



House of Commons

European Scrutiny Committee

Thirtieth Report of Session 2012–13

Documents considered by the Committee on 30 January 2013,
including the following recommendation for debate:

Business Failure and Insolvency



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Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

Numbers preceded by the letters COM or SEC or JOIN 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 " <i>Legal base</i> ") Treaty establishing the European Community
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	(in " <i>Legal base</i> ") 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 published in the House of Commons Vote Bundle each Monday, and is also available on the parliamentary website. Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

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

Letters sent by Ministers to the Committee relating to European 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 Business Failure and Insolvency

(a) (34563) 17881/12 COM(12) 743	Commission Report on the application of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings
(b) (34564) 17883/12 + ADDS 1–2 COM(12) 744	Draft Regulation amending Council Regulation (EC) No 1346/2000 on insolvency proceedings
(c) (34562) 17876/12 COM(12) 742	Commission Communication : <i>A new European approach to business failure and insolvency</i>

<i>Legal base</i>	(a) — (b) Article 81 TFEU; co-decision; QMV (c) —
<i>Documents originated</i>	12 December 2012
<i>Deposited in Parliament</i>	19 December 2012
<i>Department</i>	Department for Business, Innovation and Skills
<i>Basis of consideration</i>	(a) and (c) EMs of 11 January 2013 (b) EM of 9 January 2013
<i>Previous Committee Report</i>	None; but see HC 23–i (1999–2000) chapter 9 (24 November 1999)
<i>Discussion in Council</i>	(a)–(c) Not known
<i>Committee’s assessment</i>	(a) and (b) Legally important (c) Legally and politically important
<i>Committee’s decision</i>	(a) and (c) Not cleared; further information requested (b) For debate on the opt-in in European Committee C

Background and scrutiny

1.1 These three Commission initiatives, a report (document (a)), a draft amending Regulation (document (b)) and a Communication (document (c)) are all new documents which we have not previously scrutinised. The report and the draft Regulation are aimed at updating existing EU legislation on cross-border insolvencies and mutual recognition between Member States of insolvency proceedings, in the form of Council Regulation (EC) No 1346/2000 (which our predecessors scrutinised),¹ with particular emphasis on making

¹ See headnote: HC 23–i (1999–2000) chapter 9 (24 November 1999). From time to time the Annexes to the Regulation have been amended since it came into force — the Annexes list the national insolvency proceedings and office-

better provision for business rescue to assist economic recovery and growth in the EU. The Communication, although containing no firm commitment to future legislative action, goes far beyond the current cross-border regulatory framework in mapping out potential, long-term aspirations to harmonise aspects of the domestic insolvency laws of Member States.

1.2 The existing Regulation, adopted in 2000 but not in force until 2002, applies whenever a debtor, whether a natural or legal person, has assets or creditors in more than one Member State. Its primary purpose is to determine which court has jurisdiction for opening insolvency proceedings, providing the following hierarchy of judicial proceedings:

- main proceedings have to be opened in the Member State where the debtor has its centre of main interests (“COMI”) and the effects of these proceedings are recognised throughout the EU;² and
- secondary (or “territorial”) proceedings can be opened where the debtor has an establishment; the effects of these proceedings are limited to the assets located in that State.

1.3 The existing Regulation also contains rules on applicable law and certain rules on the coordination of main and secondary insolvency proceedings. However, the Regulation does not harmonise Member States’ domestic insolvency laws in any way.

1.4 Article 46 of the Regulation requires that ten years after its entry into force, the Commission must review its operation in practice and consider any necessary amendments to it. The Commission’s ten-year review is set out in its report, document (a).

1.5 Since the recommendations of the report are essentially reproduced by the Commission in the proposals for the draft Regulation, we examine documents (a) and (b) together.

The report and the draft Regulation (documents (a) and (b))

The case for amending the existing Regulation

1.6 In its report, which is based on evaluative studies and a consultation,³ the Commission says that the existing Regulation on insolvency proceedings is generally regarded by stakeholders and consultees (in particular insolvency practitioners, lawyers and academics) as successful (well-implemented, efficient and effective) and that the underlying policies are largely supported by them.

holders (liquidators and the like) to which the Regulation applies — and the relevant amending instruments have been subject to scrutiny. These amendment proposals have been scrutinised by either our predecessors or us.

2 The insolvency law of the “main proceedings” Member State is recognised and generally applies to associated assets and creditors located in other Member States, instead of local insolvency law.

3 The report takes account of a comparative legal study, carried out by the Universities of Heidelberg and Vienna, on evaluation of the Regulation in 26 Member States; a third-party study to assess the impact of amending the regulation; and a web-based public consultation between March and June 2012, with respondents from all Member States with the exception of Bulgaria and Malta. UK participation in this consultation was significant, representing 20% of respondents.

1.7 However, the Commission identifies shortcomings which mostly stem from the following changes in the EU insolvency “market” since the entry into force of the Regulation in 2002:

- rising insolvency cases across the EU following the global financial crisis;
- increased use of group structures for companies involved in international trade;
- development of different business rescue procedures to help viable businesses survive; and
- an increase in insolvency “forum shopping”, particularly by individuals seeking debt relief in jurisdictions with more lenient bankruptcy laws (“bankruptcy tourism”).

1.8 The Commission recommends that some amendments to the Regulation are needed to modernise, improve and clarify it, as set out under the headings which follow below (draft amending provisions are included where available).

1.9 Before examining those recommendations, three other matters should be highlighted:

- ***the legal base:*** the legal base proposed for the draft Regulation (document (b)) is Article 81 TFEU (Judicial Co-operation in Civil Matters). The Government’s views of the “opt-in” implications of this for the UK are discussed later in this Report;
- ***applicable law:*** there are no amendments suggested in the report (and so no provisions in the draft Regulation) on determining choice of law because consultees were generally supportive of the current approach in the Regulation although there were some concerns about differences in domestic labour laws preventing insolvency office-holders from taking a consistent approach to employees in different Member States (in terms of modifying or terminating employment contracts). The Commission considered that this could only really be solved through harmonisation of those laws, which was outside the scope of the proposed reform; and
- ***the Commission’s impact assessment:*** the Commission’s impact assessment⁴ considers two options for insolvency reform. Option A, which the Commission prefers, updates the existing Regulation as per the recommendations in the report and draft Regulation (documents (a) and (b)). Option B looks at possibilities for the harmonisation of national laws and proceedings (and this is further considered in the Communication (document (c))).

Broadening the scope of the Regulation

1.10 In its report, the Commission recommends changing the definition of insolvency proceedings in Article 1(1) of the Regulation, which is based on terminal insolvency and distribution of assets, to:

4 See headnote: 17883/12 ADDs 1 and 2.

- cover business rescue,⁵ restructuring and other pre-insolvency proceedings (all increasingly used by Member States);
- resolve discrepancies between the definition and the procedures listed in the Annex of the Regulation, currently the subject of cases pending in the Court of Justice of the European Union (“CJEU”); and
- include a wider range of personal insolvency proceedings, including debt, which either do not exist in Member States or are expressly excluded from the Regulation by them as without such proceedings being recognised under the Regulation, debtors can remain liable to foreign creditors.

1.11 However, an outstanding issue relates to insolvency proceedings located outside the EU, which are out of scope. Whilst several Member States (including the UK) have enacted laws based upon the UNCITRAL Model Law or with similar features, others have no specific laws for international insolvency. Consultees were divided on whether a non-uniform approach to non-EU proceedings was problematic.

1.12 In the draft Regulation, the definition of insolvency proceedings is widened in line with the report’s recommendations, principally by including within the Regulation an extended list of insolvency proceedings covered by it.

Clarifying rules on jurisdiction for opening insolvency proceedings

1.13 Regarding the COMI (centre of main interest) test the Commission finds in its report that:

- a significant majority of consultees supported its use to determine Member State jurisdiction for “main” insolvency proceedings;
- the COMI of individuals is not addressed by the Regulation, leading to inconsistencies between Member States in determining this, some applying “habitual residence”, others applying national concepts;
- it can be open to manipulation where debtors relocate prior to filing for insolvency proceedings and the evaluation study revealed cases of “bankruptcy tourism”, citing regions including the UK as attracting debtors from Germany and Ireland;
- the approaches of Member States’ courts to determining jurisdiction based on COMI and to recording their decisions have varied so much as to create problems for foreign creditors who are not able to challenge the decision to open proceedings and/or to be informed of decisions in sufficient time; and
- Member States’ courts generally respect the prior opening of main proceedings in another Member State (according to the evaluation) with some exceptions, such as the appointment of a liquidator in Germany. 51% of respondents to the consultation

5 The Commission gives the example of UK Schemes of Arrangement under the Companies Acts.

agreed that the definition of opening insolvency proceedings in the Regulation should be amended to include proceedings opened without a court decision.

1.14 The Commission concludes in the report that rules for determining the jurisdiction for opening insolvency proceedings need to be clarified.

1.15 In the draft Regulation, the clarification is achieved by setting out, in the recitals to the Regulation, the basis for determining where a debtor's COMI is located, this proposed approach reflecting the current CJEU approach to COMI.⁶

Better coordination of secondary and main proceedings

1.16 In its report, the Commission explains that the respondents' evaluation of secondary proceedings as provided under the Regulation shows that:

- allowing them to be opened in a different Member State to that opening “main” proceedings, where the law of the “main” Member State cannot be applied due to disparities between the two legal systems, is problematic even where liquidators in each Member State co-operate;
- requiring them to be liquidation proceedings inhibits business rescue, where, for example, sale as a going concern is being managed in the main proceedings, but local secondary liquidation proceedings are opened in respect of a part of the business in another Member State;
- there are no specific rules for opening them;
- courts cannot refuse to open them even where it would not be in the interests of local creditors;
- liquidators in main proceedings have no say on their opening;
- there is no duty to cooperate between courts and liquidators or vice versa, and the existing duty to cooperate between liquidators is vague (though the Commission notes the ability of liquidators in UK “main” proceedings to undertake to respect creditors' rights in secondary proceedings).

1.17 The Commission concludes in its report that the efficiency and coordination of secondary proceedings with main proceedings need to be improved through new rules on court-to-court cooperation, enabling secondary proceedings to be rescue proceedings instead of only liquidation proceedings, and enabling new rules for the protection of local creditors' rights.

1.18 In the draft Regulation, the Commission's proposals apply these recommendations and additionally give office-holders in main proceedings more rights when secondary proceedings are pending.

6 See case C-341/04 *Eurofood*; case C396-*Interedil* and case C1/04, *Staubitz-Schreiber*.

Improvement in publicity and transparency of proceedings

1.19 In its report, the Commission highlights that 75% of consultees view the absence of mandatory publication and registration of decisions opening insolvency proceedings as problematic, particularly leaving foreign creditors unaware of proceedings and unnecessary parallel proceedings being opened in different Member States.

1.20 Only registration of insolvency proceedings of companies and other legal entities, not individuals, is mandatory in every Member State. As only 14 Member States (including the UK) publish decisions in an insolvency register accessible to the public with limited electronic access, it is difficult for foreign creditors to monitor any available registers. A majority of consultees considered that all Member States should be required to register the opening judgment in an insolvency register and that national registers should be interconnected.

