next Multiannual Financial Framework overall is a real freeze in payments. Significant reductions are required to the overall Structural and Cohesion Funds envelope proposed by the Commission to achieve this.”<sup>41</sup>

7.12 The Government believes that the primary focus of EU Structural Funds should be to address regional disparities and that this can best be achieved by focusing on growth and raising skills levels and employment. The Minister therefore welcomes the proposed use of the ESF to address challenges identified in Member States' National Reform Programmes and to complement domestic programmes “to improve value for money.”<sup>42</sup> He also highlights a number of concerns.

7.13 First, the Minister suggests that some of the proposed investment priorities on social inclusion and poverty would extend the scope of the ESF beyond its current focus on

40 See (32986), (32987), (32988), (32989), (32994) and (32998); HC 428–xxxv (2010–12), chapter 1 (7 September 2011).

41 See para 19 of the Minister's Explanatory Memorandum.

42 See para 21 of the Minister's Explanatory Memorandum.



improving labour market participation and skills levels. He believes that “targeting the most disadvantaged groups, according to labour market need, in order to improve their employability and skill” would help to tackle poverty and promote social inclusion.<sup>43</sup>

7.14 Second, the Minister says that investment decisions should be taken by Member States “on the basis of a thorough assessment of evidence of needs” and that they should have sufficient flexibility to use EU Structural Funds to address their own specific “bottlenecks to growth.”<sup>44</sup> Similar flexibility is needed to enable Member States to use the ESF “in a way that is consistent with their employment and skills policies and systems, taking account of devolved responsibilities as in the UK.”<sup>45</sup>

7.15 Third, the Minister notes that the draft Regulation confers powers on the Commission to adopt delegated acts concerning simplified cost options and “ESF policy-based guarantees” (designed to enhance access to capital markets) and says that the Government will consider whether these powers are “essential for sound financial management and consistent with Member States’ responsibility for employment and skills policy.”<sup>46</sup>

7.16 The Minister indicates that the Government will undertake a further consultation on the proposed General Regulation and accompanying sectoral Regulations, including the draft ESF Regulation. He says that negotiations are expected to continue throughout 2012 and that final agreement is only likely to be reached once the EU’s Multiannual Financial Framework for 2014–20 has been settled.

## Conclusion

**7.17 We note the Government’s view that significant reductions are needed in the funding levels proposed by the Commission for economic, social and territorial cohesion in order to achieve a real freeze in EU expenditure for the period 2014–20. The eventual size of the EU budget for Structural and Cohesion Funds will inevitably affect the feasibility of the thematic objectives and investment priorities proposed for each of the individual Funds, including the ESF. We are therefore retaining the draft Regulation under scrutiny and ask the Government to inform us of the outcome of its consultation on the proposal and to provide us with progress reports on the negotiations.**

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43 See para 22 of the Minister’s Explanatory Memorandum.

44 See para 23 of the Minister’s Explanatory Memorandum.

45 See para 24 of the Minister’s Explanatory Memorandum.

46 See para 25 of the Minister’s Explanatory Memorandum.

## 8 EU Programme for Social Change and Innovation

(33229) 15451/11 COM(11) 609	Draft Regulation of the European Parliament and of the Council on the European Union Programme for Social Change and Innovation
+ ADDs 1–3	Commission staff working papers: Impact assessment, summary of impact assessment and ex-ante evaluation

<i>Legal base</i>	Articles 46(d), 149, 153(2)(a) and 175 TFEU; co-decision; QMV
<i>Document originated</i>	6 October 2011
<i>Deposited in Parliament</i>	17 October 2011
<i>Department</i>	Work and Pensions
<i>Basis of consideration</i>	EM of 26 October 2011
<i>Previous Committee Report</i>	None
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

### Background

8.1 The Commission currently has three instruments to help it implement EU employment and social policy. They are:

- *PROGRESS* — the Programme for Employment and Social Solidarity which has a budget of €683 million<sup>47</sup> for the period 2007–13 and seeks to strengthen the evidence base for EU social and employment policies, promote mutual learning and the exchange of good practice, and support the effective implementation of EU policies and laws;
- *EURES* — a network of public employment services across the EEA which has a budget of €149 million for 2007–13 and seeks to provide information and advice to job seekers and workers on employment opportunities across the EU; and
- the *European MicroFinance Facility* which provides EU resources of up to €100 million for the four-year period 2010–13 to encourage the provision of loans to those who would otherwise struggle to obtain credit and who wish to set up their own small businesses.

### The draft Regulation

8.2 The draft Regulation proposes establishing a single EU Programme for Social Change and Innovation which would incorporate all three instruments and define common objectives and types of action eligible for funding. These general provisions would be

<sup>47</sup> The conversion rate is €1 = £0.8667, the market rate for 30 September 2011.

complemented by additional provisions setting out specific objectives tailored to each of the three strands of the Programme. The Programme as a whole would have a budget of €958 million for the period 2014–20, which would be allocated as follows:

- 60% (or €575 million) to PROGRESS to support the development, implementation, monitoring and evaluation of EU employment and social policies and legislation, and to promote evidence-based policy-making and innovation. At least 17% (or €98 million) would be used to promote “social experimentation” by funding innovative projects in areas of mutual interest (for example, the modernisation of labour market or social protection systems) with a view to testing possible solutions, disseminating the results, and increasing the efficiency of social expenditure;
- 15% (or €144 million) to EURES to encourage the exchange of information on job vacancies and labour mobility;
- 20% (or €191 million) to a Microfinance and Social Entrepreneurship facility to improve access to microfinance and to encourage the development of social enterprises; and
- 5% (or €48 million) to be allocated annually in accordance with policy priorities.

8.3 The principal objective of the new Programme would be to support implementation of the Europe 2020 Strategy, especially its headline targets on employment and social exclusion, and the EU’s integrated guidelines on economic and employment policy with a view to promoting a high level of employment, guaranteeing adequate social protection, combating social exclusion and poverty, and improving working conditions.

8.4 The draft Regulation (Article 4) identifies five overarching objectives:

- strengthening stakeholder “ownership” of the objectives of EU employment and social policies in order to encourage better coordination at EU and national level;
- developing “adequate, accessible and efficient social protection systems and labour markets”;
- modernising EU law in line with “smart regulation” principles and ensuring that EU laws on working conditions are effectively applied;
- promoting the mobility of EU workers within open and accessible labour markets; and
- promoting employment and social inclusion through easier access to, and availability of, microfinance.

8.5 The draft Regulation sets out a variety of types of action which may be financed under the Programme. These include: analytical activities, such as the development of common methodologies, indicators and benchmarks as a means of evaluating policies and assessing their impact, and the production of surveys, studies and reports; mutual learning and awareness-raising activities to encourage the exchange and dissemination of information;

support for EU-level networks; the development of a multilingual digital platform for job vacancies; and support for microfinance and social enterprises.

8.6 In its accompanying explanatory memorandum, the Commission emphasises the importance of social innovation and social experimentation as a tool for shaping the reforms and policies needed to implement the Europe 2020 Strategy. Whilst recognising that Member States have the primary responsibility for tackling socio-economic problems, the Commission highlights the role that the EU can play in “putting the need for specific reforms on the agenda, identifying barriers to change and ways of overcoming them, ensuring that existing Union level rules are complied with, stimulating sharing of good practice and mutual learning, and supporting social innovation and Europe-wide approaches.”<sup>48</sup>

### The Government’s view

8.7 The Minister for Employment (Chris Grayling) notes that the draft Regulation would carry forward many of the elements of the existing PROGRESS, EURES and Microfinance programmes, while at the same time simplifying their implementation through the application of common provisions defining general objectives, types of actions, financial rules, and monitoring and evaluation. He says that the existing programmes have, in the main, proved to be effective and demonstrated their added value and that, as a result, there is strong support for a more integrated successor programme.

8.8 The new Programme would be managed by the Commission and, as it does not include specific allocations for Member States, would have “very limited direct implications for the UK.” However, the Minister anticipates that there would be wider benefits for the UK as a result of “studies, exchanges of good practice, stakeholder engagement” as well as additional micro-credits and support for social enterprises. He adds:

“There should also be more scope for government and others to bid for future innovation project funding, in areas identified as of common interest for study, although we expect that funds will largely be used to support Member States with limited capacity of their own to support this work.”<sup>49</sup>

8.9 The Minister notes the emphasis placed in the draft Regulation on greater EU support for work on social experimentation and innovation in order to test how divergent policy reforms respond to agreed common challenges. He continues:

“The proposed greater focus on supporting innovative policy approaches is an attractive development in terms of improving mutual learning and the effectiveness of the Open Method as an alternative to further EU legislation. At a time of considerable fiscal consolidation in Member States, this approach might be particularly useful in helping to ensure that we can benefit more fully from others’ experience and, through that shared learning, improve the efficiency and effectiveness of our own policy development and spending on it. However, it is

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48 See p. 3 of the Commission’s explanatory memorandum.

49 See para 20 of the Minister’s Explanatory Memorandum.

important that this is accommodated within a more realistic programme budget, as part of the overall Multiannual Financial Framework.”<sup>50</sup>

8.10 The Government identifies the “inflated budget total”, rather than the substance of the draft Regulation, as its “key concern.”<sup>51</sup> The Minister notes that 35% (or €238 million) of spending under the current PROGRESS programme is intended to support implementation of the principles of non-discrimination and gender equality. He says that the Commission’s explanatory memorandum appears to suggest that this expenditure will be incorporated in new instruments in the field of justice. If this is indeed the case, then the Government believes that the budget proposed for the new integrated Programme represents a “significant increase” in spending which it intends to challenge.<sup>52</sup> The Minister adds:

“At a time of major fiscal consolidation for Member States, we need to see similar budget discipline at the EU-level. The maximum acceptable expenditure increase through the next Financial Perspective overall is a real freeze in payments. The growth and competitiveness heading, which includes this programme, should be a priority with a proportionally larger share of EU spending, but still increase by no more than inflation.”<sup>53</sup>

8.11 The Minister expresses the Government’s concern at the proposal to set aside 5% of the Programme’s budget as a “contingency fund”, adding that the Commission “should aim to budget realistically.”<sup>54</sup> He says that the Government will seek further commitments to ensure that the Commission continues to cooperate with and consult relevant sectoral committees, such as the Employment and Social Protection Committee or the Advisory Committee on Health and Safety at Work. The Government will also seek to ensure that the principle of co-financing, which requires the recipients of EU funding to make a contribution of 20%, is maintained for the PROGRESS strand of the new Programme.

8.12 On EURES, the Minister notes that the draft Regulation would extend its field of activity from the recruitment and placing of workers to post-placement support for a successful applicant and the development of targeted mobility schemes for hard-to-fill vacancies or for particular categories of workers. He questions whether this shift in focus is realistic “when we need to target resources on those in greatest need of support” and when levels of youth unemployment are high in all Member States.<sup>55</sup>

8.13 The Minister draws attention to the inclusion of social enterprises as potential beneficiaries of the Microfinance facility and indicates that the Government will seek to clarify whether support is intended to be limited to those social enterprises with a focus on employment.

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50 See para 18 of the Minister’s Explanatory Memorandum.

51 See para 11 of the Minister’s Explanatory Memorandum.

52 The Minister suggests an increase of as much as one third (or roughly €350 million). This is based on the difference between the figure of €850 million proposed for the EU’s social development agenda in the Commission’s Communication on *A Budget for Europe 2020* and the actual figure of €958 million in the draft Regulation on the EU Programme for Social Change and Innovation, plus the €238 million of expenditure transferred from PROGRESS to new Justice programmes.

53 See para 19 of the Minister’s Explanatory Memorandum.

54 See para 11 of the Minister’s Explanatory Memorandum.

55 See para 11 of the Minister’s Explanatory Memorandum.

8.14 Finally, the Minister notes that the Commission is keen to make progress on the draft Regulation, but adds that “the final budget figure will be dependent on the outcome of negotiations on the overall Multiannual Financial Framework.”<sup>56</sup>

## Conclusion

8.15 The Minister provides a broadly positive assessment of the effectiveness and added value of the existing PROGRESS, EURES and Microfinance programmes and highlights the continuities in the proposed new integrated Programme, while also welcoming the stronger focus on innovation.

8.16 The Government’s principal concern would appear to be the size of the budget for the new Programme. Although the total figure of €958 million proposed in the draft Regulation for 2014–20 would not appear to be significantly greater than current expenditure of around €932 million for 2007–13, the Minister suggests that the increase may be far more substantial because current spending of €238 million on gender equality and anti-discrimination under the existing PROGRESS programme has been stripped out of the proposed new Programme and moved to a different budget heading.

8.17 We think that it is essential to have as clear a basis as possible for comparing current and future projected expenditure. We therefore ask the Government to clarify with the Commission how EU-level activities to implement the principles of non-discrimination and gender equality will be funded for the period 2014–20, and at what cost to the EU budget, and to report back to us. We also ask the Government to provide us with progress reports on the negotiations. Meanwhile, the draft Regulation remains under scrutiny.

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56 See para 22 of the Minister’s Explanatory Memorandum.

## 9 Enlargement Strategy and Main Challenges 2011–12

(33233) 15608/11 COM(11) 666	Commission Communication: Enlargement Strategy and Main Challenges 2011–2012
(33234) 15618/11 COM(11) 667	Commission Opinion on Croatia's application for EU membership
(33235) 15620/11 COM(11) 668	Commission Opinion on Serbia's application for EU membership
(33268) 15707/11 SEC(11) 1208	Commission Staff Working Document: Analytical Report accompanying the Commission's Opinion on Serbia's application for EU membership
(33246) 15609/11 SEC(11) 1200	Commission Staff Working Document: Croatia 2011 Progress Report
(33247) 15611/11 SEC(11) 1201	Commission Staff Working Document: Turkey 2011 Progress Report
(33248) 15612/11 SEC(11) 1202	Commission Staff Working Document: Iceland 2011 Progress Report
(33249) 15613/11 SEC(11) 1203	Commission Staff Working Document: The former Yugoslav Republic of Macedonia 2011 Progress Report
(33250) 15614/11 SEC(11) 1204	Commission Staff Working Document: Montenegro 2011 Progress Report
(33251) 15615/11 SEC(11) 1205	Commission Staff Working Document: Albania 2011 Progress Report
(33252) 15616/11 SEC(11) 1206	Commission Staff Working Document: Bosnia and Herzegovina 2011 Progress Report



(33253) 15617/11 SEC(11) 1207	Commission Staff Working Document: Kosovo <sup>57</sup> 2011 Progress Report
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<i>Legal base</i>	—
<i>Documents originated</i>	12 October 2011
<i>Documents deposited</i>	18 October 2011
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 7 November 2011
<i>Previous Committee Report</i>	None; but see HC 428–x (2010–11), chapter 19 (8 December 2010) and HC 19–xxxii (2008–09), chapter 2 (11 November 2009)
<i>Discussion in Council</i>	14 December 2010 General Affairs Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; further information requested

## Background

9.1 The Council is responsible for decisions on the admission of new Member States; the Commission’s annual report has traditionally provided the basis for the Council to take stock and give direction to the accession negotiations and pre-accession reform priorities. The Commission Communication accordingly provides a statement of the EU’s evolving enlargement strategy, an assessment of progress, and a look forward to the challenges and priorities for 2012.

9.2 The main document is the Enlargement Strategy and Main Challenges 2011–2012. This is accompanied by a set of comprehensive Progress Reports on Croatia, Iceland, Macedonia, Montenegro and Turkey (Candidate countries) and Bosnia and Herzegovina (BiH), Albania, Kosovo (aspirant countries). This year the Commission has also produced an additional Communication on Serbia, with its Opinion on Serbia’s application to be granted Candidate country status, accompanied by an analytical Report; and an Opinion on Croatia’s accession.

9.3 The Progress Reports analyse the progress made by individual countries in meeting the Copenhagen criteria for membership, i.e. political and economic criteria, as well as the capacity to assume the obligations of membership. The political criteria require the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The economic criteria require a functioning market economy able to cope with the competitive pressure and market forces within the Union. The ability to assume the obligations of membership is based on progress in transposing and implementing the *acquis* (the body of EU law). For the purposes of accession negotiations this is split into 35 chapters ranging from the free movement of goods, through the judiciary and fundamental rights, to the environment and financial control. The reports on

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57 Under UNSCR 1244/99.

formal candidate countries — Croatia, Turkey, Iceland and Macedonia — set out in detail progress on each of the accession negotiation chapters. For the remaining countries, the reports cover a wide range of issues in line with the political and economic reforms required by their Stabilisation and Association Agreements (SAAs) with the European Union (for all except Kosovo, which does not have an SAA, but which is part of the Stabilisation and Association Dialogue).

## The main Commission Communication

9.4 The Commission sees the EU's enlargement policy as the response to the legitimate aspiration of people of our continent to join the endeavour of a unified Europe; as having (by virtue of the integration of the countries of Central and Eastern Europe over the past decade) shown that enlargement benefits the EU as a whole and allowed it to be better positioned to address global challenges; and as having been a powerful tool for societal transformation.

9.5 The Commission also recalls that the renewed consensus on enlargement, agreed by the December 2006 European Council, and based on the principles of consolidation of commitments, fair and rigorous conditionality and good communication with the public, combined with the EU's capacity to integrate new members, remains the framework for the EU enlargement policy.

9.6 The Commission says that the European Union's enlargement process has entered a new phase. It sees the completion of accession negotiations with Croatia as vindicating the policy adopted in the aftermath of the devastating Balkan conflicts of the 1990s, which aims to bring peace, stability, democracy and ultimately EU membership to the whole region; and as providing new momentum for reform in all enlargement countries. It also sees the dramatic events in the Southern Mediterranean and the Middle East, as well as the fragility of the ensuing situations, as underlining the importance of a pole of stability and democracy in South-East Europe, solidly anchored in the EU's enlargement process.

9.7 Since the adoption of the last enlargement package, the Commission notes further positive developments in the Western Balkans; viz., the removal of a major stumbling block from the European path of Serbia and an important step towards reconciliation via the arrest and transfer to the International Criminal Tribunal for the former Yugoslavia (ICTY) of Ratko Mladić and Goran Hadžić, and the opening of the dialogue between Belgrade and Pristina. The Commission says EU-related reforms can be reported in most enlargement countries, and highlights the granting of visa-free travel to the citizens of two more Western Balkan countries, Albania and Bosnia and Herzegovina.

9.8 Nevertheless, the Commission says, important reforms were delayed in a number of countries, often as a result of internal political developments and conflicts, and were particularly serious in Bosnia and Herzegovina and Albania. Good governance, the rule of law, administrative capacity, unemployment, economic reform and social inclusion remain major challenges in most countries. There have been concerning developments in the area of freedom of expression in the media. Differences over status continue to affect negatively both Kosovo and the region, with the recent events in Northern Kosovo causing grave concern. The name question concerning the former Yugoslav Republic of Macedonia remains unsolved.

9.9 Conversely, the Commission notes, Iceland's accession process has made headway, due to her long established democracy, membership of the European Economic Area and the Schengen zone, and high calibre public administration.

9.10 In Turkey, the accession process continues to be seen as the most effective framework for promoting EU-related reforms, developing dialogue on foreign and security policy issues, strengthening economic competitiveness and diversifying supply of energy sources. But, to the Commission's regret, it has not been possible to open a new negotiating chapter in the accession negotiations for over a year.

9.11 With respect to Croatia, her imminent accession is seen as demonstrating that the enlargement process is geared to maximise its transformative effects on the countries concerned, and that improvements brought to the process by the 2006 renewed consensus on enlargement were put into practice with Croatia and have proved their value. In particular, difficult negotiating chapters such as those on the judiciary and fundamental rights and on justice, freedom and security should, the Commission says, be tackled as early as possible to allow adequate time for the candidate country to build the necessary track record of reform. Far from drawing a dividing line in the Balkans, the accession of Croatia should serve as an incentive and catalyst for the rest of the region to accelerate its course towards the EU.

9.12 Within this context, the Commission remains fully attached to the principle of own merits, with the pace at which each country advances towards membership depending mainly on its performance in meeting the established criteria and conditions. It sees Croatia's successful experience as indicating to other enlargement countries that:

- the EU delivers on its commitments once the conditions are met;
- the demanding criteria and conditions for accession, with increased monitoring, are not an obstacle, but a guarantee that the candidate state achieves a higher level of readiness which will benefit both it and the EU upon accession;
- bilateral disputes with neighbours should and can be addressed through dialogue and compromise.

9.13 On the other hand, where political will and the commitment to achieve concrete results are insufficient or lacking, the accession process has not advanced and risks stalling. Based on the accompanying in-depth country analyses,<sup>58</sup> the Commission takes stock of what these countries have achieved preparing for membership; assesses their prospects for the coming years; and in this regard makes a number of recommendations.

9.14 As in previous years, a number of key challenges are given particular attention.

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58 Summaries and conclusions of the country reports are included as an annex to the Communication.

### **Increased focus on strengthening the rule of law and public administration reform**

9.15 Having been identified as a continuing major challenge and a crucial condition for countries moving towards EU membership, strengthening the rule of law has been given greater attention in recent years, particularly in the context of the negotiating chapters on the judiciary and fundamental rights and on justice, freedom during the accession negotiations with Croatia, and as conditions for the opening of accession negotiations with Albania and Montenegro. These issues should and will be tackled early in the accession process, as they require the establishment of convincing track records before negotiations can be concluded.

9.16 The *fight against corruption* is one of the key challenges for the rule of law in most enlargement countries. So, too, the *fight against organised crime*, being closely linked with fighting corruption and establishing independent judiciaries. *Regional cooperation between law enforcement and judicial bodies*, including the creation of professional networks, is seen as particularly important for addressing this challenge, and the Commission, together with Member States, is supporting the creation of a regional prosecutors' network and the establishment of coordinated witness protection programmes.