1.21 The Commission concludes in the report that additional requirements should be introduced to publish relevant court decisions in cross-border insolvency cases in a publicly accessible electronic register and to interconnect national insolvency registers via the European e-justice portal. These recommendations are introduced as provisions in the draft Regulation.

Facilitation and standardisation of lodging foreign creditor claims

1.22 Since the Regulation makes no provision for the lodging of claims, foreign creditors have problems due to difficulties with language, costs, varying time limits and a lack of information.

1.23 Foreign creditors, according to the evaluation, have been time-barred from lodging a claim due to short deadlines and lack of notice of proceedings, and there is evidence that individuals and SMEs may choose to forgo a debt due to the high cost of lodging claims, due to translation costs.

1.24 The report recommends introducing standard forms for foreign creditors to use when lodging claims and this recommendation is applied in the draft Regulation.

Coordination of group companies' proceedings

1.25 The report notes that the lack of specific rules on cross-border insolvencies in the Regulation means that:

- individual courts have to decide the COMI of subsidiaries as recent CJEU rulings⁷ have shown that it cannot be assumed that it is the same as the group parent; and
- the efficient administration of multinational group companies is hindered, a view supported by almost 50% of consultees.

7 See footnote 6; the cases of *Eurofood* and *Interedil*.

1.26 The report concludes there should be better coordination of the insolvency proceedings relating to different members of a group of companies. In the draft Regulation, the Commission therefore proposes rules requiring court and office-holder communication and cooperation to ensure that group proceedings are better coordinated and not undermined by fragmented, competing proceedings in different Member States.

The Government's views on the report and the draft Regulation (documents (a) and (b))

Overall position on the report and draft Regulation

1.27 In an Explanatory Memorandum of 11 January 2013 on the report, the Minister for Employment Relations and Consumer Affairs at the Department for Business, Innovation and Skills (Jo Swinson) notes that, in feedback already received from UK stakeholders,⁸ the general view was that the existing Regulation worked well in facilitating cross-border insolvencies in the EU and that it had had some beneficial effects for the UK beyond this:

“There have been some COMI relocations to the UK to access our corporate insolvency procedures because they are perceived to provide better outcomes than may be achieved in some other Member States. Many of the largest pan-EU insolvency proceedings have been dealt with under the existing Regulation in the UK. This has benefitted UK insolvency professionals from the fees generated, and UK creditors whose claims will have been handled under our domestic insolvency law.”

1.28 However, as both stakeholders and the Government concede that some amendment of the Regulation is needed to address particular problems that had arisen since its introduction, she says of the report:

“The Government is generally supportive of the principles underpinning the Commission's proposals, many of which are aligned to the existing principles of the UK insolvency regime.”

1.29 Repeating the support of the Government and the anticipated support of UK stakeholders⁹ for the changes now drafted in the proposed Regulation, but also recognising the potential impact of the changes on all those involved in cross-border insolvencies, the Minister says that, in any event, the Government plans to issue a Call for Evidence in January 2013 on the draft Regulation.

1.30 In terms of the wider timetable for the proposal, the Minister says that it is expected to be on the Council's agenda under the current Irish Presidency and will be considered by the JURI committee of the European Parliament over the next few months.

8 The Explanatory Memorandum explains that the UK government previously issued a survey to UK stakeholders in 2009 on the functioning of the existing Regulation. Insolvency practitioners, lawyers, academics, judiciary, creditor groups and business organisations were represented in the responses received. The general view was that the Regulation worked well, but some amendment was needed to address particular problems that had arisen since its introduction. Similar views were expressed again by a range of UK stakeholders earlier this year in response to a Commission online questionnaire and the Commission's proposals address many of the points made by UK respondents.

9 See footnote 8.

Legal implications of the draft Regulation

Subsidiarity

1.31 The Minister says that the Government does not consider that the draft Regulation infringes the principle of subsidiarity, saying that action at EU level in the form of an amending Regulation is necessary to achieve: “Modification of the current rules of the existing Regulation relating to scope, jurisdiction for opening insolvency proceedings, provisions concerning secondary proceedings, publication of decisions and the lodging of claims...” and the “interconnection of national electronic insolvency registers”.

Changes to domestic insolvency law

1.32 Regarding the impact of the draft Regulation on UK law, the Minister notes that although the proposal will not require implementation in UK domestic law, it is likely that amendments to existing UK laws will have to be made on issues such as the publication of judicial decisions in UK insolvency proceedings, the disclosure of the basis for jurisdiction when UK proceedings are opened, and the content and form of claims submitted by foreign creditors in UK proceedings.

“Opt-in” question

1.33 The Minister notes that the legal base proposed for the draft Regulation is Article 81 TFEU (Judicial Co-operation in Civil Matters). This is a Title V (Area of Freedom, Security and Justice) provision and, accordingly, the Minister confirms, the proposed legislation will not be applicable to the UK unless it “opts-in” pursuant to Article 3 of Protocol 21 to the TEU and TFEU.

Fundamental Rights

1.34 The Minister comments that the draft Regulation, just like the current Regulation, will engage and be compatible with Article 16 (the freedom to conduct a business), Article 17 (the right to property) and Article 47 (the right to an effective remedy) of the Charter of Fundamental Rights. She also notes that requirements in the draft Regulation involving the maintenance and inter-connection of publically accessible electronic insolvency registers engages Article 8 (protection of personal data), but that the draft Regulation addresses this by requiring Member States and the Commission to comply with existing EU data protection laws¹⁰ when processing personal data under it.

Policy implications of the draft Regulation

1.35 Conscious of the beneficial impact of insolvency corporate “forum shopping” for the UK, the Minister notes that the UK has also been a destination for individuals seeking debt relief with relatively small numbers of incidences of “bankruptcy tourism” to the UK (around 200 per annum) with court orders annulled wherever the relocation of COMI has been found to be a sham.

¹⁰ Data Protection Directive (95/46/EC) and EC Regulation 45/2001.

1.36 She then provides a preliminary assessment of the policy implications of the main proposals, formed from stakeholder feedback obtained prior to the publication of the draft Regulation.¹¹

Broadening the scope of the Regulation

1.37 The Minister says that widening the scope of the Regulation will enable new types of business rescue and hybrid procedures to be added to the lists of procedures defined in the Regulation. She says:

“In principle this could facilitate increased rescue of viable, but distressed, businesses in the EU. The primary benefit of having proceedings listed in the Regulation is that there is automatic recognition of those proceedings in other Member States. This enables dealings with assets, employees, creditors and other stakeholders to be more efficient in terms of speed and cost as the need for separate proceedings or further court recognition is removed. If more businesses are rescued rather than liquidated, the single market will benefit from less dissipation of economic value and fewer jobs lost. UK stakeholders will benefit from these conditions, as will those in all Member States.”

1.38 She explains that although the UK’s main business rescue procedures, administration and company voluntary arrangements, are already listed in the existing Regulation, the Minister notes the proposed inclusion of the Companies Act “Scheme of Arrangement”; this is not an insolvency procedure, but used to rescue distressed businesses through debt restructuring. She warns that stakeholders’ opinions will be sought by the Government on the implications of the inclusion of such schemes, saying:

“It is vital that Member States be allowed to determine which of their own domestic procedures are in or out of the Regulation. The Commission’s proposal appears to address this point in Article 45(2) which retains the existing system whereby only Member States can request the inclusion of a procedure in the Regulation.”

Clarifying rules on jurisdiction for opening insolvency proceedings

1.39 The Minister says that the Government supports increased legal certainty for all involved in insolvency proceedings resulting from this proposed clarification.

1.40 She notes that the Commission’s proposals also seek to address concerns over forum shopping, particularly “bankruptcy tourism”, by requiring courts to explain their decision on jurisdiction and on opening proceedings in a particular location. In addition, creditors are given the right to challenge this decision through judicial review. This mirrors practices increasingly found in UK courts where third party evidence (from creditors) may be sought on the question of COMI prior to opening bankruptcy proceedings.

1.41 However, the Minister sounds a note of caution saying that the “...requirement under the proposal will add some time and cost to the process for opening proceedings...” and although the Government will seek stakeholder evidence on this question, she

11 See footnote 8.

“...anticipated that the additional cost will be small for each case and offset by wider benefits to stakeholders from increased legal certainty”.

Better coordination of secondary and main proceedings

1.42 The Minister says that the extension of secondary proceedings to include rescue proceedings is expected to be widely supported by UK stakeholders and will help with the rescue and rehabilitation of companies with cross-border operations.

Improvement in publicity and transparency of proceedings

1.43 The Minister notes that it is important that information on both main and secondary proceedings is readily available to interested parties, such as potential lenders and particularly creditors. She explains that this “...is because there have been instances under the existing Regulation where two sets of main proceedings have inadvertently been opened in different jurisdictions because of the difficulties in obtaining information, leading to wasted time and costs”.

1.44 She continues that the requirement to publish relevant court decisions in cross-border insolvency cases in a publicly accessible electronic register may involve cost for the UK¹² in having to further develop existing registers. But she comments that “...it is possible that the benefits to stakeholders from free access to better information than is currently available will offset these additional publication costs. Government will be seeking evidence from stakeholders on this question”.

Facilitation and standardisation of lodging of foreign creditor claims

1.45 The Minister says that the proposed introduction of a standardised claim form for foreign creditors will be:

“an addition to the rules that currently exist in UK insolvency law. The proposal could be beneficial to UK businesses claiming in insolvency proceedings in other EU countries, however.”

Coordination of group companies' proceedings

1.46 These proposals, according to the Minister, “offer a pragmatic solution to a complex issue and UK stakeholders have expressed support for such an approach”.

Financial implications of the draft Regulation

1.47 The Minister says that an Impact Assessment Checklist has been produced. Further evidence of the impacts from the Commission’s proposals will be sought in the Call for Evidence to be launched in January.

¹² At the EU level, the proposal to interconnect Member States’ domestic insolvency registers is estimated by the Commission to cost €1.5 million (£1.2 million) over the project life (2014–20).

1.48 Noting the two options presented in the Commission’s impact assessment, the Minister informs us that the Government supports the Commission’s preference for option A, modernisation of EU regulation of cross-border insolvency proceedings, being opposed to harmonisation of domestic insolvency laws.

The Communication (document (c))

The Commission’s case for future harmonising legislation

1.49 The Commission argues that the disparities between national insolvency laws impede efficient and effective insolvency proceedings and that a new approach to insolvency and business failure is needed to promote better business recovery within the EU. The document contains broad policy aspirations and does not yet make any firm commitment to legislation nor provide a specific timetable for the development of those aspirations.

1.50 The Communication is based on a study commissioned by the European Parliament (“EP”) which found that differences in domestic insolvency laws create competitive inequalities and other disadvantages for companies with cross-border activities or ownership within the EU. The study concluded that the harmonisation of specific areas of insolvency law would increase the efficiency of insolvency and business recovery proceedings, improving returns for creditors and increasing confidence in the EU’s financial infrastructure. The EP adopted a Resolution on 15 November 2011 which called both for the revision of the existing Regulation and for the harmonisation of specific aspects of national insolvency legislation.