9.17 Public administration reform, aiming at enhancing transparency, accountability and effectiveness — crucial for the implementation of the *acquis* and essential for democracy and the rule of law — continues to be a key priority under the political criteria in most enlargement countries, and need increased efforts on the basis of overall national strategies.

### **Ensuring freedom of expression in the media**

9.18 The Commission notes that ensuring this freedom is a key component of the Copenhagen political criteria for membership. It says that the enlargement countries are characterised on the whole by pluralist media landscapes; but that, in a number of countries, negative developments in this area have recently been observed, which are a source of serious concern. The Commission further examines freedom of expression in the accompanying reports, where the situation in each country is outlined.

### **Enhancing regional cooperation and reconciliation in the Western Balkans**

9.19 Regional cooperation and good neighbourly relations are recalled as essential elements of the Stabilisation and Association process and, as such, are closely monitored by the Commission at all stages of the accession process. Significant progress has been achieved in this respect over the past decade and further important steps over the past year are reported. At the same time, issues stemming from past conflicts — notably in Bosnia and Herzegovina and Kosovo — continue to obstruct the normal functioning of institutions, act as a brake to the reform and remain key challenges to stability in the Western Balkans that affect regional cooperation, relations between countries, as well as their internal functioning and reform process; addressing these remaining issues is urgent, and resolving them will remove a major impediment to the Western Balkans' course towards the EU. Full cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) remains an essential condition for the accession process in the Western Balkans; the recent

arrests and transfers to The Hague of the last two ICTY indictees were major steps in that direction. The Commission also calls upon the governments concerned to pursue with greater vigour the proper conduct of domestic war crime trials; and notes that, overall, governments and civil society organisations in the region must do more to explain to citizens that reconciliation is an integral part of their European future and that justice with respect to war crimes is an indispensable element of this process.

### ***Achieving sustainable economic recovery and embracing Europe 2020***

9.20 All enlargement countries have now embarked upon a path of recovery, though at varying paces: Turkey has emerged from the crisis with a bigger economy and its growth continues to be impressive, but there are increasing signs of overheating; the Western Balkan economies are also beginning to recover, though it will take some time for them to reach pre-crisis levels; Iceland's economy continues to emerge from the major economic disturbances it experienced during the crisis.

### ***Extending transport and energy networks***

9.21 Transport and energy interconnection are highlighted as key elements in the EU's cooperation with all neighbouring countries and, in the case of the enlargement countries, as preparing them to take on and implement fully the transport and energy *acquis*. The Commission sees Turkey, with its strategic location at the crossroads between Europe, the Middle East and the Caucasus, as having steadily developed and strengthened its links with the EU, noting in particular its role in the establishment of the Southern Gas Corridor, whose further development the Commission thinks would benefit both sides. In the Western Balkans, the Commission recalls a number of areas in which regional development is being encouraged, noting in particular its role in negotiating the creation of a Transport Community with the Western Balkan countries and establishing an integrated market for infrastructure and land, inland waterway and maritime transport; negotiations have been almost completed, but are held back by differences over the denomination of Kosovo; the Commission urges the parties concerned to take the necessary steps that will allow for a rapid conclusion of the negotiations and the signing of the Treaty.

9.22 The Commission then reviews, in summary:

- progress in each of the countries;
- how it is supporting the enlargement process in terms of financial assistance, visa liberalisation and mobility; and
- information and communication.

9.23 The Communication concludes with some 27 general and country-specific Conclusions and Recommendations.

### **The Government's view**

9.24 In his Explanatory Memorandum of 7 November 2011, the Minister for Europe (Mr David Lidington) welcomes the publication of the Commission's reports, which he believes

represent a fair and balanced assessment of progress and the main challenges and set out a credible and useful basis for developing the Government’s approach to EU enlargement policy over the coming year. He explains that the Strategy and reports provide the basis for in-depth discussion in the relevant working groups, which will culminate in the adoption of conclusions on EU enlargement at the December General Affairs Council, and potentially endorsement of any decisions at the December European Council. The Government will, he says, “take a final view on the recommendations of the Commission in late November, based, inter alia, on further progress achieved in each country.”

9.25 The Minister then summarises the main conclusions and recommendations of the enlargement strategy, followed by a summary of the further detail found in each individual country progress reports.

9.26 The Minister regards the following recommendations as being of particular note (his comments are in italics in each case):

- “A recommendation to open accession negotiations with Montenegro;
- “A recommendation to grant Serbia Candidate Status, on the understanding that Serbia re-engages in the Dialogue with Kosovo and implements agreements reached to date. A recommendation on the opening of accession negotiations based on progress on one key priority, focused on normalisation of relations with Kosovo.

*“The Government supports the membership aspirations of any European country that shares our values and their right to progress towards membership on the basis of their own merits. We are committed to concluding accession negotiations only when the UK is confident that a candidate country is able to meet the political, economic and legal obligations of membership. We therefore welcome the Commission’s assessments which are in line with these principles. The Government welcomes the Strategy’s emphasis in these reports on promoting the rule of law and tackling difficult issues such as corruption early in the negotiating. The Government also welcomes the focus on regional co-operation and good neighbourly relations as essential elements.*”

*“The Government aims to use the enlargement process as a tool to promote reform and reconciliation. In that light we have emphasised to countries the need to study the Commission’s assessments, and to make maximum progress before the December European Council takes a final decision on the Commission’s recommendations. The Government therefore intends to take a final decision on the recommendations made at a later date, when progress can be most fully assessed.”*

9.27 The Minister then summarises and comments upon the country-specific sections in the main Commission Communication as follows (his comments are in italics):

### **Croatia**

“The Strategy notes that accession negotiations were concluded in June 2011 and Croatia now needs to maintain momentum on remaining reforms and to finalise



work to align fully with the *acquis* before accession. It notes that Croatia continues to meet the political criteria and that substantial progress has been made in all areas. The Strategy notes that Croatia has made substantial progress on judiciary and fundamental rights and that reform of the judiciary has continued but requires constant attention. It notes that handling of domestic war crimes cases has been improved but that the issue of impunity needs to be thoroughly addressed.

“The Strategy notes that Croatia continues to cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY) but has been unable to fully account for certain missing military documents.

“As regards the economic criteria the Strategy notes that Croatia is a functioning market economy which should be able to cope with competitive pressures and market forces within the Union. Regarding Croatia’s ability to take on the obligations of membership, preparations for meeting EU requirements have continued to progress well and there is a high degree of alignment with EU rules in most sectors.

*“The Government agrees with the Commission’s assessment and welcomes the Strategy’s focus on the importance of continued progress on reform in Croatia, particularly in the areas of ICTY cooperation and judiciary and fundamental rights.”*

### **Macedonia**

“The Strategy reiterates (for a third year) the Commission’s recommendations to open accession negotiations, and to transition to the second stage of the SAA. It also notes the continued need for reenergised reform in the independence of the judiciary, public administration, the fight against corruption, and protecting the freedom of the media. The Government supports the Commission’s assessment and its recommendations.

“The Strategy also recalls previous European Council conclusions that maintaining good neighbourly relations, including a negotiated and mutually acceptable solution to the name issue (a bilateral issue with Greece), remains essential. It cautions that ‘another year should not be lost’.

*“The Government does not see resolution of the name issue as a pre-condition for starting accession negotiations, but hopes that negotiations can succeed in finding a mutually acceptable solution without further delay.”*

### **Montenegro**

“The Commission notes Montenegro’s good progress in fulfilling the political criteria, achieving overall satisfactory results, in particular that Montenegro has successfully addressed the seven key priorities identified in the Commission’s 2010 Opinion. The Commission considers that Montenegro has achieved the necessary degree of compliance with the membership criteria and in particular the political criteria, and recommends that accession negotiations be opened with Montenegro. The Commission, however, also notes that sustained efforts are required in further developing a track record in the area of rule of law, and in particular with respect to



high level corruption and organised crime cases. The Commission also therefore proposes applying the new approach of negotiating chapters on judiciary and fundamental rights, and justice, freedom and security early in the accession process. The Commission will place particular attention on monitoring Montenegro's progress on rule of law and anti-discrimination in order to help maintain reform momentum in these areas.

*“The Government welcomes the Commission’s assessment, and looks forward to making a full assessment of progress ahead of the December European Council.”*

### **Albania**

“The Strategy notes that Albania has made limited progress against the 12 key priorities set in the 2010 Opinion. It highlights the numerous difficulties, including the continued political impasse, the deaths of four people in anti-government protests, as well as disputed local elections, which have heightened the climate of mistrust between political forces and certain State institutions. It notes some progress in fighting organised crime, but that progress remains insufficient regarding the judiciary, anti-corruption policy, and property rights.

“It welcomes the beginnings of an Action Plan to address the recommendations in the Commission’s Opinion, but cautions that sustained efforts and demonstrable progress will be required before the Commission can recommend candidate status and the opening of accession negotiations.”

### **Bosnia and Herzegovina**

“The Strategy concludes that despite some positive developments in regional cooperation, visa liberalisation and the opening of a structural dialogue on judicial issues, Bosnia and Herzegovina (BiH) has made very limited progress on EU related reforms. It concludes that the actions of BiH’s political representatives continue to reflect a lack of a common understanding on the overall direction and future of the country and its institutional setup, and that the long delay in forming a state level government after elections in October 2010 has hampered reforms which would allow the country to make further progress towards the EU. It highlights persistent delay in harmonising the Constitution with a European Court of Human Rights’ ruling on ethnic discrimination regarding representation in the institutions of the country. It makes clear that a State Aid Law needs to be adopted at state level and that progress is needed towards adoption of a state level census law, together with other reforms required to facilitate the country’s EU integration process. It notes that the EU has reinforced its role in Bosnia and Herzegovina, with the EU’s first single representative in Bosnia and Herzegovina having taken up office.

*“The Government agrees with this assessment and remains concerned about the general lack of progress in BiH.”*

## Serbia

“The Strategy includes the Commission’s conclusions and recommendations on Serbia’s application to join the EU. In the Annex dealing specifically with Serbia’s membership application, the Commission notes Serbia has progressed considerably towards fulfilling the political criteria, and in implementing its Stabilisation and Association Agreement (SAA). Serbia has reached a fully satisfactory level in cooperation with the ICTY. Serbia has made some progress on regional cooperation, taking an increasingly active role in fostering reconciliation in the region. As regards the economic criteria, the Annex notes Serbia has taken steps towards establishing a functioning market economy and has a degree of macroeconomic stability, but that further efforts are needed to restructure the economy and improve the business environment.

“Assuming further alignment and continued implementation, Serbia would be in a position to fulfil its obligations against nearly all the *acquis* fields in the medium term (5 years), but will need to focus particular attention on the areas of agriculture and rural development, judiciary and fundamental rights, justice, freedom, security and financial control. The fields of environment and climate change will require significant attention. Serbia is well on its way to sufficiently filling the political criteria and conditions of the Stabilisation and Association process, provided that progress continues and that practical solutions are found to the problems with Kosovo.

“In light of the progress made, the Commission recommends the Council should grant candidate status to Serbia, on the understanding it re-engages in the EU facilitated dialogue with Kosovo and implements the agreements reached in that dialogue so far. It also recommends that accession negotiations be opened once Serbia has achieved further significant progress in the Key Priority of normalising its relations with Kosovo. The Commission will present a report on progress on this Key Priority as soon as sufficient progress has been reached.

*“The Government welcomes the Commission’s assessment of Serbia’s progress. The Government notes the Commission’s recommendations for further progress, particularly on normalisation of relations with Kosovo. The Government looks forward to making a full assessment of Serbia’s progress, including on the issues highlighted, by the December European Council.”*

## Kosovo

“The Strategy underlines the commitment shown by the Kosovo Government towards Kosovo’s European Perspective, notably through sustained efforts in areas such as visa and trade policy, and the establishment of a National Council for EU Integration. The Strategy also calls for greater reform efforts to address corruption, organised crime and weak administrative capacity. The Strategy highlights the steps that will be taken in support of Kosovo’s European Perspective, including the launching of a Rule of Law Structured Dialogue, a Visa Liberalisation Dialogue and a review of the Commission’s 2009 study to ensure Kosovo further benefits from the EU accession process.

“The Strategy notes that the integration of Kosovo Serbs south of the Ibar has improved, but expresses concern that inter-ethnic tensions persist in northern Kosovo, calling on all concerned in Kosovo to defuse tensions and cooperate with the EU’s Rule of Law Mission (EULEX). The Commission underlines the importance of Kosovo launching a comprehensive agenda for the north. It notes the progress made in the EU-facilitated Dialogue between Kosovo and Serbia, and calls for continued constructive efforts and for existing agreements to be implemented. Finally, the Strategy outlines the Commission’s support for the EULEX investigation into Senator Dick Marty’s report for the Parliamentary Assembly of the Council of Europe alleging organised crime, including organ trafficking, committed in the period during and after the Kosovo conflict.

*“The Government shares these assessments and welcomes the recommendations.”*

### **Turkey**

“The Strategy notes the importance of the accession process as the framework for reform in Turkey. Citing slow progress, with no negotiating chapters opened for over a year, it notes the importance of a new constructive phase in relations through concrete steps in areas of common interest. It outlines proposals for a new “positive agenda”, including co-operation and dialogue on political reforms, migration, counter-terrorism, cultural links, trade, and economic links. The Strategy also proposes enhancing co-operation and reporting on chapters where formal accession negotiations cannot be opened for the time being. The Strategy also refers more widely to the economic and diplomatic importance of Turkey, and underlines the value of further developing the EU’s foreign policy dialogue with Turkey. In addition, it refers to the importance of further developing links on energy, given Turkey’s key strategic location for the EU. The Government supports these proposals.

“The Strategy notes positive steps in reform on property rights for minority religious foundations, and flags the opportunities for reform with the plans for a new Turkish constitution. The Strategy also notes several areas where more work is needed. Freedom of expression concerns are noted as a particular issue to address. It also notes concerns over tensions between Turkey and Cyprus over gas exploration in the Eastern Mediterranean, urging the avoidance of any kind of threat, source of friction or action that could damage good neighbourly relations and the peaceful settlement of disputes. It also notes the continuing need to ensure full, non-discriminatory implementation of the Additional Ankara Protocol (AAP), i.e. opening ports and airports to Cypriot vessels, and to make progress towards normalisation of bilateral relations with the Republic of Cyprus.”

### **Iceland**

“The strategy notes that Iceland continues to meet the political criteria and can be considered a functioning market economy whilst outlining challenges presented by financial sector weaknesses and capital movement. Overall level of preparedness to meet EU acquis requirements remains good, in particular due to Iceland’s

participation in the European Economic Area. The strategy notes that the Icesave dispute remains unresolved. It states that the Commission shares the legal analysis of the EFTA Surveillance Authority, i.e. that Iceland is in breach of the Deposit Guarantee Directive. The Strategy also notes that in the area of fisheries, Iceland has not begun to align with the EU *acquis*.

*“The Government supports the Commission’s assessment and its recommendations.”*

9.28 The Minister then summarises each of the *Country Progress Reports* as follows (again, his comments are in italics):

### **Croatia**

“The Report states that following the closure of the remaining chapters, accession negotiations with Croatia were closed by a Ministerial Accession conference on 30 June 2011 and signature of the Accession Treaty is expected before the end of 2011. It states that the Commission has received a strong mandate to monitor closely Croatia’s fulfilment of the commitments undertaken and states that Croatia must now maintain momentum on remaining reforms and finalise work to align fully with the *acquis* before accession. It notes that Croatia continues to meet the political criteria and that substantial progress has been made in all areas, including rule of law, and results are becoming tangible.

“On the subject of regional cooperation and good neighbourly relations the Report notes that in July the Croatian government adopted and transmitted to Parliament for adoption a declaration on promoting European values in Southeast Europe stating a firm commitment from Croatia that bilateral issues, such as border issues must not obstruct the accession of candidate countries to the EU from the beginning of the accession process until the Accession Treaty comes into effect. The Government welcomes that this declaration was adopted by the Croatian parliament on 21 October.

“As regards the economic criteria the Report notes that Croatia is a functioning market economy which should be able to cope with competitive pressures and market forces within the Union. Regarding Croatia’s ability to take on the obligations of membership, preparations for meeting EU requirements have continued to progress well and there is a high degree of alignment with EU rules in most sectors.

“The Report states that Croatia has continued to progress well with a high degree of alignment in most chapters of the negotiations, but additional efforts are needed in certain areas to strengthen administrative capacity. The Report notes that Croatia’s preparations in the field of environment are nearing completion with regard to both alignment and implementation of legislation, in particular in the areas of water quality and chemicals. It also states that Croatia should step up its efforts to bring its international agreements into line with the EU *acquis*. Under Chapter 8 (Competition Policy) the Report notes that substantial progress has been achieved in the field of competition policy, in particular by the approval of acceptable restructuring plans for the shipyards in difficulty. However, further efforts are required in order to continue developing the Croatian Competition Agency’s

enforcement record against cartels following the entry into force of the new Competition Act.

“The Report notes that Croatia has made substantial progress on judiciary and fundamental rights and that reform of the judiciary has continued but requires constant attention. It notes that handling of domestic war crimes cases has been improved but that the issue of impunity needs to be thoroughly addressed. Anti-corruption efforts have been accelerated with positive results, but the track record needs to be further developed. Similarly, whilst some progress in the fight against organised crime and police reform was reported, it too requires further attention to ensure full implementation.

“The Report notes that Croatia continues to cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY) but has been unable to fully account for certain missing military documents. It also says that ‘Political leaders should also avoid statements and measures that could call into question the importance of reconciliation and the need to serve justice through the prosecution of war crimes’.

*“The Government agrees with the Commission’s assessment and welcomes the Strategy’s focus on the importance of continued progress on reform in Croatia. There is clearly further work to be done in strengthening administrative capacity and developing track records in certain areas. The Government particularly welcomes the Commission’s focus on the areas of ICTY cooperation and judiciary and fundamental rights.”*

### **Macedonia Progress Report**

“It notes that Macedonia is implementing all its current commitments under its Stabilisation and Association Agreement and reiterates its proposal to move on to the second phase of implementation. The report notes the positive elections, as well as remaining deficiencies highlighted by the OSCE-ODIHR election monitoring report. It also welcomes the high profile given to the 10th anniversary of the Ohrid Framework Agreement and progress in implementing the law on languages.

“The report notes that, with an opposition boycott of Parliament, followed by a parliamentary election in June and government formation concluding in late July, the government of Macedonia has had limited time to take forward EU legislation. Despite some progress, the Commission reports that further efforts are needed as regards the independence of the judiciary, reform of public administration, the fight against organised crime (including staffing concerns) and corruption, asylum and freedom of expression and plurality in the media. The Government supports these aims and believes the report provides the government of Macedonia with clear direction for its reform priorities.

“The report notes Macedonia is an active partner in the region, with generally good bilateral ties with its neighbours. Regarding the ongoing name issue dispute with Greece, the report welcomes direct meetings at the highest political level, and stresses the importance of finding a mutually acceptable solution through UN negotiations.



“The report notes that Macedonia’s has maintained macro-economic stability, with some positive development in financial services, and the simplification in the overall regulatory framework. However, along with continued high structural unemployment, the Commission highlights the link between deficiencies in the rule of law and public administration that hinder business development.

*“The report is in line with the Government’s assessment of progress in Macedonia.”*

### **Montenegro Progress Report**

“The Commission assesses that Montenegro has made good progress in meeting the political criteria, achieving overall satisfactory results, in particular in the seven key priorities identified in the Commission’s 2010 Opinion. In particular, the legislative and institutional framework has been improved with a view to strengthening the work of parliament, the electoral framework, professionalism and de-politicisation of public administration, the independence and accountability of the judiciary, the fight against corruption and organised crime, media freedom and cooperation with civil society. Sustained efforts are needed, however, in further strengthening the role of parliament, public administration capacity, implementation of judicial reforms and developing a track record in the area of rule of law, particularly with respect to high-level corruption and organised crime cases (including drug trafficking, people trafficking and money laundering) and reducing discrimination.

“It is in order to address these issues that the Commission has recommended the introduction of the new strategy to open Chapters 23 and 24 (judiciary and fundamental rights, and justice, freedom and security) early in the accession process.

“The Commission indicates that Montenegro has made further progress towards establishing a functioning market economy by stabilising its banking sector and maintaining a relatively prudent fiscal stance. Particular improvements were noted in the reduction of high external imbalances, reform of public pensions, market entry and exit mechanisms, contract enforcement, and business and property registration procedures. However, concerns remain over financial stability due to the very high share of non-performing loans. Unemployment remains high, the privatisation process has suffered from the negative global environment and persisting weakness in the rule of law negatively affect the investment and business environment.

“The Commission reports that while Montenegro has continued smoothly to implement the obligations under the Stabilisation and Association Agreement, gaps remain in areas regarding State aids and transit traffic. Although Montenegro has made good progress overall in improving its ability to assume the obligations of membership, progress has been limited in areas such as free movement of workers, freedom to provide services, agriculture, environment, regional policy and coordination of structural funds.

*“The Government welcomes the Commission’s assessment, and proposals to tackle rule of law and fundamental freedom issues early in any negotiating process. The Government looks forward to making a full assessment of all progress ahead of the December European Council.”*

## **Albania**

“The report is clear that Albania has made very little progress in meeting the 12 Key priorities set in last year’s Opinion on its membership application. The report notes that the political scene in Albania has been dominated by the ongoing political stalemate, which was exacerbated by the deaths of four demonstrators in anti-government protests in January 2011, and the disputed local elections in May. This political impasse has blocked agreement on measures requiring a three-fifths majority in parliament but equally importantly it has distracted from implementation of existing laws and commitments and seen independent institutions undermined. Albania’s economic resilience to-date is a more positive aspect of the report.

“The report highlights: that particular efforts are required to re-establish political dialogue to allow the proper functioning of parliament, especially in exercising its scrutiny and oversight responsibilities effectively, and to advance judicial reform; and that limited progress has been made in the fight against organised crime and corruption, with a need to implement existing legislation and establish a track record of proactive investigation and co-operation.

“The report emphasises the need for electoral reform, based on the recommendations of OSCE-ODIHR — including outstanding recommendations from the 2009 general election. It notes efforts to establish a cross-party action plan to address the 12 key priorities, but urges more intensive engagement to meet EU standards.

*“The Government shares the Commission’s assessment, and welcomes the emphasis on Governance and Rule of Law and the need for Albania’s political leaders to bridge their differences and work together in these areas in order to advance Albania’s European perspective.”*

“Economically, the report notes Albania has maintained macroeconomic stability, though high public debt is a limiting factor. Good progress has been made in facilitating business registration and licensing, but weak property rights legislation and enforcement remains a serious concern.”

## **Bosnia and Herzegovina**

“The Progress Report on Bosnia and Herzegovina (BiH) concluded that BiH had made very limited progress towards its EU perspective. It highlighted the particular obstacles to progress posed by the failure to form a state-level government over one year after elections and the underlying lack of understanding between political leaders on the direction and future of the country. The report reiterated the ongoing concern that BiH remains in breach of its Stabilisation and Association Agreement (SAA), in particular in relation to the 2009 ‘Sejdi and Finci’ judgement from the European Court of Human Rights that an amendment to the constitution is required to eliminate discrimination against the representation of ethnic minorities in state institutions. Other outstanding requirements of the SAA (which BiH signed in 2008,



but which has not yet entered into force) include the adoption of State Aid and Census laws at the state level.

“The report made clear that progress must be made on the ‘5+2’ objectives agreed by the international community as necessary for the closure of the Office of the High Representative. Other problematic areas highlighted in the report include corruption, the fight against organised crime, implementation of police reform, political interference in media and public administration, discrimination and segregation in the education system and limited implementation of international human rights instruments. The report found the implementation of BiH’s obligations under the Interim Agreement uneven, with limited progress being made in key acquis areas, especially agricultural policy and public procurement legislation. Adoption of a new Global Fiscal Framework is crucial as this is a condition for the disbursement of EU macro-economic support worth 100m Euro.

“The report notes some positive developments, in the areas of visa liberalisation, regional cooperation, and the transport and energy sector. We hope that the EU Structured Dialogue on Justice will promote judicial reform.

*“The Government shares the assessment made in the progress report that the overall pace of reforms has been very limited. Most worryingly, BiH remains in breach of its own Interim Agreement with the EU due to non-compliance with the European Convention on Human Rights. Credible progress on this is necessary before BiH’s SAA can be brought into force, as is the establishment of a state aid authority and population census law. We are urging BiH politicians to form a new government that can address these issues quickly and begin to deliver long overdue reforms, in order to avoid BiH falling further behind the rest of the region. It is not enough for BiH’s leaders simply reiterate their commitment to EU integration. We need to see this commitment put into action. The Government remains strongly committed to BiH’s European perspective and to its territorial integrity.”*

## **Kosovo**

“The central theme of the Kosovo report is that whilst progress has been made in some limited areas, substantial reforms are still required. Areas where the Commission assesses progress has been made include judicial reform, Kosovo’s commitment to the European agenda, migration — notably on readmission and reintegration of returnees — and Kosovo’s constructive engagement in the Dialogue with Belgrade.

“As with last year’s report, the Commission assesses that major challenges remain concerning rule of law — notably corruption and organised crime — and strengthening of public administration. The report draws attention to the inconsistent cooperation with EULEX. The report also expresses concern about respect for minorities, the minimal role played by civil society in the democratic process and environmental protection. It also criticises the Kosovo Government for going off-track with the IMF Stand-by Arrangement. The Commission underlines the need for those people living in northern Kosovo to benefit from Kosovo’s

European Perspective and in this context urges Kosovo to launch a comprehensive agenda for the north.

“The Kosovo Government has reacted positively to the report. PM Thaci welcomed the report and confirmed that over the coming year his Government would focus on the three strategic priorities of fighting organized crime and corruption, sustainable economic development and reforming public administration. Minister of European Integration Citaku declared that the opening of the visa dialogue was “one of the biggest achievements since Kosovo’s declaration of independence”, adding that the report reflected the “real and factual situation” in Kosovo.

*“The Commission’s report is in line with our own assessment of the progress made by Kosovo in the past twelve months as well as the priority areas for reform. The positive reaction from the Kosovo Government, boosted by the Commission’s Kosovo conditionality in the Serbia avis, provides a solid framework in which Kosovo can continue to drive forward those reforms fundamental for Kosovo’s continued progress towards EU integration.*

*“UK projects in Kosovo have both contributed to areas of progress identified in the Progress Report and are actively addressing issues of concern. Regarding reintegration and returns for example, we joint-funded the first urban return of Kosovo-Serb families to Prizren and are looking to expand such work to promote economic opportunities for returnees. Additionally, the UK is currently working with partners in civil society on anti-corruption legislation, electoral reform and women’s rights, supporting the Kosovo Property Agency and helping build Government capacity on public administration.*

*“The UK continues to be a strong supporter of the EU-facilitated Dialogue between Kosovo and Serbia. We view it as essential for building practical cooperation between Kosovo and Serbia, for moving them in a more stable fashion towards EU membership and for improving the lives of all citizens in both countries. To date, agreements have been secured on cadastral and civil registries, freedom of movement and customs stamps. However, the process has stalled due to ongoing Serbian obstruction on customs arrangements. We continue to urge both sides to engage constructively and flexibly to implement agreements already reached and move forward into further areas such as telecommunications and energy.”*

## **Turkey**

“It recognises a number of steps forward, while noting several areas where further work is needed. The report notes the opportunities for the planned new constitution to cement the stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities, and to address long-standing problems including the Kurdish issue. Turkey has reaffirmed its commitment to the EU process, and established a new EU Ministry to help pursue this. Turkey has become more active in its wider neighbourhood and is a leading regional player.

“There has been good progress on consolidating the principle of civilian oversight of security forces. The report also notes good progress on judicial reforms further to the

2010 constitutional reforms, though noting further work is needed. While the ‘Ergenerkon’ and ‘Sledgehammer’ investigations into alleged coup plots against the government are cited as an opportunity to strengthen democracy, concerns are raised over some of the judicial processes involved. Concerns are also raised on home affairs reform, including the need to adopt a law on the financing of terrorism and a personal data protection law. There has been progress on international human rights law, with the ratification of the Optional Protocol to the UN Convention against Torture (OPCAT), and a positive trend on prevention.

“On freedom of religion, the report notes welcome steps in dialogue with the Alevis and non-Muslim religious minorities, and groundbreaking ceremonies at historic minority religious sites. It also notes a considerable step forward on the Law on Foundations, giving rights to religious minorities to recover property. But there are continuing issues to address, and a legal framework in line with the European Convention on Human Rights (ECHR) has yet to be established. There have also been positive developments on freedom of assembly. The report cites serious concerns over freedom of expression in a range of areas.

“It notes a high number of legal cases and investigations against journalists, and the need for legal amendments in this area, including to comply with the rulings of the European Court of Human Rights (ECtHR). The report notes that the 2009 ‘Democratic Opening’, aimed at addressing the Kurdish issue, was not followed through. It underlines the condemnation by the EU of terrorist attacks by the PKK. There are concerns over the detention of elected politicians and human rights defenders. Comprehensive steps have been taken to address issues around the rights of Roma, although further work is needed. Women’s rights, sexual equality, and combating domestic violence remain major challenges, with a legal framework in place but more to be done on implementation.

“The report notes that Turkey has continued to support the Cyprus settlement negotiations. But it notes the continuing need to ensure full, non-discriminatory implementation of the Additional Ankara Protocol (AAP), i.e. opening Turkey’s ports and airports to Cypriot vessels. The report cites progress in efforts to improve Turkish-Greek relations. Turkey has played a positive role promoting peace and security in the Western Balkans. Turkey’s continuing contribution to the EU-led military mission in Bosnia and Herzegovina is also noted.

“There is a sound economic basis for EU membership, with strong trade and economic integration with the EU, along with firm economic growth and lower unemployment. The Customs Union continues to boost trade, though there are issues around full implementation. The report also notes good progress against the requirements of the Competition Policy Chapter (No. 8).

*“The progress report is a balanced assessment of Turkey’s progress over the last year.”*

## **Iceland**

“Negotiations were officially opened in July 2010 and the screening exercise subsequently started in November 2010. Iceland is already well aligned with much of

the *acquis* due to its membership of the European Economic Area (EEA). Four chapters were opened on 27 June 2011 and two — Science and Research and Education and Culture — were provisionally closed the same day.

“Iceland continues to meet the political criteria. Icelandic institutions are stable and the rule of law is guaranteed. The judicial system is well established and the judiciary is of a high standard. The governance at national and local levels is effective and transparent. The public administration continues to be generally efficient and free of political interference. Human rights and the protection of minorities are legally guaranteed and respected in practice, however legislation on citizen’s rights and data protection is not yet in line with EU standards.

“Under the economic criteria, Iceland made good progress under its IMF programme, and met all programme targets. However, as the Commission notes, while moderate growth is expected in 2011, unemployment is likely to remain high and inflation is rising on the back of high commodity prices. With the slight relaxing of the 2011 deficit, acknowledged by the IMF as appropriate, it is important that the revised targets are adhered to. Temporary measures, such as the private sector collective bargaining and capital controls must also be gradually phased out. Overall, challenges remain for improving the functioning of markets. The Report also notes that overall the country’s industrial sector remains little diversified and the construction sector continues to deleverage.

“Overall, Iceland’s agricultural policy is not in line with the *acquis* and no alignment has been undertaken. The Report highlights the lack of progress on the Fisheries Chapter and that Iceland has not begun to align with the EU *acquis*, and notes that Iceland’s unilateral setting of Total Allowable Catches for mackerel “continues to cause widespread concern within the EU, also with regard to the principles of sustainable resource management”. Full compliance with the *acquis* on the Environment remains to be achieved, in particular with regard to protection of whales.

“The Report notes that the Icesave dispute remains unresolved. It states that the Commission shares the legal analysis of the EFTA Surveillance Authority, i.e. that Iceland is in breach of the Deposit Guarantee Directive.

*“The Government agrees with the Commission’s assessment.”*

9.29 Finally, the Minister summarises the Commission Opinions as follows (his comments again being in italics):

### ***Opinion on Croatia***

“The Commission Opinion on Croatia restates the fundamental principles of EU enlargement and recalls the history of Croatia’s accession process. It outlines the legal basis of accession (such as Croatia’s acceptance, without reserve, of the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community) and the precedence of Union law over conflicting national provisions.

“The Opinion confirms the Commission’s view that Croatia meets the political criteria and that the Commission expects Croatia to meet the economic and *acquis* criteria and to be ready for membership by 1 July 2013. The Report calls on Croatia to maintain its efforts to align with the *acquis* and further strengthen its administrative capacity and outlines the pre-accession monitoring process.

“The Opinion concludes by offering to the Council a favourable opinion on the accession to the European Union of the Republic of Croatia. The Government agrees with this Opinion, with a view to signing the Accession Treaty before the end of 2011. Thereafter the Treaty would need to be ratified by all 27 EU Member States and Croatia with a view to entering into force on 1 July 2013.”

### ***Opinion on Serbia***

“The Opinion notes that substantial reforms undertaken over recent years have enabled Serbia to progress considerably towards meeting the political criteria which provide for the guarantee of democracy, rule of law, human rights and respect for and protection of minorities. In particular, it draws positive attention to: the extent to which the constitutional, legislative and institutional framework aligns with European standards and Serbia’s focus on EU integration; the strengthening of parliamentary procedures; the end of ‘blank resignations’ for MPs; improvements to the framework for rule of law (following reforms targeting the judiciary, anti-corruption and organised crime); Serbia’s significantly improved fully satisfactory cooperation with the International Criminal Tribunal for the former Yugoslavia (as demonstrated by the arrests of Ratko Mladic and Goran Hadzic this year); and the significant steps it has taken to foster reconciliation, particularly with Croatia, Bosnia and Herzegovina and Montenegro. The Opinion also notes however that further strengthening is required in the areas of: the legislative process and parliamentary scrutiny; independent regulatory bodies; the judiciary, the fight against organised crime and corruption; and implementation of human rights legislation.

“The Opinion also notes that Serbia has more to do on relations with Kosovo. The agreements reached in the EU facilitated Dialogue need to be implemented, and further results are needed in the Dialogue to implement the principles of regional co-operation and to provide solutions on such *acquis* related matters as telecoms and energy. All sides need to play their part in defusing the tension in northern Kosovo and allowing free movement of persons and goods.

“In terms of meeting the economic criteria, the Commission notes that Serbia has achieved a track record of implementing economic reforms, leading to a degree of macroeconomic stability. The global economic and financial crisis disrupted the steady growth of the past decade, but recent progress was noted on strengthening the financial framework and public finances, privatisation and liberalisation of trade. Areas for further improvement include: further speeding up privatisation and liberalisation; improving the business environment; and tackling unemployment, labour market rigidities and the informal economy.

“The Opinion positively assesses Serbia’s ability to assume the obligations of EU membership. Serbia generally respects its commitment under the Stabilisation and



Association Agreement and has made good progress in adopting legislation which aligns with the EU acquis, though further significant efforts would be needed in the fields of environment and climate change. Serbia is well on its way to sufficiently filling the political criteria and conditions of the Stabilisation and Association process, provided that progress continues and that practical solutions are found to the problems with Kosovo.

“The Commission recommends the Council should grant candidate status to Serbia, on the understanding it re-engages in the dialogue with Kosovo and implements the agreements reached in that dialogue so far. It also recommends that accession negotiations be opened once Serbia has achieved further significant progress in normalising its relations with Kosovo.

*“The Government welcomes the Commission’s assessment of Serbia’s progress. The Government notes the Commission’s recommendations for further progress, particularly on normalisation of relations with Kosovo, but also across all areas where reform is required. The Government looks forward to making a full assessment of Serbia’s progress, including on the issues highlighted, by the December European Council.”*

## Conclusion

**9.30 We are grateful to the Minister for his detailed and helpful Explanatory Memorandum.**

**9.31 We are reporting this to the House in equal detail not simply because of the widespread interest in the enlargement question but also because, in a number of cases, important decisions will soon be made.**

**9.32 The first concerns Croatia. As the Minister notes, accession negotiations with Croatia were closed by a Ministerial Accession conference on 30 June 2011 and signature of the Accession Treaty is expected before the end of 2011. Central to this process was the EU Common Position on Judiciary and Fundamental Rights (Negotiation Chapter 23).**

**9.33 Having allowed Bulgaria and Romania to accede to the EU despite inadequate preparation and subsequent poor performance on a range of “good governance” issues, a new chapter 23 was introduced in the EU accession process, dealing with the judiciary and fundamental freedoms. It involves both opening and closing benchmarks; unanimity is required for the chapter to be opened; and, once opened, to be closed. Last summer, Croatia’s chapter 23 negotiations were finally opened; before the chapter could close, (as the Minister for Europe put it) a “comprehensive and robust set of benchmarks” would need to be met, covering: judicial transparency, impartiality and efficiency; tackling corruption; protecting minority rights; resolving outstanding refugee return issues; protection of human rights; and — crucially — full cooperation with the International Criminal Tribunal for (former) Yugoslavia (ICTY). Croatia would need to show a track record of implementation across all these areas.**



9.34 The Common Position is the European Commission's assessment of Croatia's progress. It recommends that the chapter requires no further negotiations, and underlines the importance of Croatia continuing to develop a track record of implementation across the board. The chapter was formally adopted (without discussion) at the July European Council. In endorsing it, the Secretary of State for Justice and the Minister for Europe made much of the irreversibility of the process, and of the monitoring that will be undertaken during the two years before Croatia would accede.

9.35 The Committee took the view that Croatia still had much to do over the next two years if, at the end, it could truly be said to have reached the point that — despite four years of post-accession assistance and monitoring under its Cooperation and Verification Mechanism — the Commission is still seeking of both Bulgaria and Romania; and that pre-accession monitoring was likely to have little impact, once an accession timetable had been set. The Committee accordingly recommended it for debate on the Floor of the House. This was as long ago as 19 July.<sup>59</sup> That debate now needs to take place as soon as possible.

9.36 The same considerations apply in the case of Serbia. As the Minister notes, the Commission's analysis of Serbia's progress and its Opinion on Serbia's application for Candidate Country status gives Serbia a lot of good marks, and recommends that negotiations for accession should be opened — but only after Serbia achieves further significant progress in meeting the following key priority:

“Further steps to normalise relations with Kosovo in line with the conditions of the Stabilisation and Association Process by: fully respecting the principles of inclusive regional cooperation; fully respecting the provisions of the Energy Community Treaty; finding solutions for telecommunications and mutual acceptance of diplomas; by continuing to implement in good faith all agreements reached; and by cooperating actively with EULEX<sup>60</sup> in order for it to exercise its functions in all parts of Kosovo.”

9.37 The Commission then says that it will present a report on Serbia's implementation of the above key priority as soon as sufficient progress has been achieved.

9.38 However, sufficient progress or otherwise, the Minister plainly expects a report of some sort before the December General Affairs Council and subsequent European Council. With presidential elections due in Serbia next Spring, concerted efforts are already underway by the Serbian government to convince Member States and the Commission that agreement should be forthcoming before the end of the year, notwithstanding that the Pristina-Belgrade Dialogue is deadlocked and the slim likelihood of the Commission's key priority being met in the next six weeks or so. The consideration of Serbia's progress thus far shows that, when the crunch comes, the

59 See (32992) —: HC 428–xxxiv (2010–12), chapter 1 (19 July 2011).

60 The EU's largest ESDP mission: 1900 strong, with a focus on local ownership and capacity building, through mentoring, monitoring and advice, and aim to advance the goal of a stable, viable, peaceful, democratic, multi-ethnic Kosovo, contributing to regional cooperation and stability and committed to the rule of law and to the protection of minorities. For the Committee's consideration of the latest Council Decision on EULEX, see (33307) — at chapter 16 of this Report.

desire to encourage “pro-European” forces prevails over the need to demonstrate clear adherence to conditionality.

9.39 Yet it is the failure to require clear, prior adherence to conditionality that has led the Union to where it continues to be with both Bulgaria and Romania, i.e., still awaiting a level of performance on key areas of good governance that should have been demonstrated prior to accession, the absence of which continues to threaten the EU’s own internal security.

9.40 We therefore ask that the Minister deposits whatever further progress report or reports are produced prior to the December meetings, along with his views, so that the House can also consider the basis of the key decisions that the Minister anticipates.

9.41 Until then, we shall retain these documents under scrutiny.

9.42 In view of its “rolling inquiry” into *EU Enlargement and Foreign Policy*, we are also drawing them to the attention of the Foreign Affairs Committee.

## 10 Taxation: a financial transaction tax

(33179) 14942/11 + ADDs 1–20 COM(11) 594	Draft Directive on a common system of financial transaction tax and amending Directive 2008/7/EC
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<i>Legal base</i>	Article 113 TFEU; consultation; unanimity
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister’s letter of 3 November 2011
<i>Previous Committee Report</i>	HC 428–xxxix (2010–12), chapter 4 (26 October 2011)
<i>Discussion in Council</i>	Not known
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Not cleared; further information requested

### Background

10.1 In October 2010 the Commission presented a Communication, *Taxation of the financial sector*, in which it discussed the possibility of a financial transaction tax (FTT) or a financial activities tax (FAT) for the EU. It concluded that:

- a FTT could be an appropriate option as a revenue raiser if applied globally, whereas there were significant avoidance and competitive risks for an EU only FTT;

- a FAT, in its most extensive form, could be interpreted as a tax on a proxy for total value added generated by financial sector companies; and
- there was potential for a FAT in the EU context.<sup>61</sup>

10.2 In February 2011 the Commission opened a public consultation on a FTT and the Government responded to this on 19 May 2011.

10.3 In June 2011 the Commission presented its proposals for the Multiannual Financial Framework for 2014–2020. These included the idea of a FTT as a new resource to finance the EU Budget.<sup>62</sup>

10.4 In September 2011 the Commission presented this draft Directive which would introduce a FTT. The main provisions of the draft Directive are that it would:

- apply to a very broad range of financial instruments, consistent with the definitions contained in the Markets in Financial Instruments Directive (secondary trading in equities and bonds, together with equity, interest rate, foreign exchange and commodity derivatives);
- not apply to primary markets, or currency spot transactions, with the aim of ensuring that the tax would not contravene the free movement of capital;
- not apply directly to day to day financial activities relevant for citizens and businesses, for example, mortgage lending, insurance contracts or payment services;
- not apply to transactions with the EU, the European Atomic Energy Commission, European Central Bank, the European Investment Bank and central banks of Member States;
- apply to a broad definition of financial institutions (including banks, insurers, asset managers, pension funds), with definitions drawn from existing Directives;
- not apply to central counter parties, central securities depositories and international central securities depositories, when exercising such functions;
- apply on the basis of residence — the tax would be collected directly from EU financial institutions involved in transactions of the relevant financial instruments, for example, a transaction involving a French bank would necessitate the collection of the tax from that French bank;
- provide that a financial institution be treated as established in an Member State where it had been authorised by a Member State to act as a financial institution, had a registered seat in a Member State, its permanent address or usual residence

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61 (32095) 15282/10 + ADD 1: see HC 428–ix (2010–11), chapter 2 (24 November 2010) and *Gen Co Debs*, European Committee B, 7 February 2011, cols 3–24.