1.51 The Communication highlights six specific areas (examined below) where the Commission asserts that different treatment in national insolvency laws is problematic especially for SMEs, who can be particularly affected as creditors in insolvency due to the length of proceedings and national rules for the priority of distributions to creditors. The possible solutions discussed should, the Commission says, be the subject of further inter-institutional dialogue with the EP and the Council, wider public consultation and further analysis by the Commission of the impacts of differences in national insolvency laws.

Encouraging “second chances” for “honest” bankrupts

1.52 The Commission considers there is a need to mitigate the consequences of insolvency (social, legal and administrative) for “honest” as opposed to “fraudulent” bankrupts to give them the chance to make a second start at a business venture. In many Member States, the treatment of “honest” and “fraudulent” bankrupts is the same and the Commission says that more differentiation is needed, for example, by expediting insolvency proceedings for ‘honest’ bankrupts.

Minimising and standardising debt discharge periods for “honest” bankrupts

1.53 To encourage “second chances” and business restarts on a consistent and equal basis throughout the EU, the Commission considers that shortening of debt discharge periods for “honest” bankrupts is needed together with the introduction of a standard three-year “automatic” upper limit.

Standardising rules on the opening of proceedings to provide equal opportunities for restructuring.

1.54 Different domestic insolvency tests apply throughout the EU (some based on actual insolvency, others on imminent) meaning that companies in a similar financial position might fail to meet the insolvency test in one Member State but not another. This, the Commission considers, leads to unequal restructuring opportunities for businesses. Some Member States prescribe mandatory deadlines for debtors to file for proceedings, the length of which can vary and restrict the ability to solve financial difficulties (if too short) or delay the granting of relief. The Commission considers that these problems could be avoided by harmonisation of laws on opening of proceedings.

Facilitating collective cross-border insolvency proceedings for creditors

1.55 Creditors expect to be able to apply for collective insolvency proceedings against a debtor. However, some jurisdictions prevent proceedings being opened against certain (unspecified) categories of debtors whilst in other Member States there are special conditions limiting the ability of certain creditors to commence proceedings. The Commission considers that measures to facilitate collective cross-border insolvency proceedings could address those concerns.

Standardising procedures for creditors relating to procedures to file and verify claims

1.56 The Commission notes that there are differing time limits for creditors to file claims or assert their rights in proceedings, such as obtaining security over assets or receiving information. Late filing of claims could affect a creditor's ability to participate in distributions. Foreign creditors are particularly vulnerable to differing procedures in other Member States.

Promoting restructuring plans

1.57 The legal framework differs significantly between Member States, including the procedures for proposing or adopting a plan and the requisite majorities required to approve and modify them.

The Government's view of the Communication (document (c))

1.58 In an Explanatory Memorandum of 11 January 2013, the Minister says that while the Government supports the aims of modernising insolvency law, improving the efficiency of proceedings¹³ and ensuring that the insolvency framework promotes growth, it is not in favour of any EU move to harmonise domestic insolvency laws where such a move would require changes to existing UK domestic insolvency law which are not in the best interests of UK businesses and consumers. However, she recognises that as legislation is not proposed in the Communication, there are no immediate policy or financial obligations

¹³ Both reflected by proposals in the draft Regulation (document (b)).

arising out of it for the UK which would necessitate any consultation or cost benefit analysis of the initiatives mentioned at this stage.

1.59 She confirms that there is no timetable for further dialogue and consultation proposed by the Commission at EU level yet, though the Minister expects the Commission to carry on working on the initiative throughout 2013.

1.60 The Minister then addresses each of the six main areas examined by the Commission and we set out the Government's responses under the following headings.

Encouraging "second chances" for "honest" bankrupts

1.61 The Minister says that the Government supports the Commission's aim in promoting second chance initiatives. UK insolvency legislation is intended to promote a rescue culture and does provide a 'second chance'.

1.62 She explains that under UK law, there is no law preventing:

- an insolvent individual continuing to trade during, for example, the period of their bankruptcy or after discharge; nor
- the director of a failed company from going on to act as a director of another company, provided that that person is not subject to a disqualification order or undertaking nor is bankrupt personally.

1.63 Also, she continues, in the UK, any person who is made bankrupt is subject to certain restrictions, including disqualification from acting as a director of a company, until their discharge from bankruptcy. Although there is no "fast-track" or special procedure for "honest" bankruptcies, UK law does take a different approach to bankrupts whose conduct has been culpable, reckless or dishonest; they can be subject to a Bankruptcy Restrictions Order ("BRO") for up to 15 years. A BRO, in order to protect the public, does not affect their automatic discharge from bankruptcy but imposes ongoing restrictions, including disqualification from acting as a director and a duty to disclose the BRO when applying for credit, for the period it is in force.

Minimising and standardising debt discharge periods for "honest" bankrupts

1.64 On the question of the existing provision under UK law to provide "second changes" for "honest" bankrupts, the Minister explains that an individual receives protection from their creditors from the date of the bankruptcy order and is automatically discharged from bankruptcy after one year, within the three-year upper limit proposed by the Commission, unless they fail to cooperate with the proceedings. She contrasts this with other Member States bankruptcy laws which can be more severe and provide for longer discharge periods (for example, up to nine years in Germany).

Standardising rules on the opening of proceedings to provide equal opportunities for restructuring

1.65 The Minister comments that the UK has a range of business rescue procedures available to distressed companies, including administration and voluntary arrangements and that, mostly, companies can access formal insolvency proceedings in the UK if insolvent or imminently insolvent. There are other forms of business rescue procedure for businesses unable to meet this insolvency test, such as Schemes of Arrangement under the Companies Act. In any case, the Minister says that:

“Many UK businesses are rescued by way an informal turnaround, where a deal is struck between creditors and the need to enter formal proceedings is avoided. There are no deadlines for the mandatory filing of insolvency proceedings for individuals or companies in the UK.”

Facilitating collective cross-border insolvency proceedings for creditors

1.66 Creditors can open insolvency proceedings against a debtor in the UK, says the Minister, unless a corporate or individual debtor has been granted a moratorium to allow them to propose a voluntary arrangement or, in the case of a company, it has given notice of the intention to appoint an administrator. These, granted for a short term, usually for a period of no longer than 14 days, enable debtors to achieve either a voluntary arrangement with creditors or to be rescued, in the case of administration. Generally, a creditor may commence insolvency proceedings against a debtor in the UK if they are owed a debt of more than £750 which is not paid within 21 days of serving a statutory demand — this is the case where the debtor is self-employed, professional or an individual with consumer debts.

Standardising procedures for creditors relating to procedures to file and verify claims

1.67 The Minister explains that it is already the law in the UK that notice must be given by UK insolvency office — holders to all creditors (including foreign creditors) at various points in the proceedings, as to their appointment, dates and venues of meetings of creditors, how to make a claim in proceedings and progress updates. Certain notices must also be made in the appropriate Gazette, including notices of distributions, which are freely accessible and searchable.

1.68 She then alludes to the Government’s support of a connected proposal in the draft Regulation (document (b)) on publishing of proceedings in an EU register and standardisation of foreign creditors’ claims forms and says: “This proposal could be useful to UK businesses who are creditors in insolvency proceedings in other EU Member States”.

Promoting restructuring plans

1.69 The Government, the Minister says, would support the promotion of formal restructuring procedures across the EU to better develop a culture of business rescue. She says:

“UK rescue proceedings have rules on the content and form of restructuring plans, and Government would only support moves to harmonise such rules at an EU level if it would benefit UK businesses and consumers.”

Our assessment

1.70 Although all of these three documents are significant in different ways, they are linked by their inherent importance to insolvency management. They all concern the need for balance in promoting business rescue and in encouraging economic recovery and growth in the UK and in the EU, whilst affording adequate protection to SMEs (in any capacity), creditors (other businesses and consumers) and others (including employees).

1.71 The reforms proposed in the draft Regulation offer potential benefits to those involved in insolvency proceedings, in terms of coordinating main and secondary proceedings, promoting business rescue and increasing legal certainty and transparency of proceedings. We note the Government’s recognition of these benefits and overall support for the proposals.

1.72 However, the Government’s initial assessment and general acceptance of the proposed amendments to the existing Regulation set out in document (b) (and partly informed by the important evidential and policy background to the amendments set out in the report (document (a))) may need further consideration once responses have been received to the Call for Evidence and in the light of its Impact Assessment. It is important that the decision on whether the Government will exercise its Title V JHA opt-in in respect of the draft Regulation is not just based on established policy but also informed by such new evidence on the existing operation of the Regulation and the anticipated operation, costs and other implications for business and individuals alike of the proposed amendments to be made, which is available within the three-month time limit.

1.73 Although the Communication (document (c)) contains no formal commitment to legislation and therefore has no immediate policy or financial implications for the UK, it is sufficiently specific to go beyond mere horizon-scanning and reveals a discernible aspiration to standardise at least some aspects of EU insolvency laws in the future. The prospect of harmonisation of insolvency laws, however distant, is a matter of considerable concern. This is partly because of the potential legal and practical impacts on UK businesses and individuals who are involved in insolvency proceedings in any capacity. But it would also mean a loss of national autonomy to regulate an important area of national law.

Conclusion

1.74 Any changes to the national insolvency legal framework are of inherent importance to business and individuals alike. This is particularly true in an economic climate where there has been an increased incidence of insolvencies and use of insolvency processes. As regards the draft Regulation (document (b)), we note that the Government is generally supportive of the proposal. Given the legal importance, we recommend the draft Regulation for debate in European Committee C solely on the question of whether the Government should opt-in to the proposal. We ask for this

debate to be held in sufficient time before 7 March 2013 (the eight-week deadline for Parliament to express a view) so that the Government can take account of the views of the House before deciding whether to opt in.

1.75 As this is an opt-in debate, the draft Regulation will remain under scrutiny following the debate. Accordingly, we ask the Government to update us on the result of its Call for Evidence and the publication of its Impact Assessment, and to do so before the date of the debate if possible. We also keep the report (document (a)) under scrutiny, as it forms important policy and evidential background to the reforms set out in the draft Regulation.

1.76 The prospect of long-term change to the national insolvency regime is, in our opinion, of legal and political importance. The possibility of future harmonisation of domestic insolvency laws, mooted by the Commission in the Communication (document (c)), is of particular concern. We do not, therefore, clear document (c). Instead, we ask the Minister to tell us what steps she will be taking to make sure that the Government, together with other like-minded Member States, is able to influence this early, but formative, stage in the Commission's long-term thinking on the future EU approach to insolvency proceedings and law. Depending on its consequences, we may also recommend the Communication for debate in due course.