62 (32986) 12478/11 + ADDs 1–2 (Section 2.2 of the Commission's Explanatory Memorandum, Section 2 of ADD 1 and Part III of ADD 2) (32994) 12475/11 + ADDs 1–3 (Section 3): see HC 428–xxxv (2010–12), chapter 1 (7 September 2011).

was located in a Member State, it had a branch within that Member State or was acting on behalf of a financial institution established in a Member State;

- apply where at least one of the parties to the transaction was established in a Member State — so the transaction itself would not have to be undertaken within the EU for the tax to apply;
- provide that where this proposal and the Capital Duties Directive (concerning indirect taxes on the raising of capital) fall into conflict, this proposal would take precedence;
- place the responsibility on individual Member States to collect the tax where the financial institution is established in their jurisdiction and to ensure that the tax is levied accurately to prevent evasion, avoidance and abuse; and
- allow the Commission to adopt delegated acts to specify measures on the prevention of evasion, avoidance and abuse.

10.5 The Commission proposes that:

- Member States would set minimum tax rates of 0.1% (10 basis points) of the value of equity and bond transactions and 0.01% (one basis point) on the notional value of derivatives transactions;
- this tax rate would apply to all financial institution counterparties to the transaction established in the EU;
- if, for example, a derivatives transaction took place between two EU financial institutions, this would mean that the tax rate applied to the transaction would be 0.02% (two basis points); and
- if a derivatives transaction took place between an EU financial institution and a non-EU business the tax applied would be on the EU financial institution and, therefore 0.01% (one basis point)

10.6 When we considered this proposal last month we heard that, although the Government is not opposed in principle to a FTT if imposed globally, it has considerable problems with this draft Directive. Additionally the Government strongly opposes any new EU taxes to fund the EU Budget and opposes the Commission's thoughts on a FTT in this area. We said that we were clear that this proposal needed to be debated. However, we did not wish to recommend such a debate until we had an indication from the Government as to whether this proposal was being dismissed out of hand or whether the text would be discussed before the matter were voted on (at which point we presumed the Government would veto the proposal, unless a similar measure had been adopted globally).

10.7 However we took the opportunity to ask the Government about a number of points related to the legal base of the proposal. We added that we were currently considering the compliance of this proposal with the principle of subsidiarity (the House has until 5 December 2011 to issue a Reasoned Opinion on non-compliance with subsidiarity). So we

asked for replies to our questions so that we could come to a final conclusion on subsidiarity. In the meantime the proposal remained under scrutiny.<sup>63</sup>

## The Minister's letter

10.8 The Financial Secretary to the Treasury (Mr Mark Hoban) now writes as follows:

“I agree with the Committee that the proposal does not appear to be wholly focused on ensuring the proper functioning of the internal market. However, in advance of detailed discussion with the Commission and Member States on the proposal it is difficult to fully understand what the primary purpose of the proposal is.

“As highlighted in the explanatory memorandum, the legal base (Article 113) demands that the proper functioning of the internal market must be an objective. The proposal itself also cites objectives of ensuring that the financial sector makes a fair contribution to covering the costs of the recent crisis and to ensure a level playing field with other sectors from a taxation perspective; and creating appropriate disincentives for transactions that do not enhance efficiency of the financial markets in order to complement regulatory measures aimed at avoiding future crises.

“At the moment it is difficult to take a firm view on whether the requirements for use of Article 113 are fulfilled, but it is certainly unclear to me that the proposal as it stands will prevent obstacles arising to trade in the internal market.

“Given this, I am of the strong view that further examination of the legal base of the proposal is required, and this is something that will be raised in forthcoming discussions with the Commission itself.

“To clarify the process going forward, a formal challenge to the legal base of the proposal could only be brought after the FTT Directive was adopted. We (or any other claimant) would then have 2 months and 10 days in which to bring a challenge to the ECJ. There is no formal process to challenge the legal base of draft legislation. In practice, as the proposal requires unanimity, we could challenge the legal base by refusing to agree the proposal unless we were satisfied that use of an Article 113 legal base was justified.

“You also asked whether the text of the proposal would be discussed before the matter is voted on. We are clear that the UK Government does not support the Commission proposal and will not accept a financial transaction tax at EU27 level while other jurisdictions around the world do not impose one. Nevertheless, discussions of the proposal will take place at EU level. Other member states have expressed concerns similar to our own, and we are working closely with them as part of the ongoing EU discussions on the issue.”

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63 See headnote.

## Conclusion

10.9 We note the Minister says it is difficult to understand what the primary purpose of the proposal is in advance of Council negotiations, and so his response to our questions is preliminary. We would disagree: the primary purpose of the proposal has to be consistent with the chosen legal base, namely the proper functioning of the internal market. That is why we asked the Minister for his views on the legitimacy of the internal market objective at this stage.

10.10 So we ask the Minister to respond to our questions on the purpose, and therefore legal basis, of the proposal in greater detail, but once the negotiations have started.

10.11 The Minister did not answer our questions on the extent to which, in his view, a financial transaction tax adopted in one Member State presents an obstacle to the functioning of the internal market. It was this aspect of the subsidiarity argument that was of most interest to us. In the absence of this further information, and given that the more substantive issue is that of the legal base, we do not propose to recommend that the House adopt a Reasoned Opinion on this proposal.

10.12 We remind the Minister that we will wish, once we have a clearer indication of how consideration of this issue is developing, to recommend the document for debate. Meanwhile it remains under scrutiny.

## 11 EU General Budget 2011

(33266)	Draft amending budget No 6 to the general budget 2011: General
15683/11	Statement of Revenue; Statement of expenditure by Section:
COM(11) 674	Section III, Commission

<i>Legal base</i>	Article 314 TFEU; co-decision; QMV
<i>Document originated</i>	18 October 2011
<i>Deposited in Parliament</i>	21 October 2011
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 3 November 2011
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested



## Background

11.1 During the course of a financial year the Commission may present a Draft Amending Budget (DAB) for the current EU budget, to be considered for adoption by the Budget Authority (the Council and the European Parliament).

## The document

11.2 This Draft Amending Budget, DAB No 6/2011, is for changes to both the expenditure and revenue sides of the 2011 EU Budget. On the expenditure side the Commission proposes:

- creation of a new budget line for a programme to support the further development of an Integrated Maritime Policy, with reallocated commitment appropriations of €23.1 million (£19.9 million) entered in reserve, pending adoption of the legal base;
- reallocation of €60 million (£51.6 million) in commitment appropriations within Heading 4 (EU as a Global Player) to the European Neighbourhood and Partnership financial assistance to Palestine, the peace process and the United Nations Relief and Works Agency for Palestine Refugees in the Near East;
- reinforcement of the European Social Fund, for operational technical assistance, by €3.3 million (£2.8 million) to provide specific expertise in support of the Administrative Reform Operational Programme in the field of tax administration in Greece, with accompanying payment appropriations of €300,000 (£258,225);
- an increase of payment appropriations by €550.3 million (£473.7 million), with €142 million (£122.2 million) for Sub-Heading 1a (Competitiveness for Growth and Employment) and the remaining €408.3 million (£351.4 million) for Heading 1b (Cohesion for Growth and Employment); and
- creation of a token holding entry for a decrease of payment appropriations in rural development programmes, to take into account the possible difference between the payment forecasts from the Member States, as updated in September 2011, and the declaration of payments that will be submitted in November 2011.

Of the €142 million (£122.2 million) additional payments for Sub-Heading 1a €82 million (£70.6 million) is to be allocated to the budget lines for nanosciences, nanotechnologies, material and new production technologies, in order to finalise contracts for call proposals this year and €60 million (£51.6 million) is to be allocated to support for research cooperation in the area of information and communication technologies, to accommodate faster pre-financing of projects under this programme. The €408.3 million (£351.4 million) for Sub-Heading 1b is split equally between the European Social Fund convergence objective and the European Social Fund regional competitiveness and employment objective to meet an anticipated shortfall in payments over the remainder of the year.

11.3 The changes the Commission proposes on the revenue side, and which will reduce the level of contributions required from Member States to finance the 2011 Budget, are:

- an €662.0 million (£569.8 million) increase in miscellaneous revenue;

- €1,814.9 million (£1,562.2 million), from budgeting of VAT and GNI balances for earlier years;
- a €1,200.0 million (£1,032.9 million) reduction in Traditional Own Resources; and
- a €726.6 million (£625.4 million) reduction in Member States GNI-based contributions to the 2011 EU Budget.

## The Government's view

11.4 The Financial Secretary to the Treasury (Mr Mark Hoban) says that:

- the Government is very concerned by the changes to expenditure proposed in this DAB, which would increase both commitment and payment appropriations above the level agreed by the Council last year;
- it is committed to delivering budgetary restraint at EU level, in order to reflect ongoing efforts domestically and across Europe to consolidate public finances;
- it is not satisfied that the Commission is either properly prioritising its activities towards the end of the year or making every effort to meet requirements for extra payments by redeploying funds from under-implementing budget lines;
- it intends to challenge the Commission to demonstrate why sufficient redeployments are not available.

The Minister illustrates the point thus:

- the final level of expenditure under rural development programmes will not be known until later this month;
- it is possible that under-spending on these programmes may meet payment appropriation needs identified without requiring extra resources; and
- the risk of over-spending under the European Social Fund remains difficult to quantify and more precise estimates will be possible later in the year.

The Minister tells us that the Government will seek to delay any agreement to changes to expenditure under the DAB until better information on final spending this year becomes available.

11.5 The Minister comments further that:

- the Government is content with the proposed changes to the revenue section, the net effect of which is a reduction in the level of GNI-based contributions required from Member States;
- it notes that the DAB is an unhelpful admixture of unusual adjustments to expenditure from the EU budget and more routine adjustments to the revenue accruing to the EU budget; and

- it believes that these issues should properly be dealt with separately and will raise this concern with the Commission.

11.6 Turning to the financial implications of the DAB the Minister says that:

- the net expenditure effect is an increase in commitment appropriations by €3.25 million (£2.80 million) and an increase in payment appropriations by €550.3 million (£473.7 million) in Sub-Headings 1a and 1b;
- the increase in planned expenditure and the reduction in Traditional Own Resources would increase by €1,750.3 million (£1,506.6 million) the level of GNI-based contributions required from Member States to finance the 2011 Budget;
- however, this increase is more than offset by the changes to miscellaneous revenue and the budgeting of VAT and GNI balances in respect of earlier years — €2,476.9 million (£2,132.0 million);
- the net effect is a reduction in the level of GNI-based contributions required from Member States of €726.6 million (£625.4 million);
- the UK's share of GNI contributions in the 2011 Budget is 14.22%; and
- the introduction of this DAB will therefore reduce the UK's contribution, after abatement, to the 2011 Budget by €103.4 million (£89.0 million).

## Conclusion

**11.7 We note the Government's concerns, which we share, about the expenditure proposals in this document. So we will defer further consideration of this matter until we have an account of the responses to the Government's request for further explanation and justification for the expenditure changes proposed. Meanwhile the document remains under scrutiny.**

## 12 Industrial policy and competitiveness

(33254) 15587/11 + ADDs 1–3 COM(11) 642	Commission Communication — <i>Industrial policy: Reinforcing Competitiveness</i>
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<i>Legal base</i>	—
<i>Document originated</i>	14 October 2011
<i>Deposited in Parliament</i>	20 October 2011
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	EM of 1 November 2011
<i>Previous Committee Report</i>	None; but see footnote
<i>Discussion in Council</i>	5 December 2011
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

### Background

12.1 The Commission believes it is essential to increase productivity in manufacturing industry and associated services in order to underpin economic recovery, and it therefore sees industry as being at the centre of the Europe 2020 Strategy. It says that the financial and economic crisis has refocused attention on the importance of creating a strong, competitive and diversified manufacturing base, and it accordingly put forward in October 2010 — as one of the seven Europe 2020 “flagship initiatives” — a Communication<sup>64</sup> setting out a strategic framework for a new integrated industrial policy at stimulating economic recovery by creating a thriving world-class industrial base in the EU.

### The current document

12.2 This latest Communication is the first in a series of new yearly initiatives in which the Commission says that it will look specifically at the competitiveness of Member States, the current document being based on the “European Competitiveness Report 2011” and “Member States’ Competitiveness Performance and Policies (2011 Report)”. It aims to encourage coherent and coordinated Member States’ industrial policies, as well as deep structural changes, to achieve sustainable growth, and in particular takes forward a commitment in last year’s Communication to monitor Member States’ competitiveness policies and exchange good practices in order to improve cooperation of industrial policies across the EU.

12.3 The Communication focuses on the six policy areas below to help Member States use their limited resources in order to increase the global competitiveness of their industries.

64 (32128) 15483/10: see HC 428–ix (2010–11), chapter 14 (24 November 2010).

### *Structural Changes in the Economy*

12.4 The Commission argues that, in order to boost competitiveness, it is necessary to move towards innovative, knowledge-based sectors, and that action is needed to facilitate change by improving product market regulation, supporting innovation and investing in education and training throughout the lifecycles. Member States are split into four categories according to their degree of specialisation in technologically advanced sectors, with the UK being listed as part of the first group, whose industrial structure is dominated by technologically advanced sectors.<sup>65</sup>

### *Innovative Industry*

12.5 The Communication states that research and innovation drive productivity growth and industrial competitiveness, and it urges EU industry to accelerate efforts to adopt new technologies. It also calls for an integrated approach to bridge the gap between basic research into key enabling technologies and their market application, and it encourages Member States to:

- pool scarce resources to help to achieve critical mass in bringing innovation to the market;
- increase cooperation in innovation to create large scale demonstration projects and pilot test facilities;
- reduce fragmentation of innovation support systems;
- facilitate bringing innovative solutions to the market (with the UK being singled out as having schemes to achieve this); and
- increase the market focus of research projects.

### *Sustainability and Resource Efficiency*

12.6 The Communication stresses that, in order to maintain the long-term competitiveness of European industries, it is essential to have a transition towards a sustainable, resource efficient and low carbon economy. Overall, it notes that many Member States (including the UK) have made significant progress, but that challenges remain: and it encourages a mix of measures to support research, innovation, resource efficiency, and the deployment of cleaner technologies especially in process industries. In particular, it supports:

- favouring energy and raw material efficiency, and promoting innovation and deployment of cleaner technologies along value chains with the use of long-term incentives which encourage market creation and facilitate the participation of SMEs;
- ensuring fair and undistorted pricing of energy, and continuing to work on upgrading and interconnecting energy distribution networks;

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<sup>65</sup> The other countries are Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Netherlands and Sweden.

- favouring and promoting social entrepreneurship in Europe.

### *Business Environment*

12.7 The Commission states that an open, efficient and competitive business environment is a crucial catalyst for growth in a global context, and it notes the importance of reducing administrative burdens, improving infrastructure, having a modern public administration and reducing the compliance burden arriving from taxation. In particular, it advocates strengthening competitiveness by:

- evaluating the current administrative burdens on business and rapidly reducing burdens to meet targets; and
- promoting competition among service providers which use in broadband, energy and transport infrastructures.

### *Single Market*

12.8 The Communication notes that services are the largest part of the EU economy and their integration with manufacturing is growing, and it says that competitiveness would be strengthened by:

- developing support for innovative services based on measurable outcomes;
- participating in the Innovation Partnerships and in large-scale demonstration projects; and
- fully implementing the Single Market legislation, in particular the Services Directive and promoting business services.

### *Small and Medium-Sized Enterprises (SMEs)*

12.9 The Commission notes that policies designed to unleash the potential of SMEs were set out in its Communication reviewing the Small Business Act. It suggests that SMEs growth would be improved by:

- ensuring regulations do not pose obstacles to expansion;
- favouring access to appropriate finance;
- providing support services for accessing new markets;
- ensuring that public administrations reduce payment times and adhere strictly to the Late Payments Directive.

### *Report on UK Competitiveness*

12.10 The Commission states that overall the UK enjoys a favourable position with respect to competitiveness, but that some areas are improving while others are deteriorating. The UK's R&D intensity is below the EU average (but high in pharmaceuticals and aircraft) but the UK is ranked as fifth in the Innovation Union scoreboard. The UK performs above the



EU average in relation to the overwhelming majority of indicators for a sustainable industry, the business environment and entrepreneurship and SMEs. However the Commission notes there is still room for improvement in relation to e-government usage by business relative to other EU Member States.

12.11 The Communication concludes by saying that the Commission will strengthen the coordination of Member States' industrial policies by promoting and monitoring growth-enhancing structural improvements to achieve the Europe 2020 targets, and that it will by the first quarter of 2012 provide a forum for identifying and discussing good practices in promoting growth through industrial policies.

### The Government's view

12.12 In his Explanatory Memorandum of 1 November 2011, the Minister of State for Business and Enterprise at the Department for Business, Innovation and Skills (Mr Mark Prisk) says that there are no direct policy implications for the UK from this Communication, adding that, although the Communication highlights a number of themes seen as fundamental for Member States' industrial policies to encourage sustainable growth, these are not new, in that many recent such Communications have encouraged action in relation to innovative industry, resource efficiency, improving the business environment, implementing the Single Market and supporting SMEs.

12.13 The Minister says that he understands that the Commission plans to initiate exchanges of practices and encourage closer cooperation on industrial policies among Member States focusing on four selected areas — exploring the potential of green business models; encouraging innovation through public procurement; stimulating and promoting highly innovative SMEs based on key enabling technologies; and better contract enforcement through alternative dispute resolution methods. He adds that the UK has expressed an interest in participating in all these Expert Groups, and that, more generally it will wish to review the key findings in this Communication and the accompanying documents, and consider whether there are key lessons that can be applied to UK industrial policy.

### Conclusion

12.14 **As we have indicated, this Communication is essentially a follow-up to the one which the Commission produced in 2010 setting out an Integrated Industrial Policy, which we described at some length in our Report of 24 November 2010. As the Government has pointed out, the themes it has identified are not new, and, whilst we are drawing it to the attention of the House, we see no reason to withhold clearance.**

## 13 Implementation of EU obligations under the Kyoto Protocol

(33226) Commission Report on progress towards meeting the Kyoto objectives  
 15405/11  
 + ADD 1  
 COM(11) 624

<i>Legal base</i>	—
<i>Document originated</i>	7 October 2011
<i>Deposited in Parliament</i>	17 October 2011
<i>Department</i>	Energy and Climate Change
<i>Basis of consideration</i>	EM of 1 November 2011
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

13.1 In order to meet the environmental challenges presented by global warming, the 1992 United Nations Framework Convention on Climate Change (UNFCCC) requires industrialised countries to return their emissions of greenhouse gases by the year 2000 to the levels obtaining in 1990. However, in 1997, the Kyoto Protocol went on to set legally binding emission targets for industrialised countries to meet by 2012. The Community of 15 accordingly undertook to reduce its 1990 emission levels by 8% by the period 2008–2012, with reductions being apportioned between the individual Member States under the Burden Sharing Agreement (see Annex). Of the new Member States, all but Cyprus and Malta have individual reduction targets under the Protocol, equivalent to 8% (except for Hungary and Poland, where the target is 6%).

### The current document

13.2 This report provides a description of historical trends in, and projections of, greenhouse gas emissions for the EU-15 and EU-27, based on information provided by Member States, and is the sixth of a series of annual reports required under Decision 280/2004/EC. Historical emissions are shown between 1990 and 2009 (the latest year for which data is now available), whilst projected emissions are provided for 2010 (the midpoint of the first commitment period) on the basis of those measures currently in place and the additional policies and measures being introduced, as well as the effect of the planned use of the Kyoto flexible mechanisms,<sup>66</sup> and the projected use of carbon sinks (Land Use, Land Use Change and Forestry (LULUCF)) allowed under the Kyoto Protocol.

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<sup>66</sup> Joint Implementation (JI) and the Clean Development Mechanism (CDM).

13.3 The report notes that emissions in the EU-15 in 2009 decreased by 6.9% compared with 2008 (the extent of this being due largely to the economic situation), and are now 12.7% below base year emissions, whilst, for the EU-27, emissions were 7.1% lower than in 2008, and 17.4% lower than the base year. It says that the EU-15 is now well on track to reach its Kyoto target, and that this will be over-achieved, assuming current and planned measures deliver as expected. Also, each of the Member States concerned is on track to meet its individual Kyoto target, as are the ten EU-12 Member States with targets. The Commission adds that provisional data for 2010 suggest that emissions from the EU-15 and EU-27 fell by a further 2.3%, taking EU-15 emissions to 10.7% below base year levels, and those for EU-27 to 15.5% below the base year.

13.4 The Commission goes on to note that the EU has also agreed to reduce greenhouse gas emissions in 2020 by at least 20% compared with 1990 levels, with separate targets for those sectors within and outside the Emissions Trading Scheme. It says that, on current projections, the EU would fail to meet this target by some margin, and that consequently many Member States need to make additional efforts to meet their obligations.

### The Government's view

13.5 In his Explanatory Memorandum of 1 November 2011, the Minister of State at the Department of Energy and Climate Change (Gregory Barker) says that the EU and the UK have taken a leading role in calling for, and taking, action to tackle climate change, and he notes that UK emissions in 2009 of the six greenhouse gases regulated under the Kyoto Protocol were 25.3% below base-year<sup>67</sup> and projected to decline further over 2008–12, meaning that the UK has already over-achieved its target of 12.5%. He adds that emissions in 2010 were provisionally estimated to be 28.7% below the baseline, but that, taking into account the effect of emissions trading increases, the reductions achieved would be 24.3% below the baseline.

13.6 The Minister also points out that the Climate Change Act 2008 introduced a long-term legally-binding target, requiring a reduction of at least 80% by 2050 compared with 1990 levels of the six Kyoto gases. He says that the carbon budget for the first budgetary period, which coincides with the first Kyoto commitment period, has been set at a level in excess of UK's Kyoto commitment, requiring emission reductions of just over 22% below 1990 levels.

13.7 The Minister concludes by saying that the UK welcomes this report as a useful signpost of the progress being made by Member States, and that the Government considers that all Member States should meet their individual Kyoto targets, with the EU-15 not relying on over-compliance by some Member States to ensure that the overall target is met. He believes that this report will help to sustain the pressure on Member States to ensure that the necessary existing and planned measures deliver fully.

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67 The base year is 1990 for carbon dioxide, methane, and nitrous oxide, and 1995 for the three fluorinated gases.

## Conclusion

13.8 This report is the latest in a series of assessments of the EU's progress towards meeting its Kyoto targets, and provides some interesting and useful information. As in previous years, we think it right in clearing the document to report it to the House, noting that the Commission has confirmed that, provided current and planned measures deliver as expected, the EU will meet those targets, and that it is very likely these will be over-achieved.

## Annex: Member States' commitments under the Community's Burden Sharing Agreement (percentage changes for 2008–2012 relative to 1990 emission levels)

Austria	-13
Belgium	-7.5
Denmark	-21
Finland	0
France	0
Germany	-21
Greece	+25
Ireland	+13
Italy	-6.5
Luxembourg	-28
Netherlands	-6
Portugal	+27
Spain	+15
Sweden	+4
UK	-12.5

## 14 Recovery of undue payments under the Common Agricultural Policy

(33200) 14895/11 —	Special Report No 8/2011 Of the European Court of Auditors: Recovery of undue payments made under the Common Agricultural Policy
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<i>Legal base</i>	—
<i>Deposited in Parliament</i>	7 October 2011
<i>Department</i>	Environment, Food & Rural Affairs
<i>Basis of consideration</i>	EM of 18 October 2011
<i>Previous Committee Report</i>	None, but see footnote
<i>Discussion in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

14.1 The EU spends around €55 billion a year on the Common Agricultural Policy (CAP), and management of most of this expenditure is shared between the Member States and the Commission, with the aid being paid out to beneficiaries by the designated national paying agencies, which are then reimbursed by the Commission. Some of these payments are made irregularly or contain errors, and have to be recovered. In order to safeguard the EU's financial interests, Member States are required to adopt appropriate legislative, regulatory and administrative provisions, and to take any other measures needed to check the genuineness and compliance of operations financed by the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), to prevent and pursue irregularities, and to recover sums lost as a result of irregularities or negligence.

14.2 Member States are also required to undertake sample checks on the regularity of individual payments, with some of these taking place before payment is made, enabling irregularities to be deducted directly from the payment, whilst, in the case of checks carried out after payment has taken place, Member States are required to record a debt for any undue payments detected, and then request repayment of the overpaid amount. Many beneficiaries repay as requested, but if they lodge an appeal, and, if the debt is subsequently upheld, an enforcement action for recovery is initiated (though, under certain conditions,<sup>68</sup> the paying agency can decide to halt recovery and declare the amount as irrecoverable, with the debt being written off).

14.3 These arrangements also provide for the Commission to clear the accounts relating to agriculture and rural development, whereby it accepts the amounts paid out by the Member States, but may reduce payments to them when it finds that they have misapplied

<sup>68</sup> Such as in the case of insolvency, or where the cost of recovery exceeds the amount due.

the relevant regulations. Although the Commission has often reported these reductions as “recoveries”, most of the transactions involved take the form of corrections which do not recover payments from the beneficiaries, but instead shift part of the cost of the CAP on to national taxpayers. In the context of the clearance of accounts, a small part of the Commission’s clearance decisions relate to the recovery of specific debts.

14.4 The European Court of Auditors last reported on the recovery of irregular payments in Special Report No 3/2004.<sup>69</sup> This highlighted a low rate of recovery of reported debt, inconsistencies in the data reported, a large volume of old debts neither recovered nor written off, and a lack of clarity in the division of responsibilities between the Commission’s Directorate-General for Agriculture and the European Anti-Fraud Office (OLAF). This was followed by the Council adopting in 2006 a new regulatory framework, the most significant change being the introduction of the “50/50 rule” which shares the financial consequence of non-recovered debt equally between the EU budget and Member State concerned. Member States are charged for 50% of amounts not recovered four years after the date the debt was recognised, or eight years if the recovery process is being pursued in the courts. However, if a final judicial decision confirms that the debt was not due, the amount charged under the 50/50 rule has to be paid back to the Member State by the Commission.

14.5 The 50/50 rule is intended to help protect the financial interests of the EU and to provide an incentive for Member States to ensure a more timely recovery of debts, compared with the previous situation where unrecovered debt was allowed to remain in the accounts for very long periods, sometimes decades, until ad hoc decisions were finally taken to write them off. At the same time, however, the Court says there are two main risks to the effective application of the rule — postponement of the date when debts are first recognised, thereby delaying the date that Member States can be charged in case of non-recovery; and writing debts off as irrecoverable before all recovery possibilities have been exhausted.

14.6 Further changes were introduced by the new framework regarding the transmission by Member States to the Commission of irregularities and the progress made in recovering them. Prior to 2006, such information was sent to OLAF, but it is now sent to the responsible Commission Service (DG Agriculture and Rural Development), so that debts can be more closely monitored. Also, the threshold for reporting individual irregularities to OLAF was raised from €4,000 to €10,000.

## The current document

14.7 This latest report by the Court of Auditors examines the procedures for recovery of undue payments, and focuses in particular on recoveries by Member State authorities and the monitoring role of the Commission.

14.8 The Court found that the arrangements introduced in 2006 have improved matters by providing more accurate information and greater detail on debts and recoveries at Member State level, and by giving more information in the annual accounts. Also, the recovery rates

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69 (25969) 12681/04: see HC 42–xxv (2003–04), chapter 6 (3 November 2004).



have improved in respect of debts raised from 2006 onwards. However, the Court says that certain weaknesses persist in that:

- whilst new procedures, which result in the automatic reimbursement to the Commission of 50% of the amount of old debts, enhance the protection of the EU's financial interests by "recovery" via the transfer of funds from the Member State budget to the EU budget, it has certain shortcomings such as running the risk of encouraging the write-off of debt by Member States as early as possible or reporting debt as late as possible and allowing certain amounts to "escape";
- differences in treatment between Member States means that debts are recognised at different times, reported figures are not comparable, interest is applied inconsistently and the point in time debts can be written off can vary significantly leading to a negative financial impact on the EU budget;
- the likelihood of recovery of an undue payment is affected by delays in the Member States' initiation of recovery procedures, shortcomings in their recovery actions, and their limited enforcement possibilities;
- where delays in the initial recording of debt occur, the transmission of information relating to irregularities to OLAF can also be delayed.

14.9 The Court has therefore recommended that the Commission should further improve the way in which debts in the Member States are managed and reported upon and ensure a consistent treatment of those across all Member States by:

- requesting Member States to record the irregularities and other debts once they are legally due, notably at the time the recovery notification has been drawn up;
- clarifying certain key reporting and accounting concepts which have been inconsistently applied thus far by issuing guidelines, in a timely manner;
- introducing a uniform time limit between the discovery of a potential irregularity and the notification of the recovery order to the debtor which would enhance harmonisation between Member States and ensure a more timely transmission of information on irregularities to OLAF;
- introducing explicit rules in relation to the application of interest;
- providing further clarification of the circumstances under which debts can be declared as irrecoverable, in particular in relation to the rules for writing off debt in insolvency cases;
- reviewing the application of the new, automatic 50% recovery procedure rules to ensure its effective application;
- finalising the follow-up of old "Task Force Recovery" cases, which were supposed to have been finalised some three years ago.

14.10 The Court also noted that, during the period 2006–2008 covered by its audit, around 90% of the amounts reported in the EU annual accounts as "recoveries of undue payments"

were those made by the Commission through deductions from the Member States and not actual recoveries of the unduly paid aid from beneficiaries. It observes that, although this undoubtedly protects the financial interests of the EU, it lacks the full deterrent effect of a recovery made from an unduly paid beneficiary, and it adds that the Commission should therefore explore methods which permit it to reduce the proportion of its “recoveries” from Member States’ budgets, and increase the proportion of undue payments recovered from the beneficiaries who received them.

### The Government’s view

14.11 In his Explanatory Memorandum of 18 October 2011, the Minister of State for Agriculture and Food at the Department for Environment, Food & Rural Affairs (Mr Jim Paice) says that the UK welcomes this Report, which has helpfully identified on-going weaknesses in the arrangements for recovering undue payments. He says that the Government will work with the Commission to improve these arrangements, and will urge others to do the same, though he also observes that it is important to remember that not all these undue payments were frauds, and that some of them were the results of genuine errors. He adds that the UK supports the Court’s recommendations that the Commission should further improve the way in which debts in the Member States are managed and reported upon; ensure that debts are treated as consistently as possible across all Member States; and explore methods to reduce the proportion of recoveries from Member States’ budgets and increase the proportion of recoveries from the beneficiaries.

### Conclusion

**14.12 This Special Report by the European Court of Auditors provides a useful account of the steps which have been taken in this area since its previous Report in 2004, and of those which still need to be taken. Consequently, whilst we are content to clear it, we are drawing it to the attention of the House.**

## 15 EU humanitarian assistance to Libya

(33306)	Council Decision repealing Council Decision 2011/210/CFSP on a
—	European Union military operation to support humanitarian
—	assistance and protection of civilians in response to the crisis situation
	in Libya (EUFOR Libya)

<i>Legal base</i>	Article 42(4) and 43(2) TEU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 4 November 2011
<i>Previous Committee Report</i>	None; but see (32626) —: HC 428–xxii (2010–12), chapter 10 (30 March 2011); also see (32606) — and (32610) —: HC 428–xxi (2010–11), chapter 9 (23 March 2011) and (32546) — and (32549) —: HC 428–xviii (2010–11), chapter 12 (2 March 2011)
<i>Discussion in Council</i>	14 November 2011 or the 1 December 2011 Foreign Affairs Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

### Background

15.1 On 23 February 2011 the European Union expressed its grave concern over the situation unfolding in Libya; strongly condemned the violence and use of force against civilians; deplored the repression against peaceful demonstrators; and reiterated its call for an immediate end to the use of force and for steps to address the legitimate demands of the population.<sup>70</sup>

15.2 On 26 February 2011, the UN Security Council adopted UNSCR 1970 (2011). Deploring what it called “the gross and systematic violation of human rights” in strife-torn Libya, the Security Council demanded an end to the violence and decided to refer the situation to the International Criminal Court while imposing an arms embargo on the country and a travel ban and assets freeze on the family of Muammar Al-Qadhafi and certain Government officials. It authorized all Member States to seize and dispose of military-related materiel banned by the text. It called on all Member States to facilitate and support the return of humanitarian agencies and make available humanitarian and related assistance in Libya and expressed its readiness to consider taking additional appropriate measures as necessary to achieve that.<sup>71</sup>

15.3 We subsequently considered the relevant Council Decision and implementing Council Regulation at our meeting on 3 March 2011. The Council Decision and Regulation raised no questions *per se*, but we reported them to the House nonetheless because of the

70 See [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/cfsp/119453.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/cfsp/119453.pdf) for the full text.

71 Full details of UN Security Council resolution 1970 (2011) are available at <http://www.un.org/News/Press/docs/2011/sc10187.doc.htm>.

widespread interest in the situation in Libya.<sup>72</sup>

15.4 On 17 March 2011, demanding an immediate ceasefire in Libya, including an end to the current attacks against civilians, which it said might constitute “crimes against humanity”, the UN Security Council imposed a ban on all flights in the country’s airspace — a no-fly zone — and tightened sanctions on the Qadhafi regime and its supporters. In adopting Resolution 1973 (2011) by a vote of ten in favour to none against, with five abstentions (Brazil, China, Germany, India, Russian Federation), the Council authorized Member States, acting nationally or through regional organizations or arrangements, to take all necessary measures to protect civilians under threat of attack in the country, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory.

15.5 On 21 March 2011, the Foreign Affairs Council adopted conclusions on Libya that, *inter alia*:

- expressed its concern at the then situation and condemned the gross and systematic violation of human rights, violence and brutal repression perpetrated by the regime against the Libyan people;
- expressed its satisfaction after the adoption of UNSCR 1973 and underlined its determination to contribute to its implementation;
- said that it and the EU Member States would support actions provided for by UNSCR 1973 necessary to protect civilians and civilian populated areas under threat of attack; and
- noted that the EU would continue to provide humanitarian assistance to all those affected.<sup>73</sup>

15.6 On 21 March the House adopted the following Resolution:

“That this House welcomes United Nations Security Council (UNSC) Resolution 1973; deplores the ongoing use of violence by the Libyan regime; acknowledges the demonstrable need, regional support and clear legal basis for urgent action to protect the people of Libya; accordingly supports Her Majesty’s Government, working with others, in the taking of all necessary measures to protect civilians and civilian populated areas under threat of attack in Libya and to enforce the No Fly Zone, including the use of UK armed forces and military assets in accordance with UNSC Resolution 1973; and offers its wholehearted support to the men and women of Her Majesty’s armed forces.”<sup>74</sup>

15.7 On 23 March we cleared a Council Decision and Council Regulation that authorised Member States to:

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72 See headnote: (32546) — and (32549) —: HC 428–xviii (2010–11), chapter 12 (2 March 2011).

73 The full conclusions are available at [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/120065.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/120065.pdf).

74 See *HC Deb*, 21 March 2011, cols 700–806 and <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110321/debtext/110321-0001.htm#1103219000001>.

- take the necessary measures to prevent the flights of aircrafts under their jurisdiction in the airspace of Libya, save those whose sole purpose is humanitarian;
- inspect vessels and aircraft bound to or from Libya, if they have reasonable grounds to believe that such vessels are carrying prohibited cargo;
- deny permission to any Libyan aircraft to take off from, land in or overfly their territory;
- deny permission to any aircraft to take off from, land in or overfly their territory, if they have reasonable grounds to believe that the aircraft contains prohibited items, including the provision of armed mercenary personnel.

15.8 The measures also extended the travel ban and asset freeze to encompass not just the Qadhafi family and a range of other individuals but also state enterprises under the control of Muammar Qadhafi and his family, and thus a potential source of funding for his regime.<sup>75</sup>

15.9 The Council Decision and Regulation raised no questions in and of themselves. We nonetheless reported these measures because of their political importance. In so doing, we noted that the Minister was “doing a lot of preparatory work in order to be able to take further measures very soon”, and asked him to do all that he could to continue to keep the Committee informed about what was plainly a very fast-moving situation.<sup>76</sup>

### Council Decision 2011/210/CFSP

15.10 The Foreign Affairs Council Conclusions also expressed the EU’s readiness to provide CSDP support to humanitarian assistance in response to a request from OCHA<sup>77</sup> and under the coordinating role of the UN, such actions to respect fully the UN guidelines on the use of military and civil defence assets (MCDA).<sup>78</sup>

15.11 In his Explanatory Memorandum of 29 March 2010, the Minister for Europe (Mr David Lidington) explained that:

- the Council subsequently agreed on 24 March a Crisis Management Concept outlining the potential response;
- this would support the implementation of UNSCRs 1970 and 1973 through the protection of civilians by providing EU military capabilities to assist the UN in the

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75 See headnote: (32610) —: HC 428–xxi (2010–11), chapter 9 (23 March 2011).

76 See headnote: (32606) — and (32610) —: HC 428–xxi (2010–11), chapter 9 (23 March 2011).

77 OCHA is the part of the United Nations Secretariat responsible for bringing together humanitarian actors to ensure a coherent response to emergencies and ensures there is a framework within which each actor can contribute to the overall response effort. For full information about OCHA, see <http://www.unocha.org/>.

78 MCDA Guidelines (the Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies) provide guidelines for the use of international military and civil defence personnel, equipment, supplies and services in support of the United Nations (UN) in pursuit of humanitarian objectives in complex emergencies. For further details, see <http://ocha.unog.ch/drptoolkit/PNormativeGuidanceSpecificIssues.html>.

evacuation of refugees from the borders with Tunisia and/or Egypt or by providing specialised capabilities to support humanitarian assistance;

- the European Council of Friday 25 March 2011 agreed that EU planning should continue;
- this Council Decision would enable planning for a potential CSDP military operation to proceed to the next phase.

15.12 The Minister commented on the proposal as follows:

### ***The Crisis Management Concept***

“We agreed an EU Crisis Management Concept (CMC) on 24 March 2011 which sets out the conceptual framework of how a CSDP operation might operate. This is an EU Restricted document, but in summary it sets the framework for potential CSDP action in accordance with the mandates of UNSCR 1970 and 1973 through the protection of civilians by providing EU military capabilities to assist the UN in the evacuation of refugees or by providing specialised capabilities to support humanitarian assistance. It also emphasised the need for further planning and preparation, including ensuring close coordination and complementarity with relevant humanitarian actors, in particular with OCHA, the European Commission Humanitarian Aid and Civil Protection (known as ECHO) and other international actors including NATO.

### ***What does this Council Decision do?***

“The purpose of the Council Decision is to allow for further and more detailed contingency planning. It would do this by designating an operational commander and headquarters (probably in Italy). This planning is required so that the EU can respond swiftly in case its support is requested by UN OCHA.

“It approves the readiness of the EU to provide CSDP support to humanitarian agencies with two important locks ahead of any mission launch. The first is that the launch of any mission can only be considered if OCHA requests assistance, as per the FAC Conclusions — this would demonstrate need. The wording of the draft Decision will be tightened in this respect. Secondly, the decision to launch a mission will need to be approved by the Council when considering the operational plan which will result from this next phase of planning.

### ***Why do we support it?***

“The humanitarian situation in Libya and at its borders is cause for concern and could be aggravated by migration movements resulting from events. The EU and Member States have already mobilised humanitarian aid working with the UN in evacuating refugees and third country nationals from Tunisia. If there is a deterioration in the humanitarian situation, and a request for assistance is received from OCHA, the EU has committed itself politically to be able to respond rapidly.



This Council Decision allows for prudent planning to take place that will help the EU to react swiftly, but with appropriate locks, and we are therefore supportive.

### ***What happens next?***

“Once the Council Decision is taken, detailed formal planning will commence. Should a request not be forthcoming from OCHA, and the situation on the ground does not require a CSDP operation within the parameters set out in the Decision, then the Council can take a decision to repeal the Decision closing the operational headquarters.

“If a request is made from OCHA for CSDP support, then planning documents (an operational plan) can be considered and agreed by the Political and Security Committee (PSC). Agreement to launch a mission will be subject to a further Council Decision, on which the Scrutiny Committees would be consulted.”

## **Our assessment**

15.13 We noted that any decision to launch this mission — which was called EUFOR Libya — would be dependent on a request from the UN and a further Council Decision. Since, no matter how circumscribed, this would amount to an EU military mission, and in very challenging circumstances, we asked the Minister to do everything possible to ensure that the Committee was able to consider it in a timely fashion.

15.14 In the meantime, we cleared the draft Council Decision from scrutiny.<sup>79</sup>

15.15 It was adopted on 1 April 2011, as Council Decision 2011/210/CFSP.

## **The draft Council Decision**

15.16 The draft Council Decision would close down EUFOR Libya.

## **The Government’s view**

15.17 In his Explanatory Memorandum of 4 November 2011, the Minister of Europe (Mr David Lidington) welcomes work done within the EU and at the Rome operations headquarters (OHQ); however, he says, the launch of EUFOR Libya is now highly unlikely. The situation in Libya has improved; OCHA and the humanitarian community are adequately managing the current humanitarian needs; and the Libya National Transitional Council (NTC) has stated that it does not want any foreign military forces deployed in Libya — hence this Council Decision recommending closure of EUFOR Libya and its OHQ.

15.18 The Minister says that the EU is working closely with the United Nations and others in coordinating international support to post-conflict Libya — in the immediate term, humanitarian assistance as well as work “to build on the flourishing role of civil society”; next, a comprehensive needs assessment covering the key areas identified by the Libyan

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79 See headnote: (32626) —: HC 428–xxii (2010–11), chapter 10 (30 March 2011).

authorities. The Minister explains that the EU has been given responsibility for coordinating assessments in the areas of border control, civil society and communications and will also be participating in assessments in other areas (for example public security) which are being led by the UN and World Bank/International Monetary Fund; it is hoped that some of these assessment missions will be on the ground soon. Once the assessments are complete and an implementation plan agreed, the Minister says that the EU will be likely to offer assistance in a wide range of areas, which could cover education, women's rights, public financial management, and security sector reform; and which might include a civilian CSDP mission (though, the Minister notes, formal discussions have yet to take place).

15.19 With regard to the *Financial Implications*, the Minister says that:

- the UK is liable for 14.36% of the costs of establishing and running the OHQ;
- the final costs will be known when closure is complete;
- common costs were restricted to €7.9 million to allow for contingency planning;
- he does not expect the full amount to have been required.

15.20 The Minister concludes by noting that closure of the OHQ is planned to be completed by the end of November, and that he expects the Council Decision to be adopted by either the 14 November or the 1 December Foreign Affairs Council.

## Conclusion

15.21 **Even though the draft Council Decision itself is entirely straightforward, we consider that the overall context is such that a Report to the House is appropriate.**

15.22 **We now clear the draft Council Decision.**

## 16 Common Security and Defence Policy: EULEX Kosovo

(33307)	Council Decision amending Joint Action 2008/124/CFSP on the
—	European Union Rule of Law Mission in Kosovo, EULEX KOSOVO
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<i>Legal base</i>	Articles 28, 42 (4) and 43 (2) TEU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 4 November 2011
<i>Previous Committee Report</i>	None; but see (33169) —: HC 428–xxxvii (2010–12), chapter 21 (12 October 2011); (31984)—: HC 428–iii (2010–11), chapter 1 (13 October 2010); and HC 428–i (2010–11), chapter 4 (8 September 2010); also see (30652) — HC 19–xviii (2008–09), chapter 20 (3 June 2009); and (29379) — and (29380) — : HC 16–x (2007–08), chapter 10 (30 January 2008)
<i>Discussion in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

### Background

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

- establishing a European Security and Defence Policy (ESDP) 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.