2 Financial reporting and auditing

(34615) 5213/13 + ADD 1 COM(12) 782	Draft Regulation establishing a Union programme to support specific activities in the field of financial reporting and auditing for the period 2014–20
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<i>Legal base</i>	Article 114 TFEU; co-decision; QMV
<i>Document originated</i>	19 December 2012
<i>Deposited in Parliament</i>	10 January 2013
<i>Department</i>	Department for Business, Innovation and Skills
<i>Basis of consideration</i>	EM of 25 January 2013
<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>	Not cleared; further information requested

Background

2.1 According to the Commission, the global nature of capital markets means that the harmonisation of financial reporting and audit rules at global level is essential to their smooth functioning, and for the realisation of an integrated market for financial services within the EU, and it says that this is why the EU decided in 2002 to adopt international accounting standards (IFRS), rather than introduce its own set of requirements. It also points out that, with more countries moving to adopt IFRS, Europe will need more weight in order for its voice to be heard, requiring it to speak with one voice, and it notes that the European Financial Reporting and Accounting Group (EFRAG), which is its technical adviser in accounting matters, has gradually taken on the role of providing technical input to the international standard setting process.

The current proposal

2.2 The Commission goes on to note that, in 2009, the European Parliament and Council adopted Decision No. 716/2009/EC establishing a Programme¹⁴ with a budget of €38.7 million for the period 2010–13 to support specific activities in the field of financial services, financial reporting and auditing, which funded the Committees of Supervisors, the International Accounting Standards Committee Foundation (IASCF), the European Financial Reporting Advisory Group (EFRAG) and the Public Interest Oversight Board (PIOB). That Programme will end in December 2013, and this draft Regulation aims to renew it for the next financial framework (2014–2020), though, as the responsibilities of the Committees of Supervisors were taken over in 2010 by the European Supervisory Authorities, it would now apply only to the remaining beneficiaries — the International

14 (30397) 5783/09: see HC 19–ix (2008–09), chapter 3 (4 March 2009), HC 19–xiv (2008–09), chapter 3 (22 April 2009) and HC 19–xv (2008–09), chapter 5 (29 April 2009).

Financial Reporting Standards (IFRS) Foundation (the legal successor of the IASCF), EFRAG and PIOB (see Annex).

2.3 Funding of €58.01 million would be made available from the EU budget in this period, of which €32.22 million would be for the IFRS Foundation; €23.51 million for EFRAG and €2.27 million for PIOB. In addition, the Commission proposes that funding of €4.01 million will be needed in administrative expenditure for the Internal Market and Services Directorate to manage this budget.

The Government's view

2.4 In her Explanatory Memorandum of 25 January 2013, the Minister for Employment Relations and Consumer Affairs at the Department for Business, Innovation and Skills (Jo Swinson) says that the Government agrees with the overall strategic aim of the Commission's proposals to ensure stable, diversified, sound and adequate funding to enable the relevant bodies to carry out their EU related or EU public interest mission in an independent, efficient and satisfactory way. However, she notes that the Commission wishes to maintain (but not increase) the current level of funding for the bodies concerned, and that the proposal therefore accounts for an increase commensurate with the expected 2% inflation rate, and she says that, whilst the UK recognises the important roles these organisations fulfil and supports their continued funding in principle, it questions if a blanket increase in budgets is justified given the current austerity context. It therefore proposes to ask the Commission to explain what consideration it has given to prioritising the outcomes it wishes to see, and to linking funding accordingly.

2.5 The Minister also comments on individual beneficiaries, saying that the Government is supportive of the ISRG Foundation, but that, whilst it values the work of EFRAG as a technical advisor, it is concerned that it is unsuited to the task of presenting Member States' views on standards, given that these must include political, public interest, and economic considerations. She also says that, since that EFRAG's principal role is to provide a technical view at the end of the standard setting process, it is important to limit its involvement at earlier stages to avoid a process whereby it is called upon to pass judgment on decisions to which it has been party. She adds that this is a live debate with the Commission, the UK and other Member States having expressed concern about the legitimacy of EFRAG taking on this role, and that the UK considers that the EU Accounting Regulatory Committee (ARC) may be more suited to the task.

2.6 The Minister also observes that the proposal delegates power to the Commission to select new beneficiaries for the Programme, subject to the proviso that these should be non-profit making legal persons pursuing an objective which forms part of, and supports, EU policy in the field of financial reporting and auditing, as well as being a direct successor of one of the beneficiaries already funded by the Programme. She says the Government will consider if the use of delegated powers is the most appropriate mechanism for this purpose, and will ask the Commission to explain how it will consider if successor bodies merit continued funding.

Conclusion

2.7 Since this document would essentially extend for a further period a programme which has been in force since 2009, it does not raise any significant new issues, but, given its aims and objectives, we think it right to draw it to the attention of the House. We also note that, although the Government supports the overall aim of the programme, it has raised some questions about the level of funding proposed for 2014–2020, the role of the European Financial Reporting and Accounting Group, and the proposed use of the Commission’s delegated powers. We are therefore holding the document under scrutiny, pending further developments on these various points.

Annex

The IFRS Foundation is an umbrella body which brings together the organisations that develop international accounting standards: the International Accounting Standards Board (IASB) and the International Financial Reporting Standards (IFRS) Interpretation Committee. The IFRS Foundation oversees their smooth functioning and proper financing.

The EU decided to adopt IFRS in 2002 on the basis that, given the global nature of capital markets, harmonisation of financial reporting and audit rules is essential for the sake of transparency and comparability. It proposes to fund the IFRS Foundation to ensure that both the IASB and the IFRS Interpretation Committee have the solid, neutral, reliable and calculable funding base which will allow them to operate independently, recruit top quality people, and develop high quality accounting standards.

IFRS are incorporated into Union law and applied by companies with securities listed on regulated markets in the Union (provided they meet the criteria set out in EU regulation). The EU therefore has a direct interest in ensuring that the process through which IFRS are developed and approved delivers standards consistent with the requirements of the legal framework of the internal market.

In the current Programme, the co-financing stemming from the EU aims at covering 20–25% of the IFRS Foundation’s budget, in line with Europe’s weight in the total global economy. The Commission acknowledges that since the increased use of IFRS globally will result in an expansion of the IFRS Foundation’s membership with an associated increase in its costs and total budget, the Commission’s relative contribution is unlikely to be maintained in the next financial period (it may even drop to 10%). This will mean the Foundation will need to seek additional funding from other sources in order to be able to carry out its public interest mission satisfactorily.

EFRAG

The European Financial Reporting Advisory Group (EFRAG) is a private organisation, established in 2001, originally to provide the Commission with technical expertise in financial reporting matters. It provides the Commission with opinions on whether an accounting standard issued by the IASB or an interpretation issued by the IFRS Interpretations Committee complies with the endorsement criteria set out in the regulation

governing the adoption of international standards for use in the EU. It has gradually widened its role into actively influencing the IASB in its standard setting work, and the Commission has indicated that it envisages this developing further, such that EFRAG becomes the leading platform to form a single accounting voice of the EU and to deliver the EU's input to the IASB.

The Commission is concerned that, as more and more countries move towards adopting the IFRS, the EU will need to take steps to prevent a gradual loss of influence and weight in the IASB. To this end, it regards it as essential that European interests are well represented at international level, and that Europe 'speaks with one voice' that is credible and technically sound.

For the 2011 financial year, the EU provided 43% of EFRAG's budget. The proposed co-financing level for the period 2014–2020 will not support additional tasks to be taken up by the organisation; these will have to be financed from EFRAG's own resources.

PIOB

The Public Interest Oversight Board is a not-for-profit foundation created in 2005. Its key role is to ensure that the International Standards on Auditing (ISAs) are developed and adopted by the International Auditing and Assurance Standards Board (IAASB) with due process, public oversight and transparency. The IAASB is an independent standard-setting body that sets international standards for auditing. Currently, 78% of the funding for PIOB is provided by the International Federation of Accountants (IFAC) and 22% by the EU. Work is ongoing to diversify this funding.

3 The manufacture, presentation and sale of tobacco and related products

(34587) 18068/12 COM(12) 788	Draft Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products
+ ADDs 1–7	Commission Staff Working Documents: Impact Assessments

<i>Legal base</i>	Article 114 TFEU; QMV; co-decision
<i>Document originated</i>	19 December 2012
<i>Deposited in Parliament</i>	2 January 2013
<i>Department</i>	Department of Health
<i>Basis of consideration</i>	EM of 21 January 2013
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

3.1 One of the objectives of the European Union is to establish an internal market in which, subject to any limitations imposed by the EU Treaties, goods, persons, services and capital circulate freely. In order to achieve this objective, Article 114 of the Treaty on the Functioning of the European Union (TFEU) empowers the European Parliament and Council to adopt measures approximating Member States' laws, regulations and administrative provisions. Measures concerning, amongst other things, health, safety and consumer protection, must ensure a high level of protection and take account of any new developments based on scientific facts.

3.2 In 1989, the Council determined that differences in the rules applied by Member States for the labelling of tobacco products constituted a barrier to trade and impeded the establishment and functioning of the internal market. It adopted a Directive requiring all tobacco products to carry a general health warning and all cigarette packets to indicate tar and nicotine yields and to include a more specific health warning.¹⁵ Shortly afterwards, in 1990, the Council adopted a further Directive establishing a maximum tar yield for cigarettes marketed in the EU.¹⁶ In 1992, the Council strengthened the health warnings to be included on the packaging of tobacco products and banned the marketing of tobacco for oral use.¹⁷

15 See Council Directive 89/622/EEC, OJ No. L No. 359, 08.12.1989.

16 See Council Directive 90/239/EEC, OJ No. L 137, 30.05.1990.

17 See Council Directive 92/41/EEC, OJ No. L 158, 11.06.1992.

3.3 The existing Tobacco Products Directive, adopted in 2001, repealed the earlier Directives and established more stringent rules for products containing tobacco. The Directive:

- set a maximum yield per cigarette for tar, nicotine and carbon monoxide;
- required the tar, nicotine and carbon monoxide yields to be printed on cigarette packets;
- required all products containing tobacco, other than oral tobacco or smokeless tobacco products, to carry a general health warning (“*Smoking kills/Smoking can kill*” or “*Smoking seriously harms you and others around you*”) and one of fourteen additional health warnings set out in an Annex;
- required oral tobacco products (where their use is permitted)¹⁸ and smokeless tobacco products to carry the following general health warning: “*This tobacco product can damage your health and is addictive*”;
- stipulated the minimum surface area to be covered by the general health warning (30% of the front side of the packet on which it is printed) and the additional health warning (40% of the reverse side);
- set out requirements to ensure the visibility and legibility of the health warnings;
- required tobacco products to be marked in a way that enables them to be identified and traced;
- required manufacturers and importers of tobacco products to provide Member States each year with a list of ingredients and quantities used for each product, by brand name and type, and to include toxicological data; and
- prohibited the use on packaging of words, symbols or trademarks which suggest that a particular tobacco product may be less harmful than others (for example, “mild” or “light”).

3.4 Member States remained free to introduce more stringent public health rules on the manufacture, import, sale or consumption of tobacco products in areas which were not harmonised. For example, they could add pictorial health warnings, such as colour photographs or illustrations, or prohibit the use of particular ingredients which make tobacco products more addictive.