16.2 The previous Committee’s Reports outline the wider context via which Kosovo moved to independence in 2008, and rehears the history of the EU’s role in post-conflict Kosovo:<sup>80</sup>

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

<sup>80</sup> See headnote.

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

16.4 The Joint Action<sup>81</sup> 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.

16.5 On 8 September 2010, the Committee considered a Council Decision<sup>82</sup> extending EULEX Kosovo’s mandate for a further two years. In his covering Explanatory Memorandum of 2 June 2010, the Minister for Europe (Mr David Lidington) also took the opportunity to outline, and comment upon, some recent changes to EULEX Kosovo’s Operational Plan.

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

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

16.8 Finally, the Minister said:

“In order for the mission to make further progress against its objectives in the next two years, support from Member States and EU Institutions is key. Continued

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81 The pre-Lisbon Treaty term of art.

82 The post-Lisbon Treaty equivalent.

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.”

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

## Our assessment

16.10 The Committee agreed that improving the rule of law in Kosovo was central to stability in the Western Balkans; and that, with the ending of UNMIK, EULEX Kosovo was the sole remaining operator with the aim of helping Kosovo to achieve reform in this field. However, though implicit, there were a number of disturbing features in what the Minister said about changes to EULEX Kosovo’s Operational Plan — not in the sense that they were in any obvious sense misguided, but in that only now were they being brought into being. The Committee found it difficult to avoid wondering about the effectiveness of EULEX Kosovo’s leadership thus far and of the degree to which all Member States were giving it appropriate support. There was also a lack of clarity as to how a budget that the then Minister for Europe told the previous Committee in June 2009 would total €145 million from then until the expiry of the mission’s mandate on 14 June 2010 had now grown to €265 million. Though by now adopted, the Committee recommended it for debate in the European Committee, so that the new Minister for Europe might have the opportunity to respond and interested Members might be given the opportunity of raising with him any concerns of their own about Kosovo and the EU’s role there.

## The further Council Decision

16.11 Under cover of his Explanatory Memorandum of 29 September 2010, the Minister for Europe (Mr David Lidington) submitted for scrutiny a further Council Decision concerning funding of €165 million for EULEX Kosovo between 15 October 2010 and 14 October 2011.

16.12 He explained that:

- the current total mission budget, set until 14 October 2010, of €265 million included allocations of €120 million to fund EULEX between June 2008 and November 2009, and €145 million until June 2010;
- underspends from the budget to June had been used to extend the funding period until 14 October 2010;
- the mission’s required budget had increased since it achieved Full Operating Capability in March 2009 and taken the full range of its mandate.

16.13 Further funding would, the Minister said, be allocated to the mission at a later date, for the period of its mandate after 14 October 2011.

16.14 The Minister reiterated his support for EULEX Kosovo and its “vital role in enabling the Kosovan rule of law institutions to reach EU standards”, and illustrated the “significant progress since it took over the rule of law functions from UNMIK in December 2008” mentioned in his earlier Explanatory Memorandum as follows:

“This includes responding calmly and effectively to public order disturbances; taking forward a number of high profile corruption cases and war crimes cases; and supporting Kosovan police as they have taken over primary responsibility for security in areas such as sections of the border and cultural heritage sites.”

16.15 In the next period of its mandate, the Minister said:

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

16.16 The Minister also drew attention to changes in the EULEX management team in October 2010; viz., (French) Lieutenant General Xavier de Marnhac would be taking over from Yves de Kermabon as Head of the Mission, and Her Majesty’s Ambassador in Pristina, Andy Sparkes, was to leave this role and become Deputy Head of Mission.

16.17 With regard to the Financial Implications, the Minister says that this funding supported a mission with 1,950 international staff, and explained that:

— funding for the common costs of the mission was met from the Common Foreign and Security Policy budget; and that the UK contributed 13.8% per cent to the overall EU budget in 2010;

— the €165 million covered the common costs: mainly HQ, in-country transport, office equipment and personnel costs;

— the UK had actively pressed the European Commission to reduce the proposed increase in next year’s budget (which was originally set at €168 million) and actively questioned and challenged much of the proposed budget spend;

— despite very limited support from other Member States during negotiations, the UK had secured €3 million of savings and agreement that the average spend over the two years from November 2009 to October 2011 would not exceed €290 million, which meant that the average spend in each of the years would not exceed last year’s agreed annual budget of €145 million;

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



— the UK continued to argue strongly that the mission must deliver value for money, particularly as the largest civilian CSDP mission, and to stress the importance of effective budget management and accurate forecasting to mitigate the risk of another underspend.

### Our further assessment

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

16.19 We also noted that, since our previous meeting, as the Minister mentioned, on 9 September 2010 the UN General Assembly had adopted by acclamation a non-binding resolution sponsored by Serbia and all 27 EU Member States, acknowledging the advisory opinion of the International Court of Justice that Kosovo's 2008 declaration of independence did not violate international law, and calling for EU-backed dialogue aimed at promoting co-operation between Belgrade and Pristina, as a factor for peace, security and stability in the region, and "to promote co-operation, achieve progress on the path to the European Union and improve the lives of the people." We felt that there was thus all the more reason for the House to be given an opportunity to hear from the Minister and discuss with him the next phase of EULEX, which was to begin at what appeared to be a particularly promising, and thus in many ways even more challenging, moment.

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

16.21 However, it was drawn to our attention that, subsequent to his Explanatory Memorandum, the Minister had been able to have adoption of the Decision delayed until 14 October (i.e., the date upon which the current budget was due to end and the new mandate to begin) in order to facilitate scrutiny. In these circumstances, we judged it appropriate to exercise the discretion given to us by article 3(b) of the Scrutiny Reserve Resolution, in order to allow the Minister to give agreement to the proposal notwithstanding that it was still be awaiting consideration by the House.<sup>83</sup>

16.22 That debate took place on 15 November 2010.<sup>84</sup>

### The most recent Council Decision

16.23 This draft Council Decision extended the current budget of EULEX Kosovo for two months until 14 December 2011.

<sup>83</sup> See headnote: HC 428–iii (2010–11), chapter 1 (13 October 2010).

<sup>84</sup> See *Gen Co Deb*, European Committee B, 15 November 2010, cols 3–18) also available at <http://www.publications.parliament.uk/pa/cm201011/cmgeneral/euro/101115/101115s01.htm>.

16.24 In his Explanatory Memorandum of 30 September 2011, the Minister of Europe (Mr David Lidington) recalled that EULEX's budget for October 2010 to October 2011 had been set at €165 million. He explained that:

— at UK insistence, three proposed capital investment projects were later reviewed and €7.7million of savings achieved; these funds would not be reallocated without Member State authorisation; the Mission was thus working to an effective budget of €157.3 million (with €1.3 million held under a contingency heading);

— the Mission expected to have used 82% of this €157.3 million budget by October leaving an underspend of 18%, or €26.5 million, which was sufficient to cover two months of Mission activity; a 99% spend is forecast by December 2011;

— the total underspend of €26.5 million had largely been due to delays and savings on equipment costs and capital investments, including vehicles, IT equipment, Communications etc; this underspend was forecast for about €14.5 million by October; the remainder of the total underspend was on understaffing (mainly of secondees' per diems, but also national and contracted staff) and the associated insurance costs (about €8 million); the Mission had also reduced running costs on IT equipment and vehicles (a saving of about €3 million);

— while he welcomed the areas where the Mission had made savings, he expressed concern to the Head of Mission and the Commission at the delays on capital projects; the Commission had remarked that the rate of expenditure was now increasing as more procurement processes were underway and more than €4million was expected to be spent in this area during the two months of the extension one major capital project had been delayed while irregularities with the tender were investigated;

— on staffing, the Mission had recently reorganised its Police component to remove 170 slots which were no longer effective and reallocated available staff to ensure a higher staffing rate; which action he welcomed;

— the Crisis Management and Planning Directorate of the European External Action Service was due to start a strategic review of the Mission in October in time to inform decisions about the Mission's future following the expiry of its current mandate in June 2012; he would welcome the Committee's views on the Mission's future work and keep it informed of developments;

— in the meantime, Lieutenant General Xavier de Marnhac was expected to continue as Head of Mission until the end of the current mandate, and former British Ambassador to Pristina Andy Sparkes would continue as Deputy Head of Mission.

16.25 The Minister went on:

- to emphasise that there are no financial implications to the UK; and
- to note that: a new mission budget will be issued in the coming months to cover the period beyond 15 December 2011 until the end of the Mission's mandate in June 2012; no information on the size of this budget is available at the current time; but, once it is released, the new budget will be submitted for Parliamentary scrutiny.

16.26 Finally, the Minister noted that the draft Council Decision had been due to go to the ECOFIN Council for adoption on 4 October, but that his officials had negotiated a delay in order that the Committee might scrutinise the Decision prior to its adoption, now agreed to be by written procedure, by 12 October 2011.

### **The Minister's letter of 27 September 2011**

16.27 The Minister referred to his determination to ensure detailed scrutiny to ensure clear value for money in the current and future budget periods, and professed himself pleased to report that the mission had been very active over the summer during the customs dispute and in supporting the EU-sponsored Belgrade-Pristina dialogue and the NATO KFOR troops by facilitating operational arrangements at the northern customs gates (transporting Kosovan officials to the gates and supervising and advising their work).

### **Our most recent assessment**

16.28 We commended the Minister for ensuring that the Committee could scrutinise the Decision prior to its adoption, and cleared it.

16.29 We also welcomed the savings made, and also what the Minister had to say about the mission's work over the summer period in what were clearly challenging circumstances.

16.30 Looking ahead, we looked forward to scrutinising the promised Council Decision on funding for the remainder of the mandate. We asked only that it be submitted in good time; and that the Minister outlined how the findings of the strategic review thus far had informed the new budget, along with his views thereon.<sup>85</sup>

### **The further draft Council Decision**

16.31 This draft Council Decision sets out a new budget of €72.8 million to cover the remaining six months of this mandate from 15 December 2011 to 14 June 2012.

### **The Government's view**

16.32 In his Explanatory Memorandum of 4 November 2011, the Minister for Europe (Mr David Lidington) begins by noting that the proposed budget represents a pro rata reduction of 11.8% on last year's budget of €165 million.

16.33 The Minister then continues as follows:

“EULEX is an important part of our Balkans strategy and a vital presence in enabling the Kosovan rule of law institutions (Police, Judiciary and Customs) to reach EU standards. The mission is important to tackling organised crime and corruption — areas again highlighted in the Commission's 2011 Progress Report as needing serious reform. Since 2010, EULEX has successfully completed 35 Organised Crime cases; 12 Corruption cases; and 16 War Crime cases. Most recently it indicted the former Minister of Transport and KLA member, Fatmir Limaj.

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<sup>85</sup> See headnote: HC 428–xxxviii (2010–12), chapter 21 (12 October 2011).

“During the next six month period, we will be pushing hard for EULEX to increase its presence and activity in northern Kosovo. It is the one institution that remains best placed to address the levels of crime there. EULEX activity will also include full restoration of Kosovo customs control in northern Kosovo and the investigation into Dick Marty’s allegations of organised crime, including organ trafficking. We also expect EULEX to come forward with more formal proposals for transferring certain executive powers back to the Kosovo Government.

“EULEX is the largest EU CSDP Mission and has a ceiling of 1950 international staff. It is a challenge to fill all these positions and, like many other EU missions, EULEX typically has a 13% vacancy rate i.e. between 200 and 300 slots. The Mission has reorganised its Police component, cutting 179 posts that were vacant or no longer required and has reassigned existing staff. The Mission’s current structure contains 1819 catalogued international posts.

“The first draft of the budget proposed totalled €75.5m. Following negotiations we have succeeded in reducing it to €72.8m by cutting the Head of Mission’s allowances, reducing the number of seconded staff who are paid allowances and reducing the contingency fund.

“Whilst the overall budget would be reduced by this proposal, I have supported increases in individual budget lines where these are reasonable, justifiable and integral to enabling the Mission to deliver. In some areas some additional staff would help EULEX better meet UK objectives. The witness support unit and justice component suffer from a shortage of suitable seconded candidates. This hampers EULEX’s ability to proceed with investigations and prosecutions and could impact on its investigations into allegations in Senator Dick Marty’s Council of Europe report on organ trafficking.<sup>86</sup> We have supported improving the staffing rate by converting 60 positions from ‘seconded’ to ‘seconded/contracted’ i.e. an increase of €1.7m in the proposed 6 month budget.

“The Special Investigation Task Force was set up to investigate allegation of organ trafficking in the Marty report.<sup>87</sup> It will comprise 18 staff and be based in Brussels.<sup>88</sup>

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86 On 25 January 2011, the Council of Europe endorsed a report calling on Albania and Kosovo authorities to “initiate a serious and independent investigation” of alleged trafficking of organs taken from bodies of dead prisoners held by the Kosovo Liberation Army (KLA) in Albania in the 1990s. The resolution adopted by the Council of Europe on the recommendation of its Committee on Legal Affairs and Human Rights and the report by Senator Marty, the Council of Europe’s special rapporteur on human rights, is available at [http://assembly.coe.int/CommitteeDocs/2010/20101218\\_ajdoc462010provamended.pdf](http://assembly.coe.int/CommitteeDocs/2010/20101218_ajdoc462010provamended.pdf).

87 On 28 January 2011, EULEX issued the following statement:

“The rule of law mission to Kosovo, EULEX, takes the allegations made in the recent Council of Europe Report, by Dick Marty, very seriously. EULEX has the capacity, the expertise, the location and the jurisdiction to handle the judicial follow up. We are ready, willing and able to assume that responsibility. As an initial technical step, EULEX prosecutors have opened a preliminary investigation. EULEX calls on all relevant organizations and individuals, including Dick Marty, to present what evidence they have in regard to these serious accusations. We understand concerns about witness protection in the region but we have full confidence in our own witness protection unit. Experience has already shown that it is capable of handling high level and sensitive cases. As a rule of law mission, we work on the basis of fact and evidence. Without evidence, prosecutions cannot take place. If we receive this information, our prosecutors are ready to follow up immediately.”

See <http://www.eulex-kosovo.eu/en/pressreleases/0119.php>.

88 On 29 August 2011, EULEX announced that John Clint Williamson from the United States had been appointed lead prosecutor for the EULEX Special Investigative Task Force: see <http://www.eulex-kosovo.eu/en/pressreleases/0177.php>.

Senator Marty has made his cooperation with EULEX conditional upon EULEX's ability to protect potential witnesses whose accounts formed the basis of his report. The current budget includes a provision of €0.6m for staffing and travel for the Task Force.”

16.34 With regard to the EEAS Strategic Review (c.f. paragraph 16.24 above), the Minister says that his current expectations are that it will report in spring 2012, and that he will keep the Committee updated on the Review's recommendations and his assessment thereof.

16.35 Finally, the Minister says that the draft Council Decision is due to go to the ECOFIN Council on 8 November but that, once again, his officials are negotiating a delay to allow time for scrutiny.

## Conclusion

**16.36 We again commend the Minister for having pushed back plans to have this draft adopted at the 8 November ECOFIN, to enable prior parliamentary scrutiny.**

**16.37 We look forward to receiving his proffered updates on the EEAS strategic review.**

**16.38 We remind the Minister that the draft of any new post-June 2012 mandate should be submitted in good time, outline how the findings of the strategic review have informed any new mandate, along with his views thereon, and report on what progress has been made on the areas upon which he has said he wants EULEX to focus in the next six months and by EULEX's Special Investigation Task Force in its investigation of the claims in the Marty Report.**

**16.39 We now clear this draft Council Decision.**

## 17 Financial services: investor compensation schemes

(31836) 12346/10 + ADDs 1–2 COM(10) 371	Draft Directive amending Directive 97/9/EC on investor compensation schemes
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<i>Legal base</i>	Article 53(1) TFEU; co-decision; QMV
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister's letter of 3 November 2011
<i>Previous Committee Report</i>	HC 428–iii (2010–11), chapter 7 (13 October 2010), HC 428–ix (2010–11), chapter 7 (24 November 2010), HC 428–xxxvi (2010–12), chapter 9 (14 September 2011) and HC 428–xxxviii (2010–12), chapter 10 (19 October 2011)
<i>Discussion in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

17.1 The Investor Compensation Schemes Directive, Directive 97/9/EC, ensures compensation for clients receiving investment services from investment firms (including credit institutions) in specific circumstances where the firm is unable to return money or financial instruments that it holds on the client's behalf because it is in default. Examples of where compensation may occur are in cases of theft, embezzlement, fraudulent misrepresentation, unintentional errors, negligence or breakdown in systems and controls. If the firm is unable to pay compensation itself due to insolvency national schemes pay compensation on eligible claims. The Directive does not cover investment risk.

17.2 The draft Directive, presented by the Commission in July 2010, is to amend the Investor Compensation Schemes Directive. It aims to:

- increase the protection provided under the present Directive and strengthen confidence in the use of investment services;
- address regulatory loopholes and problems experienced in the operation of national schemes; and
- reflect changes in the regulatory framework, both as the present Directive was modelled on the Deposit Guarantee Schemes Directive, which has since been amended, and as it complemented the Investment Services Directive, which has now been replaced by the Market in Financial Instruments Directive regulating provision of investment services in the EU.

17.3 When we considered this document in October 2010 we heard that the Government believed that compensation plays a vital role in ensuring ongoing investor confidence and



that recent events had highlighted the importance of this, that the UK's Financial Services Compensation Scheme leads the way in the EU and already goes further in many areas than required by the proposed Directive, such as covering losses resulting from breaches of conduct of business requirements and by providing a higher compensation limit, and that the Government therefore fully supported the principle of improving EU-wide investor protection by raising minimum standards of investor protection schemes across the EU, but that it would not support further EU harmonisation if this were to lead to a reduction in protection currently offered to UK investors.

17.4 We learned also that the Government supported the principle of updating the Investor Compensation Schemes Directive in the light of changes in the past thirteen years, although it planned to argue for continued national discretion in the operation of compensation schemes, that it would seek important improvements to the draft Directive during Council negotiations to ensure that it would avoid imposing unnecessary burdens on the EU investment industry, while at the same time delivering improvements to investor protection and confidence.

17.5 We said we were concerned that some provisions in the draft Directive might not accord with the principle of subsidiarity and we invited the House to agree a resolution on a Reasoned Opinion.<sup>89</sup> As for the other issues related to the draft Directives we said that, whilst we noted the Government's support in principle for the proposals we wished to consider the documents further in the light of information from the Government about progress in negotiating the problems it had identified to us, about the outcome of its consultations it was undertaking and about any impact assessment it developed.

17.6 Since October 2010 we have considered the draft Directive again on a number of occasions in the light of Government reports on its consultations, on its preliminary impact assessment and, most importantly, on developments in negotiation of the proposal. We heard of the Government's concerns in relation to four issues:

- introduction of pre-funding for the investments class of the UK's Financial Services Compensation Scheme (FSCS);
- harmonisation and increase of the coverage limit for all European Economic Area investor protection schemes;
- extension of coverage under the FSCS to third-party custodians of funds; and
- introduction of a provision for mandatory mutual borrowing.

When we last considered the matter, in October 2011, we heard that a new Presidency compromise text was expected and that there was the possibility of Council consideration this month. We asked for a further account of developments in the Council negotiations before we would consider the draft Directive again. Meanwhile the document remained under scrutiny.<sup>90</sup>

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89 A Reasoned Opinion was adopted and forwarded to the Commission on 25 October 2010: see *Gen Co Deb*, European Committee B, 21 October 2010, cols. 3–18 and *HC Deb*, 25 October 2010, col. 26.

90 See headnote.

## The Minister's letter

17.7 The Financial Secretary to the Treasury (Mr Mark Hoban) writes now telling us that:

- the Polish Presidency produced a revised text on 19 October 2011;
- the Government has secured all of its key negotiating aims in that compromise text; and
- the Presidency is expected to take the final text to a COREPER meeting on 17 November 2011 as an A point (no discussion) to agree a Council general approach.

The Minister then outlines to us the outcome on each of the four issues of importance to the UK.

17.8 On the funding model the Minister, reminding us that the Government had secured the support of other key Member States in its opposition to harmonised funding arrangements, says that, following successful lobbying, the latest text allows Member States discretion in their funding model, but includes a number of provisions to ensure schemes are adequately funded. He reports that:

- these provisions include a clear process for raising funds that starts with ensuring sufficient funding is raised from scheme members;
- where that is not adequate, additional contributions can be raised from scheme members;
- schemes must have in place adequate alternative funding arrangements, including borrowing from public institutions and other schemes in the same Member State; and
- Member States must inform the European Securities and Markets Authority annually of their systems and arrangements.

The Minister comments that:

- this is a significant achievement, as it will allow the UK the flexibility to determine the most appropriate funding model, while ensuring that investors in European Economic Area firms are adequately protected and safeguarded; and
- the proposal does not place any additional burdens on the UK investment industry.

17.9 On the coverage limit for all European Economic Area investor protection schemes the Minister says that:

- the latest text amends this Article to require schemes to offer a range of compensation between €30,000 and €100,000;
- this appears to satisfy the majority of Member States, although France and Spain are still pushing for greater harmonisation; and
- the Government can support this proposal as it allows it to retain the UK coverage level of £50,000 and also increases the minimum that Member States offer by 50%.

17.10 On third party custodians and undertakings for collective investment in transferable securities depositories the Minister, reminding us that the Government had opposed the inclusion of third party custodians and undertakings for collective investment in transferable securities depositories in the draft Directive, says that:

- the Hungarian presidency consequently removed undertakings for collective investment in transferable securities from the scope of the proposal;
- the present Presidency has now also removed third party custodians from the proposal; and
- the latest text includes a review clause that requires the Commission to submit a report to the European Parliament and the Council after the adoption of the Securities Law Directive and the review of the Markets in Financial Instruments Directive.