3.5 The Commission is required to publish a report every two years on the application of the Directive, which may include any proposals the Commission deems necessary “to adapt it to developments in the field of tobacco products, to the extent necessary for the establishment and operation of the internal market, and to take into account any new

¹⁸ Sweden is the only Member State permitting the use of oral tobacco or “snus”, a consequence of a derogation contained in its Act of Accession to the EU.

development based on scientific facts and developments on internationally agreed product standards.”¹⁹

3.6 In February 2005, the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC) entered into force. It establishes a framework for Contracting Parties (including the EU and all Member States) to implement tobacco control measures which are designed to prevent and reduce tobacco consumption, nicotine addiction and exposure to tobacco smoke. According to the WHO, action at an international level is justified because the production, sale and marketing of tobacco products, as well as the growth in the movement of counterfeit and contraband products, have significant cross-border effects.²⁰

The draft Directive

3.7 The Commission considers that scientific, market and international developments necessitate substantial changes to the 2001 Tobacco Products Directive. It therefore proposes to repeal it and replace it with a new and more comprehensive Directive. The draft Directive continues to cite an internal market legal base (Article 114 TFEU) because the Commission considers that it will improve the functioning of the internal market in the following ways:

- updating harmonised rules on such matters as the display of tar, nicotine and carbon monoxide levels, the size and content of health warnings, and the traceability of tobacco products to take account of scientific and international developments;
- extending the scope of harmonised rules to include specific products (such as nicotine-containing or herbal products) or product requirements (labelling and ingredients) where necessary to remove obstacles to the free movement of goods; and
- including measures on such matters as cross-border distance selling, traceability and security features designed to prevent the marketing of tobacco and related products which are not compliant with EU legislation.

3.8 Whilst emphasising the internal market dimension, the Commission also underlines the importance of ensuring a high level of health protection and, in particular, of discouraging tobacco consumption by young people (it estimates that 70% of smokers start before the age of 18).

3.9 The Commission suggests that further action at EU level is justified for four reasons:

- Member States are unable to act unilaterally to strengthen or update rules which have already been harmonised;
- differing regulatory approaches by Member States in areas which have not yet been harmonised have created obstacles to cross-border trade as industry has to produce different product lines for different markets;

¹⁹ See Article 11 of the 2001 Directive.

²⁰ See <http://www.who.int/fctc/en/>.

- restrictions imposed at a national level, for example, on internet sales or on tracking and tracing tobacco products when they move across borders, are difficult to enforce unilaterally; and
- common action at EU level ensures greater consistency and legal certainty.²¹

3.10 Member States would retain some flexibility to legislate at national level in the following circumstances:

- by maintaining or introducing more stringent national provisions applicable to all products covered by the Directive “on grounds of overriding needs relating to the protection of public health” — the provisions would have to be notified to the Commission to determine whether they are justified, necessary and proportionate; and
- by maintaining or introducing national provisions concerning aspects not regulated by the Directive if justified by “overriding reasons of public interest”, provided they are necessary and proportionate.²²

The main elements of the draft Directive

3.11 The main changes proposed by the Commission concern five policy areas:

- smokeless tobacco products, novel tobacco products and non-tobacco products;
- packaging and labelling requirements;
- ingredients and additives;
- cross-border distance sales; and
- traceability and security features.

3.12 Title II of the draft Directive establishes harmonised rules for tobacco products covering ingredients and emissions, labelling and packaging, tobacco for oral use, cross-border distance sales, and novel tobacco products.

Ingredients and emissions – Articles 3–6

3.13 The maximum yield per cigarette for tar, nicotine and carbon monoxide, and the methodology for measuring the yields, remain the same as in the 2001 Tobacco Products Directive. However, there is a new requirement for Member States to notify the Commission of the maximum yields they set, and the methods of measurement they use, for other cigarette emissions and for emissions from other tobacco products. This information may be used as part of a broader scientific assessment to change the existing yields, or introduce new ones, in order to prevent an appreciable increase in the toxic or addictive effect of particular tobacco products.

²¹ See p.11 of the Commission’s explanatory memorandum accompanying the draft Directive and pp.46–7 of ADD 1.

²² See Article 24 of the draft Directive.

3.14 The draft Directive maintains the obligation imposed on manufacturers and importers by the 2001 Tobacco Products Directive to provide Member States with a list of ingredients and quantities used for each product, by brand name and type, but with an additional requirement to ensure that such information is made available before a new or modified tobacco product is placed on the market. Moreover, manufacturers and importers of tobacco products are also required to make available market research and other studies indicating consumer preferences concerning ingredients used in their products as well as sales volume data for each product. Member States are entitled to charge a fee to cover the costs associated with handling the information. The Commission suggests that mandatory reporting, and the introduction of a harmonised reporting format, will “create a level playing field and facilitate collection, analysis and monitoring of data” whilst also reducing administrative burdens.²³

3.15 The draft Directive introduces, for the first time, a prohibition on:

- the marketing of cigarettes, roll-your-own tobacco and smokeless tobacco “with a characterising flavour”, that is with a distinguishable aroma or taste other than tobacco (for example, fruit flavourings or menthol); and
- the use of flavourings in the component parts of cigarettes, roll-your-own tobacco and smokeless tobacco, for example, filters, papers, packages and capsules.

3.16 The prohibition may be extended to other tobacco products if justified by a substantial change of circumstances, such as an increase in sales volumes or use by young people. In addition, all tobacco products are subject to a prohibition on:

- the use of vitamins or other additives that suggest a tobacco product may have a health benefit or reduce health risks;
- the use of stimulants, such as caffeine and taurine, associated with energy and vitality; and
- the use of additives that release colourful substances.

3.17 Moreover, Member States are required, on the basis of scientific evidence, to prohibit the marketing of tobacco products containing additives in quantities that appreciably increase the toxic or addictive effect of the product when consumed.

3.18 The Commission suggests that it has framed the prohibitions in such a way as to target those products most attractive to young people, whilst allowing industry some margin to differentiate between different tobacco products, and that the degree of harmonisation proposed is necessary because of disparities in the way that Member States regulate the use of additives.²⁴

²³ See p.5 of the Commission’s explanatory memorandum accompanying the draft Directive.

²⁴ See p.6 of the Commission’s explanatory memorandum accompanying the draft Directive.

Labelling and packaging – Articles 7–13

3.19 The draft Directive strengthens the requirements for health warnings for tobacco products, with the most stringent measures reserved for cigarettes and roll-your-own tobacco. All cigarette packets and packaging for roll-your-own tobacco must include a general health warning (“*Smoking kills – quit now*”) and an additional information message (“*Tobacco smoke contains over 70 substances known to cause cancer*”) which together cover 50% of the surface on which they are printed. They must also carry a combined health warning comprising one of fourteen possible text warnings and a corresponding colour photograph covering 75% of both the outer front and back surfaces, as well as information on stopping smoking. The mandatory inclusion of a pictorial warning is new and will replace the current requirement to display tar, nicotine and carbon monoxide yields on packaging. The Commission cites new evidence demonstrating that “bigger and pictorial warnings are more effective” and that references to yields are misleading.²⁵

3.20 The health warning and labelling requirements contained in the 2001 Tobacco Products Directive are broadly maintained for other tobacco products: they must carry the general health warning (“*Smoking kills – quit now*”) and an additional text warning, each covering between 30% and 40% of the front and back surface areas, as well as information on stopping smoking. As regards smokeless tobacco products, the size and content of the health warning remains unaltered, but it must be printed on both sides of the packaging. The draft Directive includes provision for the more stringent requirements applicable to cigarettes and roll-your-own tobacco to be extended to other tobacco products if justified by a substantial change of circumstances.

3.21 Apart from health warnings, the draft Directive seeks to restrict additional product information or labelling on tobacco products or their packaging. It prohibits any elements or features that:

- are false, misleading or deceptive;
- suggest that a particular product is less harmful than another or has positive health or social effects;
- refer to flavour or taste; or
- resemble a food product.

3.22 The draft Directive specifies the shape of a cigarette packet (cuboid) and roll-your-own tobacco (a rectangular pouch) and their minimum content (at least 20 cigarettes or 40g of tobacco).

3.23 The Commission emphasises that Member States would be able to introduce their own national rules on the surface area of packaging not regulated by the draft Directive, provided these rules are compatible with the EU Treaties. It adds that the draft Directive does not prevent manufacturers from displaying their own trademark on the packaging.

²⁵ See p.7 of the Commission’s explanatory memorandum accompanying the draft Directive.

Traceability and security features – Article 14

3.24 The draft Directive introduces detailed rules on the traceability of tobacco products and security features to ensure their authenticity. It requires every cigarette packet or pouch containing roll-your-own tobacco products to be marked with a unique identifier so that it can be tracked and traced back through the supply chain to the manufacturer, and to carry a visible, tamper-proof security feature. Data recording the movement of tobacco products, from the manufacturing stage to the pre-retail stage, would be held by an independent third party in a data storage facility located within the EU. The obligations concerning traceability and security features would be extended to all tobacco products five years after the deadline for Member States to implement the Directive.

Tobacco for oral use – Article 15

3.25 The draft Directive maintains the prohibition on the marketing of tobacco for oral use, subject to the derogation given to Sweden at the time of its accession to the EU.

Cross-border distance selling of tobacco products – Article 16

3.26 The draft Directive introduces a new requirement for retail outlets intending to sell tobacco products to consumers in another Member State to register with the competent national authorities in their home State and in the State of destination. They must also be equipped with an age verification system to ensure that they only sell to consumers who are old enough to purchase tobacco products according to the laws in the State of destination. The Commission suggests that these provisions will facilitate legal activity, in particular by addressing underage purchasing, without removing any existing sales channels.²⁶

Novel tobacco products – Article 17

3.27 The draft Directive includes a new notification procedure for “novel tobacco products” introduced to the market for the first time after the Directive takes effect. Whilst these products are also subject to the requirements of the Directive, manufacturers and importers must give Member States six months’ advance notification of their intention to place them on the market and provide a detailed product description, as well as information on toxicity, addictiveness and the potential appeal of the product to different consumer groups. Member States may introduce a system of authorisation and a proportionate fee, and may require additional testing to be carried out or further information to be made available.

Non-tobacco products – Articles 18 and 19

3.28 Title III of the draft Directive establishes harmonised rules for the marketing and sale of two categories of non-tobacco products: nicotine-containing products and herbal products.

²⁶ See p.9 of the Commission’s explanatory memorandum accompanying the draft Directive.

3.29 The draft Directive specifies that products containing nicotine above a certain level or concentration may only be placed on the market if they have been authorised as medicinal products on the basis of their quality, safety and efficacy in accordance with the procedures established in Directive 2001/83/EC on medicinal products for human use.²⁷ The Commission says that these thresholds take account of the nicotine content of medicinal products used as an aid to stop smoking (nicotine replacement therapies). Products containing a lower level or concentration of nicotine can continue to be sold as consumer products, but must carry a prominent health warning (“*This product contains nicotine and can damage your health*”) on the front and back of the packaging. The Commission believes that its proposal will create greater legal certainty by addressing the different regulatory approaches taken by Member States to nicotine-containing products, whilst also ensuring that consumers are made aware of their toxic and addictive properties.²⁸

3.30 The draft Directive specifies that herbal products for smoking should also carry a prominent health warning (“*This product can damage your health*”) on the front and back of the packaging. Neither the product itself, nor its packaging, should include elements or features that:

- are false, misleading or deceptive;
- suggest that it is less harmful than another product or has positive health or social effects; or
- resemble a food product; and the packaging must not state that the product is free from additives or flavourings. The Commission suggests that its proposal will enable consumers to make more informed choices, taking into account the adverse health effects of herbal products for smoking, and will create greater homogeneity within the internal market.²⁹

Future changes to the Directive – Articles 21–23

3.31 The draft Directive empowers the Commission to adapt or update a substantial number of provisions by means of delegated acts, in most cases to take account of scientific and technical developments and internationally agreed standards. The delegated powers conferred on the Commission are for an indeterminate period. The Commission is also required to publish a report five years after the deadline for Member States to implement the Directive, highlighting any areas where legislative changes may be needed.