17.11 Finally the Minister tells us that the latest text removes the Article concerned with mutual borrowing and that the Government supports this removal.

17.12 The Minister concludes that the Government is pleased with the outcome achieved in the Council negotiations on this draft Directive and with the balance that has been struck between increasing investor protection and reducing burdens on firms.

## Conclusion

**17.13 We are grateful to the Minister for this further account of developments on this draft Directive. Having no further questions to ask we now clear the document.**

## 18 Preparation of the 2012 EU Budget

(a) (32781) — SEC(11) 498	Statement of estimates of the Commission 2012 Preparation of the 2012 Draft Budget Document I: Political Presentation Document II: Financial programming 2013 Document III: Figures by budget line and overall presentation of the changes in the nomenclature between the Budget 2011 and the 2012 Draft Budget
(b) (33156) 14327/11 COM(11) 576	Amending letter No. 2 to the draft general budget 2012: Statement of expenditure by section; Section I, Parliament; Section II, European Council and Council; Section III, Commission; Section vi, European Economic and Social committee; Section VII, Committee of the regions; Section VIII, European Ombudsman
(c) (33291) 15999/11 COM(11) 698	Amending letter No. 3 to the draft general budget 2012: Statement of expenditure by section; Section III, Commission

<i>Legal base</i>	Article 314 TFEU; co-decision; QMV
<i>Document originated</i>	(b) 16 September 2011 (c) 25 October 2011
<i>Deposited in Parliament</i>	(b) 22 September 2011 (c) 28 October 2011
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	(a) and (c) Minister's letter of 3 November 2011 (b) EM of 7 October 2011
<i>Previous Committee Report</i>	(a) HC 428–xxx (2010–12), chapter 2 (22 June 2011), HC 428–xxxii (2010–12), chapter 1 (6 July 2011) and <i>Gen Co Debs</i> , European Committee B, 13 July 2011, cols 3–30 (b) and (c) None
<i>Discussion in Council</i>	25 July 2011
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	(a) Cleared (decision of the House, 14 July 2011); (b) and (c) Cleared

### Background

18.1 The Draft Budget (DB), document (a), sets out the Commission's proposals for EU expenditure in 2012. It is the first stage in the annual process of establishing the EU's budget for the following year and provides the basis for negotiations between the two arms of the Budgetary Authority (the Council and the European Parliament). The ECOFIN Council agreed its first reading position on the DB on 25 July 2011 (the TFEU requires the

Council to complete this stage by 1 October), which was then forwarded to the European Parliament. The European Parliament in turn agreed its first reading position on 26 October 2010 (the TFEU deadline is 42 days after the Council adopts its position). As it proposes further amendments to those made by the Council, a conciliation committee will be convened to meet over 21 days, early this month, with the aim of reaching agreement on the 2012 Budget. This will be subject to separate approval by both the Council and the European Parliament, after which the EU's Budget for 2012 will be deemed to have been adopted. During the course of the negotiation of the DB the Commission can submit to the Council and the European Parliament Amending Letters proposing changes to the DB.

18.2 The context for the DB is determined by the multi-annual Financial Framework (FF), which sets out annual ceilings for the six headings of budget expenditure:

- Sustainable growth;
- Preservation and management of natural resources;
- Citizenship, freedom, security and justice;
- EU as a global player;
- Administration; and
- Compensation (temporary measures for Bulgaria and Romania in their first years of accession, no longer applicable after 2009).

The DB for 2012 is the sixth of the 2007–2013 Financial Framework.

18.3 The DB is presented in Activity-Based Budgeting (ABB) format, with budget appropriations, resources and staff allocations organised by activity. The Commission has also published Activity Statements providing performance information for each activity, presenting 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.

18.4 The DB consists of draft estimates of required appropriations for the EU institutions — the European Parliament, the Council, the Office of the President of the Council (the latter two being treated as one institution for the purpose of establishing the budget), the Commission, the European Court of Justice, the European Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the European Ombudsman and the European Data Protection Supervisor and the European External Action Service.

18.5 The Commission explained in presenting it that the key objectives of the DB are to support fully the EU economy and EU citizens by exploring the leverage effect of the EU budget to reinforce growth and employment opportunities, while sustaining the actions implemented within Member States' national budgets. The DB is also meant to address the objective of smart, sustainable and inclusive growth, as identified in the Europe 2020 Strategy.

18.6 The DB proposes commitment appropriations<sup>91</sup> of €147,435 million (£130,566 million). This is 1.12% of EU Gross National Income (GNI), and an increase in commitment appropriations of €5,324 million (£4,715 million) or 3.7% above 2011 levels.<sup>92</sup> For payment appropriations,<sup>93</sup> the DB proposes €132,739 million (£117,554 million), or 1.01% of EU GNI. This represents an increase of €6,192 million (£5,484 million) or 4.9% compared to the 2011 budget. The margin<sup>94</sup> under the FF ceiling is €1,604 million (£1,425 million) for commitment appropriations and €8,815 million (£7,807 million) for payment appropriations.

18.7 We considered the DB in June and July 2011 and it was debated in European Committee B on 13 July 2011.<sup>95</sup>

### The Minister's letter

18.8 The Financial Secretary to the Treasury (Mr Mark Hoban) writes now to tell us of developments in the negotiation of the DB, reporting the present positions of the Council and the European Parliament, in the context of a formal conciliation period on the 2012 DB which started on 1 November and will finish on the 21 November 2011, with meetings on 8 November and 18 November 2011.

18.9 On the Council's position in early July 2011 the Minister reminds us that:

- its budget committee agreed, by a qualified majority, amendments to the DB to limit growth in EU spending in 2012 to 2.02% above 2011 levels, implying total EU spending of €129.1 billion (£114.3 billion);
- this is less than half the 4.9% increase in EU spending proposed by the Commission, delivering savings of €3.65 billion (£3.23 billion) in payment appropriations; and
- on commitment appropriations cuts were agreed that limit growth to 2.9% above 2011 levels, compared to 3.7% growth in the DB, thereby saving €1.59 billion (£1.41 billion).

The Minister says that:

- the Council's position was formally adopted by a written procedure on 25 July 2011;

91 Commitment appropriations set the limit of legal obligations that can be made in the budget year for activities that will lead to payments in the current and/or future budget years.

92 Throughout this chapter the figures for the 2011 budget are those of the adopted budget, as amended by Amending Budget 1 and Draft Amending Budgets 2 and 3 — (32443) 5330/11: see HC 428–xxii (2010–11), chapter 11 (30 March 2011), (32631) 8243/11: see HC 428–xxvii (2010–12), chapter 14 (18 May 2011) and (32698) 9211/11: see HC 428–xxvii (2010–12), chapter 18 (18 May 2011).

93 Payment appropriations are the amounts of funds available to be spent during the budget year, arising from commitments in the budget for the current or preceding years.

94 The margin refers to the difference between appropriations in the DB and appropriations (often referred to as "ceilings") provided for in the Financial Framework.

95 See headnote.



- the UK, the Netherlands, Sweden, Denmark, Austria and Finland voted against the proposal, but did not form a blocking minority; and
- the Government opposed the position, because it felt that further savings were available at that stage.

18.10 The Minister summarises the Council's major changes to the DB as follows:

#### *Sub-Heading 1a (Competitiveness for Growth and Employment)*

- a cut to commitment appropriations by €696 million (£616 million), of which €650 million (£576 million) results from removing commitment appropriations for ITER<sup>96</sup> until an agreement on a funding solution for its current shortfall over 2012–13 is agreed;
- a cut to payment appropriations of €1.13 billion (£1.00 billion), distributed as follows — €563 million (£499 million) in the field of research, €99 million (£88 million) from competitiveness, €147 million (£130 million) in budget lines related to the EU economic recovery plan and €102 million (£90 million) from transport;

#### *Sub-Heading 1b (Cohesion for growth and employment)*

- no change in commitment appropriations;
- a cut to payment appropriations of €1.3 billion (£1.2 billion), concentrated in the field of the European Regional Development Fund, €706 million (£625 million), the European Social Fund, €394 million (£349 million) and the Cohesion Fund, €199 million (£176 million);

#### *Heading 2 (Preservation and Management of Natural Resources)*

- a cut to commitment appropriations of €546 million (£484 million), including €198 million (£175 million) in the field of agriculture, €338 million (£299 million) in the budget line for clearance of accounts and €10 million (£8.9 million) in various other budget lines;
- a cut to payment appropriations of €787 million (£697 million), of which the largest cuts were €338 million (£299 million) on clearance of accounts, €230 million (£204 million) in the field of agriculture, €140 million (£124 million) in the

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<sup>96</sup> ITER is a large-scale scientific experiment intended to prove the viability of fusion as an energy source, and to collect the data necessary for the design and subsequent operation of the first electricity-producing fusion power plant: see <http://www.iter.org/>.

field of Rural Development and €47 million (£42 million) on the European Fisheries Fund;

### *Sub-Heading 3a (Citizenship, Freedom, Security and Justice)*

- a cut to commitment appropriations of €56 million (£50 million);
- a cut to payment appropriations of €44 million (£39 million), focusing on the External Borders Fund, the prevention of and fight against crime and agencies;

### *Sub-Heading 3b (Citizenship):*

- a cut to commitment appropriations of €16 million (£14 million);
- a cut to payment appropriations of €15 million (£13 million), targeting agencies, multimedia actions and civil protection within the EU;

### *Heading 4 (EU as a Global Player)*

- a cut to commitment appropriations of €204 million (£181 million) and payment appropriations of €300 million (£266 million), of which the largest part was €110 million (£97 million) to the Emergency Aid Reserve;
- acceptance of Amending Letter No. 1 to the DB,<sup>97</sup> relating to the EU's response to the Arab Spring, but agreement to finance it fully under the current ceilings for Heading 4, through additional redeployments;

### *Heading 5 (Administration)*

- an additional €74 million (£66 million) of efficiency savings, reducing total growth in 2012 from 1.3% to 0.5% — this delivers a saving of €546 million (£484 million) compared to the level of administrative spending pre-programmed in the current FF; and
- to demonstrate leadership, a cut to the Council's own administrative budget by 5.45% in 2012, by finding efficiencies in discretionary areas of spending, such as interpretation and travel costs.

18.11 Turning to the European Parliament the Minister, saying that on 26 October 2011 it voted at plenary on its amendments to the Council's position, tells us that:

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<sup>97</sup> (32927) 11775/11: see HC 428–xxxii (2010–12), chapter 4 (6 July 2011) and *Gen Co Debs*, European Committee B, 13 July 2011, cols 3–30.

- it called for an increase of 5.23% in payment appropriations above 2011 levels and 3.95% in commitment appropriations; and
- this means that the European Parliament is demanding an EU Budget in 2012 of over €133 billion (£118 billion) — an increase of more than €6.6 billion (£5.8 billion) on 2011, €4.0 billion (£3.1 billion) above the Council’s position and even €0.4 billion (£0.35 billion) above the Commission’s proposal.

18.12 The Minister continues that the European Parliament has sought to reverse the vast majority of cuts agreed in the Council, thereby restoring the Commission’s original proposal and summarises the following changes as particularly noteworthy:

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

- reinforcements to budget lines relating to the EU2020 Growth Strategy, which would require mobilisation of the Flexibility Instrument<sup>98</sup> by roughly €31 million (£27 million), as total commitment appropriations would exceed the relevant ceiling in the FF;

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

- an extra €250 million (£221 million) of funds for fruit and vegetable producers;

*Sub-Heading 3a (Citizenship, Freedom, Security and Justice)*

- an increase (in reserve) of €25 million (£19 million) to the EU border agency, Frontex, in order to manage maritime borders in the Mediterranean

*Heading 4 (EU as a Global Player)*

- to accommodate funding for Amending Letter No.1 to the DB, mobilisation of the Flexibility Instrument for €209 million (£182 million), as total commitment appropriations would exceed the relevant ceiling of the FF;

*Heading 5 (Administration)*

- reversal of most of the Council’s cuts; and

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98 Amongst the provisions of the Inter-Institutional Agreement governing budgetary matters is one, the Flexibility Instrument, which allows for the possibility of the three institutions financing, in a given financial year and up to an annual ceiling of €200 million, “of clearly identified expenditure which could not be financed within the limits of the ceilings available for one or more other headings”.

- a reduction to the increase in the European Parliament's own budget in 2012 to 1.9% above 2011, mainly by cutting translation and interpretation costs and travel expenditure.

18.13 The Minister comments that:

- in such challenging economic and fiscal conditions, high growth in the EU Budget is both unaffordable and out of kilter with consolidation efforts in many Member States;
- so it is very disappointing that the European Parliament wants the EU to spend more than even the Commission had proposed; and
- furthermore, the European Parliament's position would increase UK contributions to the 2012 EU budget by £500 million compared to the Council's position — this is unacceptable to the Government and UK taxpayers.

18.14 On the conciliation negotiations the Minister says that:

- as usual, there is some distance between the Council and European Parliament positions on the DB;
- this is a result of both the significant steps the Council took to limit EU spending, reflecting both the UK's and many other Member States' resolve to deliver real budgetary restraint at EU level, but also the European Parliament's unwillingness to adapt EU spending to ongoing economic fragility and tight constraints on domestic public spending across Europe;
- looking ahead, it is impossible to predict with certainty the outcome of conciliation, which is subject to qualified majority voting in Council;
- the Council and the European Parliament are still formulating their approaches to these negotiations;
- these will become clearer in time, largely through the process of negotiation itself; and
- the Government is confident that it is doing all that it can to cement a strong alliance of budget-disciplined Member States, in order to deliver the best possible final outcome on the 2012 EU Budget, consistent with the terms of the letter the Prime Minister and other EU leaders issued in December 2010.<sup>99</sup>

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<sup>99</sup> See <http://ukeu.fco.gov.uk/en/news/?view=Press5&id=530896682>.

## The new documents

18.15 With Amending Letter No. 2 to the DB, document (b), the Commission proposes to integrate the budgetary implications of Croatia's accession into the EU's administrative expenditure, with changes to the establishment plans and budgets of six institutions in Heading 5 (Administration) — the European Parliament, the Commission, the European Council and the Council, the European Economic and Social Committee, the Committee of the Regions and the European Ombudsman. The Commission explains that it was not possible to include these requests in the DB, as the accession negotiations with Croatia were only closed on 30 June 2011. The Amending Letter suggests the budgetary resources needed to cover:

- the travel and subsistence costs of observers attending sessions of the European Parliament, the European Economic and Social Committee and the Committee of the Regions;
- additional translation staff for translation into Croatian;
- contract agents to support interpretation into Croatian, in particular to enable observers to participate in parliamentary work; and
- the establishment of a satellite office in Croatia, while preparations for an information office are finalised.

18.16 The European Parliament requests:

- €7.8 million (£6.9 million) in additional funding;
- 62 new permanent posts, for which it does not request any additional funding; and
- 62 contract agents, for which €2.5 million (£2.2 million) is requested, some of which for nine months only.

The additional staff posts are for needs associated with Croatian accession. Additional funding is to meet the travel and subsistence needs of observers — observers are permitted to take part in the proceedings of the European Parliament, to speak in committees and political groups, but not to vote. Further funds are for other needs, such as conference interpreters to support the work of the observers and the costs of renting premises for an interim satellite office of the European Parliament in Zagreb, while preparations for an information office take place.

18.17 The European Council and Council request €1.4 million (£1.2 million) in additional funding and 12 additional agents. These additional resources are to prepare for Croatian accession, notably for contractual staff related costs. No permanent establishment plan posts are requested, but contractual language translators and lawyer linguists are for translation of the accession treaties and for publication of the EU body of law, the *acquis*, into Croatian. The costs of the translation of the *acquis* are shared between the Council (61%), the Commission (34%) and the European Parliament (5%).

18.18 For 2012 the Commission is seeking the additional appropriations necessary to prepare for Croatian enlargement at the Brussels headquarters — €3.2 million (£2.8 million) in additional funding, funds for 46 additional full time equivalents, that is €0.3 million (£0.26 million) for four permanent posts and €2.1 million (£1.9 million) for 42 contractual agents. The Commission describes the need for a net reinforcement of 384 additional full-time posts, made up of both establishment plan and contractual posts, to be phased in by 2014. These staff will undertake legislative drafting, monitoring and enforcement work, policy making, programme management, communications and provide language services. The Commission explains that some of these tasks, such as legislative monitoring and enforcement work, are proportional to the number of Member States rather than their size. The Amending Letter addresses the Commission's most urgent needs before accession. The Commission clarifies that the remaining needs — other administrative costs, such as operating costs and the infrastructure costs of a satellite office in Zagreb, will be taken into account in the 2013 DB.

18.19 For 2012 the European Economic and Social Committee is asking for €0.06 million (£0.05 million) in additional funding and three permanent posts, at a cost of €0.04 million (£0.03 million) to set up a Croatian translation unit in collaboration with the Committee of the Regions. As this unit will form part of the existing European Economic and Social Committee/Committee of the Regions joint translation unit, these costs are shared with that Committee. Funds are requested for the associated furniture and IT costs of the new staff. The European Economic and Social Committee says it will request additional funds in 2013, including for the participation of new members in the Committee's activities.

18.20 The Committee of the Regions is asking for €0.6 million (£0.5 million) in additional funding and seven additional permanent posts, at a cost of €0.2 million (£0.17 million). Nine new Croatian members will join the Committee as of the Croatian accession date. The Committee requests additional funds to cover the costs of inviting potential new Members to observe its activities (plenary sessions and bureau and commission meetings) 12 months prior to the Croatian accession date. The Committee also requests additional funds for the Committee of the Regions/European Economic and Social Committee Joint Translation Service, including the costs of translators and associated working space. The Croatian linguistic unit will support the arrival of the Croatian observers in mid-2012.

18.21 The European Ombudsman is asking for €0.05 million (£0.04 million) in additional funding, two additional permanent posts, at no additional cost in 2012, and an additional seconded national expert, at a cost of €0.03 million (£0.027 million) for six months only. Additional human resources, without cost, are requested to integrate a new member, the Croatian People's Ombudsman, into the European Network of Ombudsmen. The additional funds requested are to cover additional translation and communications costs.

18.22 In her Explanatory Memorandum the then Economic Secretary to the Treasury (Justine Greening) says that:

- the Government is a strong supporter of EU enlargement — it has been one of the EU's biggest success stories, creating stability, security, and prosperity across Europe;



- it therefore warmly welcomes Croatia's future accession, which represents the achievement of an historic goal for Croatia;
- however, while supportive of the work the EU institutions are doing to prepare for Croatian accession, the Government believes that EU enlargement needs to be decoupled from growth in EU administrative spending;
- on the basis of the evidence provided, the Government does not agree that Croatian accession creates burdens for the EU institutions that could not be met from existing resources;
- it questions the rationale for additional funds and aims to secure proper justification for new spending;
- it therefore is clear that it cannot accept any additional funding for Croatian accession and believes that new staffing and administrative requirements should be met through redeployments in Heading 5, which is in line with the Government's position on Heading 5 overall in wider negotiations on the DB;
- more broadly, the Government is pushing for cost and efficiency savings throughout the institutions, both in the 2012 EU Budget and in negotiations on the Multiannual Financial Framework for 2014–2020;
- rather than highlighting the possible need for further additional funds in 2013, the Government believes the institutions should be developing clear reform plans, to minimise new requirements;
- the Government does not agree to the Commission's future plans to increase the number of establishment plan posts in 2013 and 2014 at this stage;
- the total additional budget of the institutions proposed in the Amending Letter is €13.1 million (£11.6 million);
- Member States contribute to the EU budget as a whole and not to single initiatives or institutions within it;
- the UK contribution in 2012 will therefore determine the proportion of this additional cost to be paid by the UK, according to the UK's GNI share next year;
- as an indicative guide only, the UK's GNI share contribution to the 2012 budget is currently assessed at 13.8%; and
- applying this to the increase proposed would lead to additional UK contributions of £1.6 million in 2012.

18.23 Amending Letter No. 3 to the DB, document (c), concerns updates for estimated needs for agricultural expenditure, reflecting changing market factors, revised estimates of needs for some direct payments and legislative decisions this year, which are expected to affect this policy area next year and updates on the situation for International Fisheries Agreements. The net budgetary impacts of this Amending Letter are reductions in commitment appropriations of €86 million (£76 million) and in payment appropriations of €83 million (£73 million), compared to the Commission's DB. The Minister (Mr Mark Hoban) says that the Government is broadly content with these changes.

18.24 The Minister tells us that neither of the Amending Letters has been incorporated in the Council's or European Parliament's current positions and the Council's position on them will be finalised as part of conciliation negotiations.

## Conclusion

18.25 **We are grateful to the Ministers for their accounts of where matters stand on the development of the EU budget for 2012 and look forward to further accounts in due course.**

18.26 **We clear the new documents.**

## 19 EU General Budget 2011

(32947) 11966/11 COM(11) 374	Draft amending budget No 5 to the general budget 2011: Statement of expenditure by Section: Section IX — European Data Protection Supervisor: Section X — European External Action Service
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<i>Legal base</i>	Article 314 TFEU; co-decision; QMV
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister's letter of 1 November 2011
<i>Previous Committee Report</i>	HC 428–xxxiv (2010–12), chapter 8 (19 July 2011) and HC 428–xxxvii (2010–12), chapter 7 (12 October 2011)
<i>Discussed in Council</i>	12 September 2011
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

## Background

19.1 During the course of a financial year the Commission may present a Draft Amending Budget (DAB) for the current EU budget, to be considered for adoption by the Budget Authority (the Council and the European Parliament).

19.2 This Draft Amending Budget, DAB No 5/2011, is for modifications to the establishment plans of the European Data Protection Supervisor (EDPS) and the European External Action Service (EEAS) — without requests for additional budgetary resources. The EDPS recently appointed a new Director to its Secretariat and it is explained that, in accordance with the Staff Regulations, this new Director should be promoted to the next highest grade, given previous employment. Such a promotion requires an amendment to the establishment plan.