The Government’s view

3.32 The Parliamentary Under-Secretary of State for Public Health (Anna Soubry) says that the Government broadly welcomes the draft Directive, adding that the 2001 Tobacco Products Directive,

27 See Directive 2001/83/EC, OJ No. L 311, 28.11.2001.

28 See pp.9–10 of the Commission’s explanatory memorandum accompanying the draft Directive.

29 See p.10 of the Commission’s explanatory memorandum accompanying the draft Directive.

“has remained largely unchanged for a decade and no longer reflects the nature of tobacco products and markets in the EU as well as it once did.”³⁰

3.33 Whilst endorsing the objective of reducing the appeal of tobacco products for children and young people, the Minister indicates that the Government intends to carry out its own analysis of the impact that the changes put forward by the Commission on packaging, labelling, ingredients and additives would have for the UK. The Government also intends to consider carefully whether each element of the draft Directive falls within the established boundaries of Article 114 TFEU, ensures respect for the principle of subsidiarity and confers appropriate implementing or delegated powers on the Commission.

3.34 The Minister supports the continued ban on oral tobacco products, but suggests that the proposed inclusion of non-tobacco nicotine-containing products and herbal products for smoking will require further examination. In relation to the former, she says that there may be legal issues and that the Government’s approach will be informed by scientific and market research being coordinated by the Medicines and Healthcare products Regulatory Agency regarding the levels of nicotine that have physiological effects. She also questions whether the Commission’s objective of gaining maximum potential public health benefits from nicotine-containing products is an appropriate basis for regulating these products.

3.35 The Minister notes that the Government has recently consulted on the standardisation of packaging for tobacco products and is keen to ensure that the draft Directive gives Member States the flexibility to legislate for this, should they wish to.³¹ As regards the introduction of an EU-wide tracking and tracing system for tobacco products, the Minister suggests that the system proposed may well exceed the requirements of a recent Protocol to the WHO Framework Convention on Tobacco Control concerning illicit trade, which is still under negotiation.

3.36 Finally, the Minister says that the impact of the Directive will be wide-ranging and promises to provide a more detailed analysis of the expected costs and benefits for the UK. Meanwhile, she summarises the main impacts as follows:

- simplifying cross-border trade for UK tobacco product manufacturers, although costs will increase in the short term as production systems are adapted to new labelling and packaging requirements;
- longer term loss in revenue for manufacturers of tobacco products and other industries providing services (such as packaging and printing) as stricter tobacco controls reduce the prevalence of smoking;
- increased costs for those in the supply chain required to comply with the new tracking and tracing system;
- job losses within the tobacco industry as the demand for tobacco products decreases (but this may be off-set by jobs in other sectors where consumption is increasing);

30 See para 2 of the Minister’s Explanatory Memorandum.

31 See http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products/consult_view.

- reduced NHS expenditure on smoking-related diseases and better levels of public health; and
- less revenue from duty paid on tobacco products.

3.37 The Minister indicates that the Irish Presidency is keen to reach a common position within the Council before the end of its Presidency in June.

Conclusion

3.38 We note that the Government broadly welcomes the draft Directive but we are disappointed that the Minister is unable to provide a clearer indication of the Government's position on the main changes proposed by the Commission. Whilst we appreciate the need for the Government to carry out a thorough analysis of the evidence base for EU action, we are also conscious that the Irish Presidency has proposed an ambitious timetable for reaching an initial agreement on the draft Directive within the Council.

3.39 Given the significance of the draft Directive, we may wish to recommend it for debate. Before doing so, however, we ask the Minister to tell us whether the Government accepts that Article 114 TFEU is the appropriate legal base for all elements of the draft Directive, or whether an additional legal base should be cited, and to identify any specific provisions which give rise to subsidiarity concerns. We also ask the Minister to clarify the Government's position on those elements of the draft Directive which introduce new, or more stringent, requirements than those contained in the existing 2001 Tobacco Products Directive. Meanwhile, the draft Directive remains under scrutiny.

4 Marine equipment

(34574) 17992/12 + ADDs 1–2 COM(12) 772	Draft Directive on marine equipment and repealing Directive 96/98/EC
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<i>Legal base</i>	Article 100(2) TFEU; co-decision; QMV
<i>Document originated</i>	17 December 2012
<i>Deposited in Parliament</i>	21 December 2012
<i>Department</i>	Department for Transport
<i>Basis of consideration</i>	EM and Minister's letter of 28 January 2013
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	Possibly June 2013
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

4.1 Equipment carried on board ships is required to conform to the safety regulation and approval standards provided for in Conventions adopted by the International Maritime Organization (IMO).

4.2 To provide a harmonised interpretation and implementation of the IMO approval standards for marine equipment across Member States and to ensure a free movement of equipment within the EU Directive 96/98/EC on marine equipment (MED) was introduced in 1996. When developed the MED sought to harmonise the testing standards applied to marine equipment across the EU, which resulted in Member States being required to mutually recognise, without prejudice, equipment approved by another Member State. The underlining objective of this was to promote free movement of marine equipment within the EU.

The document

4.3 With this draft Directive the Commission is now proposing a new measure to replace the current MED. Based on the experience gained by Member States, certain weaknesses in the area of implementation and enforcement of the current MED have been identified. The proposed Directive would provide for a number of solutions to optimise the effectiveness of the MED. Many of these measures are minor technical changes which act to simplify procedures and requirements. The proposal is accompanied by the Commission's impact assessment and an executive summary of the assessment.

4.4 One significant weakness with the current Directive is the delay in implementation of IMO standards (due to the time taken to update the annexes of the Directive and then transpose these annexes into national laws). The current MED includes within its annexes lists of marine equipment which are required to be type approved and the required testing

standards. The annexes are updated annually to align the current MED with any revision of the testing standards agreed at IMO. The process of updating these annexes and then transposing them into national law creates an inherent delay in the application of IMO requirements within the EU. In order to remove this delay the Commission is proposing removal of the annexes and the need for national transposition by replacing the annexes with Commission implementing or delegated acts.

4.5 Other significant changes within the draft Directive are:

- empowerment of the Commission, on its own initiative, to set “testing standards”, by adding it to the bodies that can set “testing standards” — this is explained in its impact assessment as empowering the Commission to act when it deems that the IMO has “failed” to do so; and
- addition of the Ballast Water Management Convention (BWMC) to the scope of the Directive — the Convention was adopted by the IMO in February 2004, however it has not yet been ratified by the required number of countries (30 States, representing 35% of world merchant shipping tonnage) and has not yet entered into force. By including the BWMC within the scope of the proposed Directive the approval of ballast water management systems would become mandatory for EU ships ahead of the international requirement for type approval.

The Government’s view

4.6 In his Explanatory Memorandum the Parliamentary Under-Secretary of State, Department for Transport (Stephen Hammond), first recalls that during the discussions which led to the current MED it was identified that direct application of the IMO type approval framework by the Member States in the absence of Community harmonisation had led to significant barriers to the free movement of goods, mostly stemming from:

- the broad discretion left by the IMO instruments to the flag State;
- introduction of additional national requirements; and
- divergences in the certification methods.

4.7 He adds that at the same time, the resulting divergences in national regulations had led to uneven degrees of safety and environmental protection. The Minister continues that while there is still a need to ensure harmonisation, the proposed Directive would extend the scope of the current MED and the Government considers that certain aspects of the draft Directive do not fully respect the principle of subsidiarity. He explains that, in relation to the proposed empowerment of the Commission to set “testing standards”, the Government considers that this is a potential subsidiarity issue, as such standards need to be agreed on a global basis to ensure Member States are not disadvantaged by having to meet EU rules, which are potentially stricter than those applied internationally.

4.8 The Minister also raises an issue of competence creep. While noting that the Government supports the need to amend the current MED to enhance its implementation and enforcement, he says that:

- it is considering its position on the Commission’s proposal;
- it would appear that some of the proposed measures go beyond enhancing the current MED and indicate a Commission intention to extend its competence; and
- the Government considers this could jeopardise the UK’s independence and freedom to act at the IMO.

4.9 The Minister then discusses three other areas of potential concern. First, in relation to replacement of existing technical annexes of the MED with Commission delegated acts, thus shifting the responsibility for implementation of testing standards from Member States to the Commission, he says that:

- the Government acknowledges the need to speed up transposition of IMO testing standards;
- it is normal, however, for IMO standards to include an element of discretion in the implementation by individual Member States;
- when such discretion is in place the Government does not consider that it is appropriate for transposition and interpretation of an international requirement to be left exclusively to the Commission; and
- the Government would prefer the alternative solution, considered in the Commission’s impact assessment, for Member States to directly transpose IMO requirements into their national laws.

4.10 The second possible concern is the potential subsidiarity issue noted above.

4.11 Thirdly, on the addition of the BWMC to the scope of the Directive, despite harmonised approval being provided for within the IMO, the Minister says that:

- the Government considers this would place EU ships at a competitive disadvantage to the rest of the world fleet;
- in addition, the IMO has in place a harmonised process for the approval of ballast water management systems at international level;
- therefore, by including approval of ballast water management systems, the proposed Directive would create an additional tier of type approval and so an additional burden on industry; and
- this is a particular concern for the UK as one of the largest manufacturers of ballast water management systems is based in the UK.

4.12 The Minister also says that the Government notes that the proposed Directive does not provide a mechanism for the approval of Alternative Design Arrangements, limiting the scope for flexible application of international conventions to the detriment of UK business. He explains that, in particular:

- the draft Directive does not reflect the IMO provision for the inclusion of Alternative Design Arrangements, an international measure which allows

deviation from the prescriptive requirements of the IMO's Safety of Life at Sea Convention through the satisfactory demonstration of equivalent provision of equipment or systems that fulfill the intended objective of the regulation;

- this omission would place EU flag administrations, ships and equipment manufacturers at a competitive disadvantage to their third country counterparts as they would be unable to make use of equivalent arrangements permitted in international conventions.

4.13 The Minister tells us that the Government's checklist for analysis on the proposal will be submitted to us shortly. In his letter he explains that given the significance of the draft Directive and the lack of evidence in the Commission's impact assessment, he cannot be certain that it will not be significantly detrimental to UK interests — so the Government is carrying out further analysis of the potential impacts the proposal may have on UK industry. He adds that the Government is at the very early stages of the process, that once he has further evidence of the impact of the proposal he will update us and that he will be seeking an agreed Government position in its European Affairs Committee in the near future.

Conclusion

4.14 **Although we recognise the case for continued harmonisation in the EU of the implementation of the IMO's marine equipment standards, we note the significant reservations outlined by the Minister and agree in particular that the Commission may be exceeding its competence. We will await the additional information he promises us before considering the draft Directive further. Meanwhile it remains under scrutiny.**

4.15 **But, in the meantime, there is a failure in the scrutiny procedure we wish to raise with the Minister. He draws to our attention a potential subsidiarity issue, which is a matter on which, given sufficient time, we might have wished to recommend the House to adopt a Reasoned Opinion by virtue of Protocol (No 2) of the EU Treaties. However, the deadline for a Reasoned Opinion in this case is 15 February and in practical terms, given the very late arrival of the Government's Explanatory Memorandum and the lack of detail on this point contained within it, it is not possible for us to prepare and adopt a draft Reasoned Opinion for consideration by the House in time. Accordingly, we remind the Government again of the eight-week timetable for Parliament to consider the adoption of Reasoned Opinions, and of the requirement that the Government's Explanatory Memorandum should be submitted within ten working days of the deposit of the EU document. We ask the Minister for a full explanation of the delay in this case. If this is not satisfactory we will consider inviting the Minister to give evidence to us — the operation of the Reasoned Opinion procedure is the central means by which National Parliaments monitor the compliance of Commission legislative proposals with the principle of subsidiarity.**

5 Financial services: recovery and resolution

(a) (34012) 11066/12 + ADDs 1–2 COM(12) 280	Draft Directive establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directives 77/91/EC and 82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) No 1093/2010
(b) (34560) 17849/12 —	European Central Bank Opinion on a draft Directive establishing a framework for the recovery and resolution of credit institutions and investment firms (CON/2012/99)

<i>Legal base</i>	(a) Article 114 TFEU; co-decision; QMV (b) —
<i>Document originated</i>	(b) 29 November 2012
<i>Deposited in Parliament</i>	18 December 2012
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	(a) Minister's letter of 26 January 2013 (b) EM of 9 January 2012
<i>Previous Committee Reports</i>	(a) HC 86–vii (2012–13, chapter 7) (4 July 2012) (b) 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

5.1 The financial crisis and, in particular, the high profile banking failures revealed serious shortcomings in the existing crisis management arrangements. A Commission Communication: *An EU framework for cross-border crisis management in the banking sector*, published in October 2009, presented the Commission's views on the development of a regulatory framework for stabilising and controlling the systemic impact of a failing cross-border bank.³² A second Communication: *Bank resolution funds*, published in May 2010, set out the Commission's thinking on how the financial sector could contribute to the cost of financing the resolution of failing banks.³³ In a third Communication: *An EU framework for crisis management in the financial sector*, published in October 2010, the Commission outlined the main elements of a new EU framework on prevention, crisis management and resolution that would form the basis of a legislative proposal it was expecting to put forward by June 2011.³⁴

32 (31056) 15049/09 + ADDs 1–3: see HC 5–iii (2009–10), chapter 3 (9 December 2009), HC 5–xi (2009–10), chapter 2 (24 February 2010 and *Gen Co Debs*, European Committee B, 2 March 2010, cols. 3–20.

33 (31646) 10394/10: see HC 428–i (2010–12), chapter 70 (8 September 2010).

34 (32108) 15375/10: see HC 428–viii (2010–12), chapter 14 (17 November 2010).

5.2 In June 2012 the Commission presented this draft Directive, document (a), for the recovery and resolution of credit institutions and investment firms with a client asset base of at least €730,000 (£584,000), referred to in this chapter as “institutions”, and financial holding companies, referred to in this chapter, together with institutions, as “financial institutions”. The draft Directive, based on minimum harmonisation, would:

- apply to national and EEA financial institutions;
- require Member States to ensure that their national supervisory and resolution authorities have a minimum set of common tools and powers which would enable them to avert and, where necessary, manage the orderly failure of a financial institution;
- give Member States’ resolution authorities powers to resolve branches of institutions based in third countries in certain circumstances; and
- provide an underpinning for improved cooperation and coordination between relevant Member State supervisory and resolution authorities.

5.3 The proposals in the draft Directive, taken together, seek to preserve financial stability, limit taxpayer exposure and improve the functioning of the single market, reducing moral hazard and perceptions of an implicit state guarantee for financial institutions. It covers the following areas:

- recovery and resolution planning;
- preventative powers;
- early intervention;
- resolution;
- cross-border group treatment, relations with third countries and the role of the European Banking Authority (EBA); and
- financing arrangements.

5.4 When we considered this proposal, in July 2012, although we heard that the Government broadly welcomed the Commission’s draft Directive, we also learnt of a number of issues in the text on which the Government had reservations. So we asked, before considering the proposal again, to hear about the Government’s further consideration of the draft Directive and developments in negotiation of the proposal by the Council. Meanwhile, the document remained under scrutiny.³⁵

The new document

5.5 In this Opinion, document (b), the European Central Bank (ECB) says that:

³⁵ See headnote.

- it fully supports the development of a recovery and resolution framework and the removal of obstacles to effective crisis management at financial institutions, noting that all financial institutions should be allowed to fail in an orderly manner, safeguarding the stability of the financial system as a whole and minimising public costs and economic disruption;
- for this purpose the development of common support tools to manage the failure of financial institutions — such as recovery and resolution plans, bridge bank, bail-in, sale of business and asset separation tools — is crucial;
- it welcomes that these proposals are developed in line with the internationally agreed key attributes of effective resolution regimes for financial institutions;³⁶ and
- it calls for the rapid adoption of the Directive.

5.6 The ECB's specific observations are that:

- on resolution aims, the proposed Directive should clarify that the aim of resolution is not to preserve financial institutions as such, but to ensure the continuity of their essential functions;
- on conditions for resolution, the responsibility for determining whether an institution is failing or likely to fail should be allocated to the competent authority and that determination should be based only on an assessment of the prudential situation of an institution;
- on involvement of central banks, where the central bank is not itself the resolution authority, the competent authority and the resolution authority should engage in an adequate exchange of information with the central bank;
- on intra-group financial support, implementation of these voluntary agreements into national legal systems may be problematic — further reflection may be needed on whether additional provisions are warranted to ensure the legal certainty and enforceability of intra-group transactions;
- on bail-in, it welcomes the development of a bail-in to absorb losses, notes the bail-in mechanism should be designed to be in line with internationally agreed key attributes of effective resolution³⁷ and supports introduction of bail-in from 2018 at the latest;
- on resolution financing, it welcomes that the proposed Directive enables authorities to put the burden of resolution financing on an institution's shareholders and creditors, suggests that there is benefit to additional resolution financing sources, but takes the view that the proposal to set up a EU system of financing arrangements is ambitious and will not solve important cross-border resolution issues, such as coordination and burden sharing; and

36 See the Financial Stability Board's 'Key Attributes of Effective Resolution Regimes', available at http://www.financialstabilityboard.org/publications/r_111104cc.pdf.

37 *Ibid.*

- on the use of deposit guarantee schemes in resolution financing, suggests that the proposed Directive should more clearly define the role of deposit guarantee schemes in resolution financing and should not compromise the core function in protecting covered deposits, notes that it would require Member States to ensure that, under national law governing normal insolvency proceedings, deposit guarantee schemes rank *pari passu* with unsecured non-preferred claims, indicates that this is inconsistent with allowing Member States to establish depositor preference for deposits covered by deposit guarantee schemes and notes that six Member States have already established such a regime.

The Government's view of the new document

5.7 In his Explanatory Memorandum the Financial Secretary to the Treasury (Greg Clark) says that the Government broadly welcomes the ECB's opinion on the proposed Directive. Reminding us that the Government takes the view that this proposal should contribute towards reducing reliance on public support when a financial institution fails and help break the self-perpetuating link between the banking and sovereign crises, the Minister comments that:

- it is essential that all Member States equip their authorities with a common set of credible tools and powers to avert, and where necessary, manage the failure of a systemic institution in an orderly manner, especially in a cross-border context;
- the Government supports the inclusion in the draft Directive of recovery and resolution planning provisions and so welcomes the ECB's endorsement of the development of common support tools to manage the failure of financial institutions;
- the Government is, however, still carefully considering the implications of the proposed intra-group financial support provisions and notes the ECB's view that these arrangements may be difficult to implement;
- the Government supports the proposed set of minimum resolution tools, in particular bail-in, to allow resolution authorities to manage the failure of a financial institution in an orderly manner and it welcomes the ECB's endorsement of the bail-in tool;
- the Government considers that Member States should have appropriate resolution financing mechanisms and shares the ECB's opinion that resolution costs should in principle be borne by shareholders and creditors; and
- it shares the ECB's assessment that the proposed Directive is inconsistent with allowing Member States to prefer covered deposits under their national insolvency law.

The Minister's letter

5.8 With his letter the Minister responds to our request of July 2012 for information about the Government's considered view of the draft Directive, document (a), and developments

in negotiation of the proposal. He first draws our attention to the December 2012 European Council urging the Council and the European Parliament to agree on a Recovery and Resolution Directive before June 2013 and says this remains a priority piece of legislation, which the Government understands the Irish Presidency is looking to push forward in the first quarter of 2013. The Minister then gives us an update on key elements of the draft Directive, as follows.

Planning, preventative powers and early intervention tools

5.9 The Minister says that:

- the Government has continued to support the proposed recovery and resolution planning provisions, as well as the proposed preventative powers to remove identified impediments to resolution, as these are key foundations for any recovery and resolution framework; and
- it has, however, continued to question the need for some of the early intervention tools (intra-group financial support and special manager) and has raised concerns that their use may actually lead to greater distress within the financial institution facing financial difficulty.

Resolution tools

5.10 The Minister tells us that:

- the Government has broadly welcomed the proposed set of resolution tools, including the bail-in tool, to allow resolution authorities to manage failure of a systemic financial institution in an orderly manner;
- it has been working with EU partners to ensure that the resolution tools are usable, based on its recent experience of resolving financial institutions and that the design of the bail-in tool is credible; and
- there is general support for the inclusion of the tools in the Directive, but there are still technical challenges to overcome.

Role of the European Banking Authority (EBA)

5.11 The Minister says that:

- Member States, including the UK, have been carefully considering the proposed provisions that extend the EBA's role into resolution, as well as whether the proposed EBA binding technical standards (BTSs) go beyond that necessary to enhance the single market (that is, the principle of proportionality); and
- Member States are also evaluating whether some of the proposed BTSs should be removed, or where the provision relates to firm specific action, whether EBA guidance might be more appropriate.

Depositor preference

5.12 The Minister continues that:

- the Commission proposes to rank the UK's Deposit Guarantee Schemes *pari passu* with unsecured non-preferred claims in insolvency;
- this would limit any benefits that depositor preference would be able to provide (for example, reducing state liability during resolution); and
- the Government understands that there are a number of Member States that have also already introduced depositor preference to a varying degree and it is seeking to better understand their negotiating position.