19.3 In order to meet the EEAS's statutory obligations on representation from Member States, the Service has proposed a number of changes to staff numbers at different grades, allowing for recruitment of staff from national diplomatic services. It is explained that the grade structure for the EEAS, as set out in the establishment plan, has to date been subject to some uncertainty, and has now been updated to reflect the actual transfers of staff from the Commission and the Council. The staff costs associated with the contractual commitments to the staff recruited are €1.4 million (£1.2 million), higher than anticipated, but this cost has been met through redeployment, for example the EEAS has renounced nine posts in order to minimise costs involved. The EEAS is now proposing to amend its establishment plan to reflect the actual outcome of recent staff changes. This entails no additional funds for the 2011 EEAS budget.

19.4 When we first considered this DAB we heard that the Government, in the context of its general concern about staff costs of the EU institutions and its particular concern about the implications of these proposals for staff costs, was asking for further explanation and justification for the proposed adjustments of the two establishment plans and, in particular, what justifies such significant overall resourcing at senior grades of the EEAS. We commented that, whilst we recognised that the DAB has no financial implications in 2011 and that the Government was dealing with the implications for 2012 in the context of negotiations on the 2012 EU budget, we would defer further consideration of this document until we had an account of the responses to the Government's request for further explanation and justification for the amendments proposed.

19.5 Last month we were told that in response to that request the EEAS had reiterated that this measure would enable it to recruit permanent staff in order to meet statutory requirements, as part of its endeavours to ensure that staff from Member States represented one third of all AD-graded EEAS staff (AD grade staff are generally EU policy officials, rather than support staff). We heard also that:

- having received the additional information from the EEAS, the Polish Presidency had decided that the DAB would not return to the Council's Budget Committee;
- instead, after discussion in COREPER it was adopted at the General Affairs Council on 12 September 2011;
- the Government had understood that this matter would return to the Budget Committee for further discussion before proceeding to COREPER and was therefore concerned by the Presidency's decision not to schedule further discussion;

- the Government had not endorsed the proposal in Council, consistent with its scrutiny position and its concerns;
- it was disappointed that the EEAS had not answered the UK and other Member States' questions completely or comprehensively and, more generally, by the manner in which this matter had been handled in Brussels;
- following an initial discussion on 22 September 2011, the European Parliament had also expressed dissatisfaction with the level of information provided by the EEAS; and
- the Government was pursuing further information from the EEAS.

We too expressed our disappointment about the inadequate response to the Government's request for more information and the unsatisfactory handling of the matter by the Presidency. We asked for a further account about the Government's continued pursuit of the required information, which we assumed would also cover the EDPS establishment. Meanwhile the document remained under scrutiny.<sup>100</sup>

## The Minister's letter

19.6 The Financial Secretary to the Treasury (Mr Mark Hoban) tells us now that:

- the Government requested further information from the EEAS in September 2011, before the dossier went to COREPER;
- the EEAS has responded by providing the Government with further information on efforts to meet the statutory representation quotas for Member States' officials set for the EEAS on its creation; and
- it also provided information on its staffing plans to 2013 and the grading of posts following the EEAS' new recruitment.

The Minister continues that on reading the new and earlier information, the following aspects relating to human resourcing in the EEAS are now clearer:

- staff needs and recruitment at higher grades of the establishment plan;
- the fact that the EEAS has budgeted for continued vacancies in 2012; and
- the need to meet statutory promotion and Member State representation criteria.

He comments that:

- overall, this indicates that the vacancy rate in the EEAS, particularly at higher grades, did not accommodate both promotions and new recruitment needs;
- the EEAS does therefore not appear to be in a position to meet promotions quotas, stipulated by the EU Staff Regulations, within its current staff plan; and

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<sup>100</sup> See headnote.

- uncertainty over growth in staff numbers in 2010 is a further underlying reason for a request for changes now.

The Minister adds that the Government did not approach the EDPS to request further information on changes to its establishment plan, given this affected one post.

19.7 The Minister comments more generally that:

- the proposal for amendment to both the EEAS and the EDPS establishment plans highlights a fundamental issue in the EU institutions' workforce management — namely, that an individual's eligibility for promotion creates pressure to upgrade staff numbers right across the establishment plan;
- while the Government recognises that institutions need to meet current statutory promotions rates, this need not mean that staff numbers at every grade must increase simultaneously;
- the Government is seeking longer-term reform to avoid the automaticity of promotions for EU staff in future, which lies at the root of this problem;
- it believes fundamentally that strategic need should drive staff resourcing and grading decisions in the EU institutions, given their budgetary impacts; and
- it does not believe that resourcing should be driven by automatic promotion rates and aims to change the current system, including through the Commission's forthcoming review of the Staff Regulations.

19.8 The Minister also tells us that:

- the European Parliament's budget committee has discussed this proposal;
- it recommended adoption of the changes to the EEAS establishment plan, but a reversal of the change in the EDPS establishment plan to its original 2011 state;
- the European Parliament adopted this position in plenary on the 26 October 2011;
- the Council is not expected to take this dossier to conciliation for further discussion (that is the European Parliament rejection of the EDPS proposal will stand);
- the Government will, however, continue to withhold its support for this amendment, to draw attention to the implications of the Staff Regulations on career and staffing structures in the EU institutions and the urgent need for change to enable budget discipline to inform resourcing decisions; and
- it will also withhold support in recognition of the poor handling in terms of process terms by the Presidency.

## Conclusion

**19.9 We are grateful to the Minister for his further account about the Government's continued pursuit of information about the reasoning for this DAB and about other**

developments. We have no more questions to ask, but we applaud the Government's intention to seek an end to automaticity of promotions for EU staff. We now clear the document.

## 20 Commission management: internal audits

(33222) 15379/11 + ADD 1 COM (11) 643	Commission Report: <i>Annual report to the discharge authority on internal audits carried out in 2010 (Article 86(4) of the Financial Regulation)</i>
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<i>Legal base</i>	—
<i>Document originated</i>	7 October 2011
<i>Deposited in Parliament</i>	14 October 2011
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 27 October 2011
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	None planned
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

20.1 The Internal Audit Service (IAS) was set up in July 2001 as an independent service for the Commission. Directorates-General were also each given small internal audit units, known as Internal Audit Capabilities, which are supervised by the IAS. The IAS is required, under Article 86 of the Financial Regulation, to submit an annual report to the Discharge Authority (the European Parliament and the Council).

### The document

20.2 This report covers audits carried out in 2010. The document summarises the audits carried out and the findings made. Details of the objectives and scope of each audit, and statistics showing the number of recommendations accepted by those audited, can be found in the accompanying Staff Working Document.

20.3 In 2010 the IAS issued 85 reports covering 30 audits, 49 follow-up audits, one consultancy review, four management letters<sup>101</sup> and one report on the overall audit opinion. In all, 291 audit recommendations were made and all were accepted. Findings were summarised under the following headings:

<sup>101</sup> Management letters provide management with advice, usually derived from the findings of a series of audits or from a consultancy engagement, and do not lead to a formal follow up by auditors.



## **Governance**

### **Fraud**

- a number of audits of the governance structures to prevent or detect fraud were carried out;
- an unsatisfactory opinion on the grounds of the lack of an updated anti-fraud strategy for the Commission was issued;
- recommendations were made for improving governance arrangements in two Directorates, which included improvements in risk assessment processes, better compliance with financial regulations and more effective central monitoring of irregularities reported by Member States;

### **Splitting Directorates**

- a management letter reporting on the lessons learnt from the reorganisation of three major directorates made several suggestions for improving future reorganisations;

### **Executive Agencies**

- an overview report on the executive agencies looked at systemic issues identified in audit engagements performed between 2006 and 2009;
- the report expressed a “satisfactory except for” opinion and recommended an update to resource strategies, clarification of certain aspects of roles and responsibilities of the agencies and their parent Directorates-General and adoption of the security policy regarding the use of Commission software;

## **IT Issues**

### **IT in the Directorate General for Education and Culture**

- on IT project management the audit recommended that a formal IT project risk assessment framework and risk registers for all major IT projects be developed;
- recommendations to improve formal IT project risk management for all IT major projects were implemented in-year;
- potential information security weaknesses were identified in one information system;

### **The Commission’s IT Security Policy**

- a management letter summarised the main issues surrounding the implementation of the Commission’s IT security governance and the related policies as identified in the IT audit engagements performed over the last four years;

### *Set up of IT projects in the Commission*

- a management letter aimed at identifying the root causes of most frequently encountered problems;

### *Directorate General for Informatics*

- an audit made recommendations to improve business continuity management;

### *Control Strategies*

#### *Structural Funds*

- reviews were carried out in two Directorates-General (that for Regional Policy and that for Employment) to assess the adequacy of internal audit arrangements to monitor the effective functioning of management and control systems relating to Structural Funds operational programmes;
- both Directorates-Generals were found have mature audit services;
- some gaps were identified in strategic planning processes;
- satisfactory action plans to address these gaps were submitted by the directorates and all recommendations are expected to be implemented during 2011;

### *Audit strategy in the Directorate General for Education and Culture*

- the audit strategy for assessing National Agencies' monitoring of the Lifelong Learning Programme was assessed;
- improvements in the audit programming process and in the way that the effectiveness of assurances that were provided by National Authorities were made;
- all recommendations are expected to be fully implemented during 2011;

### *Development Aid*

- a number of audits were carried out to assess compliance with Commission procedures, efficiency and effectiveness of processes and assurance mechanisms in a number of systems managed by the Directorate-General for European Aid Cooperation and the Directorate General for Enlargement;
- the audits covered processes for budgetary control, financial management and procurement procedures at a number of non-EU locations;
- recommendations were made to improve control over delegations and a need for better information to allow stronger assurance to be taken from reports and ex-ante verifications of procurement procedures;

### *Joint Sickness Insurance Scheme*

- the audit assessed the effectiveness and efficiency of internal controls relating to the management of the scheme by the Office for the Administration of Individual Entitlements;
- an unsatisfactory audit opinion on the adequacy of the internal control was issued particularly where the role of the Central Office was concerned;
- some critical actions were quickly addressed (regular monitoring and reporting of financial deficits and reserves);
- all critical recommendations will be cleared by the end of 2011;

### *Compliance with Payment Deadlines*

- the audit engagement assessed compliance with the rules and regulations and the adequacy of processes to ensure that payment deadlines are met;
- failure to meet deadlines can result in beneficiaries being entitled to late payment interest; and
- the audit identified a number of important weaknesses including inadequate monitoring of compliance with payment deadlines by Directorates-General, shortcomings in guidelines and instructions and inadequate payment processes resulting in late registration of invoices and failure to record payment data accurately.

20.4 The Report's conclusion is that the response to the audit recommendations contributes to steady improvement of the Commission's internal control framework and that:

### *Control Procedures*

- the Directorate General for Enlargement needs to develop checklists as an aid to Heads of Delegation in order to improve annual assurance over all delegations;
- for the Directorates-General for Regional Policy and for Employment some improvements are deemed necessary to their internal audit arrangements;
- controls for checking compliance with legal time limits for payments were not effective in some Directorates-General — management needs to improve its monitoring over the operation of control procedures for the processing of payments;
- a number of issues were raised with the aim of improving efficiency and effectiveness of IT start-up projects — the Commission has refined its IT governance and made improvements to the way that IT strategy is designed and implemented;
- action plans have been drawn up to implement all recommendations.

## Fraud

- a lack of clarity in accountability for fraud prevention and detection and a need for an updated anti-fraud strategy is highlighted; and
- a new anti-fraud strategy has been adopted by the Commission and fully addresses all the issues raised.

## The Government's view

20.5 The Financial Secretary to the Treasury (Mr Mark Hoban) says that:

- the Government considers that this report provides a useful summary of the work of the IAS, and shows that it has an important role to play in improving the Commission's governance and internal control;
- it is encouraging to note that all 2010 audit recommendations were accepted and progress had been made towards reducing the number of outstanding recommendations; and
- there are no direct policy implications for the UK following this report.

## Conclusion

20.6 **Whilst clearing this document we draw it to the attention of the House for the evidence it shows of some improvement in the Commission's internal management.**

## 21 Eurozone crisis

(33255)  
15624/11  
COM(11) 669

Commission Communication: *A roadmap to stability and growth*

<i>Legal base</i>	—
<i>Document originated</i>	12 October 2011
<i>Deposited in Parliament</i>	20 October 2011
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 31 October 2011
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	None
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

## Background

21.1 A European Council was held on 23 October 2011, one of the principal items for discussion being economic matters, including the eurozone crisis.<sup>102</sup> This was followed on 26 October 2011 by an informal European Council<sup>103</sup> and a Euro Summit,<sup>104</sup> both about the eurozone crisis.

## The document

21.2 This Communication presents the Commission's view on a potential roadmap to deal with the eurozone crisis, intended as a steer for the European Council. Five points outline the Commission's view on:

- a response to the problems of Greece;
- enhancing the eurozone's backstops against the crisis;
- strengthening the banking system through recapitalisation;
- front-load stability and growth enhancing policies; and
- building a more robust and integrated economic governance.

21.3 On Greece the Commission calls for decisive action to remove doubt about its economic sustainability including:

- disbursement of the sixth tranche;
- a second adjustment programme based on adequate financing through public sector and private sector involvement;
- continued support from the Commission Task Force; and
- robust implementation and monitoring mechanisms.

21.4 On eurozone backstops the Commission calls for:

- the decisions taken at the 21 July 2011 meeting of eurozone Heads of Government to increase the flexibility and effectiveness of the European Financial Stability Facility to be made rapidly operational; and
- efforts to be made to accelerate the technical preparations and ratification of the Treaty change necessary to have the European Stability Mechanism operational by mid-2012.

21.5 On strengthening the banking system the Commission calls for:

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102 See [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/125496.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125496.pdf).

103 See [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/125621.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125621.pdf).

104 See [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/125644.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125644.pdf).

- banks to be reassessed by supervising authorities using “temporary significantly higher capital ratio of the highest quality after accounting for exposure” to EU sovereign debt;
- the definition of capital to broadly equate to the definition set out in the Basel III global regulatory standard on bank capital adequacy;
- banks to first use private sources of capital, including through restructuring and conversion of debt to equity instruments;
- if necessary, national governments or the European Financial Stability Facility to provide recapitalisation support;
- ongoing work on, and swift adoption of, a new system of regulation for the financial sector, namely reinforced rules on credit rating agencies, transparency on all trading platforms and a strengthened framework to combat market abuse; and
- swift adoptions of a Financial Transaction Tax.

21.6 On stability and growth the Commission says that growth and structural reform is vital to dealing with the crisis. It does not propose new policies but recommends:

- extracting maximum value from existing agreements, such as the Services Directive and completion of the integrated market for energy;
- accelerating the adoption of matters awaiting co-decision, such as patent protection and concluding trade agreements underway; and
- bringing forward proposals that are planned but not yet issued, such as facilitating access to venture capital and a “Young Opportunities” initiative to boost youth employment.

21.7 On economic governance the Commission says that it will:

- work towards a more integrated and robust economic governance framework in the eurozone;
- propose legislation under Article 136 TFEU (which applies to the eurozone only) strengthening economic and budgetary surveillance of those Member States receiving financial assistance from the European Financial Stability Facility/European Stability Mechanism and introducing a new monitoring procedure for eurozone countries in excessive deficit; and
- put forward proposals for more unified external representation of the eurozone and a Green Paper before year-end on options for “stability bonds”.

It also suggests that Treaty revision, while not serving as an immediate response to the crisis, could be envisaged to ensure the coherence of deeper integration within the eurozone and the EU as a whole, in particular the single market.



## The Government's view

21.8 The Financial Secretary to the Treasury (Mr Mark Hoban) says that a strong and stable eurozone is in the UK's national interest and that the Government has been clear what needs to happen:

- the eurozone needs to maximise the firepower of its financial fund, the European Financial Stability Facility;
- the eurozone needs to find a solution for Greece; and
- the eurozone needs to strengthen its banks.

The Minister reminds us that on 27 October 2011 the Chancellor made a statement to the House on the eurozone's progress against these objectives following the informal meeting of the European Council and the meeting of the Euro Summit the previous day.<sup>105</sup> He adds that the Government believes the agreements reached at the meetings make good progress on all fronts towards solving the immediate crisis and that it is now important for the details to be finalised.

21.9 Turning more directly to the Communication the Minister comments further that:

- the Government has been clear that decisive action at the EU level to promote growth is a necessary counterpart to Member States' domestic reform efforts;
- this includes completing the single market, promoting world trade, reducing regulatory burdens on business, and driving innovation;
- the Government therefore welcomes the Commission's focus on growth, much of which is consistent with the Prime Minister's pamphlet *Let's choose growth*;
- with regards to a Financial Transaction Tax, the Government has been clear that it is willing to discuss such taxes with international partners and has no objection to them in principle;
- any such measure should, however, only be contemplated at a global level, otherwise activity would simply relocate to countries not applying the tax, damaging EU competitiveness;
- the Government is committed to upholding tax sovereignty and subsidiarity, and considers that a Financial Transactions Tax could actually be harmful to growth;
- it supports the provision of additional assistance to those countries that are experiencing the largest difficulties in providing national co-financing for Structural Fund projects;

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<sup>105</sup> See *HC Debs*, 27 October 2011, cols. 469-489 at <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111027/debtext/111027-0001.htm#11102759000002>.

- this, however, must be consistent with the Government's stated goal of curbing the annual growth in payment appropriations in the remaining years of this Multiannual Financial Framework;
- while exact details of the Young Opportunities proposal are not yet known, the Government recalls that labour market reform is an area of Member State competence and that action at EU level should be limited to sharing good practice;
- the current crisis has highlighted the need to strengthen the Stability and Growth Pact and, in particular, to increase the focus on government debt;
- the Government welcomes more detailed and formal surveillance of macroeconomic imbalances between Member States — addressing these is crucial to generating stronger and more sustainable growth in future;
- it recalls, however, that the UK will not be subject to sanctions under either the Stability and Growth Pact or the forthcoming Excessive Imbalances Procedure; and
- there are no formal proposals in the Communication for Treaty change — if Treaty change is proposed the Government will consider it carefully based upon what is in our national interest.

## Conclusion

**21.10 Events have moved on since publication of this Communication and the Minister's Explanatory Memorandum commenting on it. Nevertheless, whilst clearing the document, we draw it to the attention of the House, given the reiteration of the Government's views on the matters surrounding the eurozone crisis.**

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

### Department for Energy and Climate Change

(33274) Draft Commission Report on: — Evaluation of the implementation of  
15779/11 the Instrument for Nuclear Safety Cooperation (INSC) during its first  
COM(11) 648 three years (2007–2009).

### Food Standards Agency

(33238) Draft Council Decision authorising the placing on the market of  
15517/11 products containing, consisting of, or produced from genetically  
COM(11) 620 modified cotton 281–24–236x3006–210–23 (DAS-24236–5xDAS-  
21023–5) pursuant to Regulation (EC) No.1829/2003 of the European  
Parliament and of the Council.

(33239) Draft Council Decision authorising the placing on the market of  
15518/11 products containing, consisting of, or produced from genetically  
COM(11) 621 modified maize Bt11xMIR604xGA21 (SYN-BT011–1xSYN-IR604–  
5xMON-00021–9) pursuant to Regulation (EC) No.1829/2003 of the  
European Parliament and of the Council.

(33240) Draft Council Decision authorising the placing on the market of  
15520/11 products containing, consisting of, or produced from genetically  
COM(11) 622 modified maize Bt11xMIR604 (SYN-BT011–1xSYN-IR604–5) pursuant  
to Regulation (EC) No.1829/2003 of the European Parliament and of  
the Council.

(33241) Draft Council Decision authorising the placing on the market of  
15521/11 products containing, consisting of, or produced from genetically  
COM(11) 623 modified maize MIR604xGA21 (SYN-IR604–5xMON-00021–9)  
pursuant to Regulation (EC) No.1829/2003 of the European  
Parliament and of the Council.

### Foreign and Commonwealth Office

(33305) Council Regulation amending Council Regulation (EC) No.131/2004  
— concerning certain restrictive measures in respect of Sudan.  
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## Home Office

(33273) Draft Council Decision on the full application of the provisions of the  
15573/11 Schengen *acquis* in the Principality of Liechtenstein.  
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## HM Revenue and Customs

(33264) Draft Council Decision on the position to be taken by the European  
15663/11 Union concerning the adoption of a Decision by the Joint Committee  
COM(11) 640 of the Convention of 20 May 1987 on a common transit procedure  
and a Decision by the Joint Committee of the Convention of 20 May  
1987 on the simplification of formalities in trade of goods concerning  
an invitation to Croatia and Turkey to accede to these Conventions.

## HM Treasury

(33308) General budget of the European Union 2011: transfers of  
— appropriations — Third quarterly report of transfers of  
— appropriations within the general budget for the financial year 2011.

# Formal minutes

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**Wednesday 9 November 2011**

Members present:

Mr William Cash, in the Chair

Michael Connarty  
Julie Elliott  
Nia Griffith  
Kelvin Hopkins

Chris Kelly  
Penny Mordaunt  
Jacob Rees-Mogg  
Henry Smith

## **1. Scrutiny of Documents**

The Committee deliberated.

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

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

Paragraphs 1.1 to 1.41 read and agreed to.

Paragraph 1.42 read, amended and agreed to.

Paragraphs 2.1 to 22 read and agreed to.

*Resolved*, That the Report be the Forty-sixth Report of the Committee to the House.

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

## **2. Scrutiny of Pre-Council Written Ministerial Statements**

The Committee considered Pre-Council Ministerial Statements.

[Adjourned till Wednesday 23 November at 2.00 pm.]

## Standing Order and membership

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

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

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

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

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

### Current membership

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