Resolution financing

5.13 The Minister says that:

- the Government remains concerned that a resolution fund, which would be established under the European System of Financing Arrangements provisions of the draft Directive, would generate moral hazard and undermine the credibility of the resolution tools, including bail-in; and
- it considers that the Commission's proposal to oblige Member States to lend to each others' resolution funds, as well as its proposal to mutualise the cost associated with resolving a cross-border group could have significant fiscal risks.

Conclusion

5.14 **We are grateful to the Minister for the information he gives us about the draft Directive and his comments on the ECB views of the proposal. We note that there are, in the Government's view, a number of issues, some relevant to the ECB views, which may be disadvantageous for the UK or for the effective operation of recovery and resolution and which are yet to be addressed in Council working group negotiations. We are also aware that there is concern that the period to be allowed for transposition of the bail-in provisions is too long. So before considering the proposal again we should like to hear about further developments on these various issues in negotiation of the proposal by the Council. Meanwhile, the documents remain under scrutiny.**

6 Financial services: key information for retail investors and insurance mediation

(a) (34087) 12402/12 + ADDs 1–2 COM(12) 352	Draft Regulation on key information for investment products
(b) (34089) 12407/12 + ADDs 1–2 COM(12) 360	Draft Directive on insurance mediation (recast)

<i>Legal base</i>	(a) Article 114 TFEU; co-decision; QMV (b) Articles 53(1) and 62 TFEU; co-decision; QMV
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister's letter of 11 January 2013
<i>Previous Committee Reports</i>	(a) HC 86–xii (2012–13), chapter 9 (12 September 2012); HC 86–xvi (2012–13), chapter 13 (24 October 2012); HC 86–xxv (2012–13), chapter 20 (19 December 2012); (b) HC 86–xvi (2012–13), chapter 14 (24 October 2012)
<i>Discussion in Council</i>	Not known
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	(a) Cleared on 19 December 2012, but further information now requested (b) Not cleared; further information requested

Background

6.1 Packaged Retail Investment Products (PRIPs) allow retail customers exposure to a range of securities without requiring a direct holding in these securities. Examples of such products include investment funds, investment life insurance and structured products issued by banks. EU legislation already exists to protect those who invest in these products. But legal requirements on product transparency, sales and advice differ according to the legal form of the product and the distribution channel, making effective comparisons difficult for consumers.

6.2 In July 2012 the Commission presented this draft Regulation, document (a), to improve transparency in the investment market for retail investors. Currently disclosures for PRIPs vary according to the legal form a product takes, making effective comparisons difficult for consumers. The draft Regulation would ensure that retail investors receive short,

comparable and standardised disclosures, termed Key Information Documents (KIDs), whatever the investment product they were considering.

6.3 The draft Regulation has a number of specific aims. These are to:

- define what constitutes a PRIIP so as to ensure all relevant products are captured — the proposal includes personal pensions, but not workplace or occupational pensions, simple deposits or pure insurance;
- place responsibility for producing a KID on the investment product ‘manufacturer’;
- set out the form and content of KIDs so they are as harmonised as possible — it is proposed that a KID should use the principles introduced for the Key Investor Information Document for undertakings for collective investment in transferable securities (UCITS), which have been compulsory for UCITS since 1 July 2012;
- oblige the distributor to provide a KID before the sale;
- ensure Member States have effective complaints procedures for PRIIPs investors, including alternative dispute resolution (ADR);
- introduce harmonised sanctions for breaches of the PRIIPs rules;
- provide a transition period for UCITS of five years — the Key Investor Information Document has been introduced only recently and it would be disproportionate and disruptive to subject these providers to the proposed PRIIPs Regulation at this stage; and
- complement, rather than replace, existing disclosures set out in the Prospectus Directive (applying to securities offered to the public or admitted to trading on a regulated market) and the Solvency II legislation (applying to insurance).

6.4 We considered this proposal on a number of occasions and cleared it from scrutiny in December 2012 on the basis of a number of assurances we had received from the Government, including that “... we no longer have any doubts about the legal base of the proposals so the opt-in does not apply ...”.³⁸

6.5 Insurance mediation is the activity of advising on, or proposing or carrying out other work preparatory to, the conclusion of contracts of insurance, concluding such contracts, assisting in the administration and performance of such contracts, in particular in the event of a claim, and professional management of claims and loss adjusting.

6.6 In 2002, the Insurance Mediation Directive, Directive 2002/92/EC, was adopted. It aims to achieve a market throughout the EU for insurance intermediaries. Member States were required to implement the Directive by January 2005. The Directive required the Council and the European Parliament to assess some of its provisions every five years after its implementation. The review was greatly delayed as a result of the financial crisis.

38 See headnote.

6.7 This draft Directive, document (b), presented in July 2012, would recast (consolidate and amend) the Insurance Mediation Directive. The proposed Directive has a number of specific aims. These are to:

- ensure the same level of consumer protection will apply, regardless of the channel through which consumers purchase an insurance product, with an extension of the scope of the existing Directive to cover the direct sale of insurance — whether purchasing a product directly from an insurance undertaking or from an intermediary, the consumer would receive the same level of protection;
- ensure consumers are provided with clear information, in advance, about the professional status of the person selling the insurance product — rules would be introduced to address more effectively the risks of conflicts of interest, including disclosure of the remuneration received by sellers of insurance products; and
- make it easier for intermediaries to operate across borders of Member States, thus promoting the emergence of a real internal market in insurance services.

6.8 One specific proposal is related to ADR, which would impose requirements on the operation of the UK’s civil justice system, in terms of the operation of limitation and prescription periods and the availability of interim remedies

6.9 When we considered this draft Directive, in October 2012, we said that whilst efforts to improve the protection of customers of the insurance industry were to be welcomed, we noted the reservations the Government had about some aspects of the proposal. So we asked to hear, before considering the draft Directive again, about progress in addressing these points in the Council’s consideration of the issues. Meanwhile the document remained under scrutiny.

6.10 As for the matter of a JHA opt-in in relation to the ADR provisions we reminded the Government of our view that its insistence on applying the opt-in protocol in the absence of a Title V legal basis is without legal basis in the Treaties. Nonetheless, we presumed that it was the Government’s firm intention to opt into the draft Directive and, therefore, that this intention would be formally notified to Parliament in accordance with the procedure promised by the Minister for Europe (Mr David Lidington) in his Written Ministerial Statement of 20 January 2011.³⁹

6.11 These two proposals were presented as part of the Commission’s retail package that also included a draft Directive to amend the UCITS Directive.⁴⁰

The Minister’s letter

6.12 The Economic Secretary to the Treasury (Sajid Javid) writes now to tell us that “the UK formally opted in to this Directive and Regulation in accordance with Article 3 of

39 *Ibid.*

40 (34086) 12397/12 + ADDs 1–2: see HC 86–xii (2012–13), chapter 8 (12 September 2012), HC 86–xvi (2012–13), chapter 12 (24 October 2012) and HC 86–xxv (2012–13), chapter 19 (19 December 2012).

Protocol 21 to the Treaty on the Functioning of the European Union (TFEU) on 16 October [2012]”⁴¹.

6.13 The Minister explains that:

- the draft Directive and the draft Regulation contain proposals on ADR procedures, out-of-court procedures for resolving disputes;
- common forms of ADR are conciliation, mediation, adjudication and arbitration;
- the Financial Ombudsman Service is one of the largest consumer ADR providers in the UK;
- the provisions in question would oblige firms to participate in national ADR procedures, provided the procedure conformed to certain criteria;
- although the Government supports the obligation to participate, it does not agree with the specific criteria imposed;
- in addition, some of the criteria required in order to make participation by firms in ADR procedures mandatory, namely restrictions on the operation of limitation periods and the requirements for the availability of interim measures, give rise to questions about the legal base of the provisions;
- these criteria would require that any limitation or prescription period for bringing a civil claim would need to be suspended until the ADR was completed and consumers would have to be able to apply for interim measures to preserve their position in exceptional cases;
- because these criteria would impose requirements on the operation of the UK’s civil justice system, the Government believes they should be brought forward pursuant to Title V, and more specifically Article 81, TFEU;
- the Government’s policy is to insist on a Title V legal base for any measure containing JHA obligations, but if it is unsuccessful, to record its position by means of a minute statement;
- the Government’s preferred legal outcome is either to negotiate the JHA obligations out of the instrument, or to split it so that the JHA obligations are contained in a separate measure with an Article 81 legal base, to which the opt-in would clearly apply;
- many other Member States have supported the UK in arguing for the removal of the criteria that raise JHA issues; and
- at this stage of the negotiations the Government is optimistic that it will succeed in doing so.

41 This decision was announced to the House on 15 January 2013: see *HC Deb*, col. 29WS.

Conclusion

6.14 We note the Minister’s information about the UK’s opt-in to the draft Directive and the draft Regulation and the reasons for it. However, we are astonished that the House only heard about this matter three months after the event (and we note also that the Minister’s letter was only sent to us 11 days after he signed it). This hardly meets the spirit of the procedure promised by the Minister for Europe (Mr David Lidington) in his Written Ministerial Statement of 20 January 2011.

6.15 Moreover, we are confused by the present statement that the UK opted into the draft Regulation in October 2012 and the Minister’s statement to us in December 2012 that “... we no longer have any doubts about the legal base of the proposals so the opt-in does not apply ...”.

6.16 We should be grateful for an early explanation from the Minister of both the inordinate delay in notification of the opt-in and the apparent inaccuracy of the statement about the opt-in to the draft Regulation.

6.17 Additionally, we remind the Minister that we wish to hear, before we consider the draft Directive again, about progress in the negotiations in addressing the points (including the ADR issue) drawn to our attention previously. Meanwhile that document remains under scrutiny.

7 Financial services: alternative investment fund managers

(34599) 18038/12 + ADDs 1–2 —	Commission delegated Regulation No ... of 19.12.2012 supplementing Directive 2011/611/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision
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<i>Legal base</i>	Article 53(1) TFEU; co-decision; QMV
<i>Document originated</i>	19 December 2012
<i>Deposited in Parliament</i>	9 January 2013
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 24 January 2013
<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

7.1 Directive 2011/61/EU on alternative investment fund managers (AIFMD) establishes an EU-wide harmonised framework for monitoring and supervising risks posed by alternative investment fund managers (AIFMs) and the funds they manage (AIFs) and for strengthening the internal market in AIFs. The Directive contains provisions relating to the conduct of business, transparency and marketing and provides for cross-border managing and marketing of funds. It covers managers of the major types of fund, that are not already subject to EU regulation through the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive, including hedge funds, private equity funds, venture capital funds and real estate funds.

7.2 The Government is transposing AIFMD ahead of the July 2013 deadline for implementation.

The document

7.3 AIFMD makes provision for an extensive set of implementing measures in delegated acts and this Commission Regulation is being made under those provisions. The main elements of the Regulation are as follows.

Calculation of assets under management

7.4 AIFMs are required to calculate their total assets under management and the Regulation sets out a standardised approach for this. It also requires AIFMs to monitor the assets under management and covers action to be taken in the event of occasional breach.

Calculation of leverage

7.5 Many AIFMs increase exposure of the AIFs they manage, including through borrowing or the use of derivatives. AIFMD requires AIFMs to calculate, report and manage the leverage of their AIFs. The Regulation requires the use of two methods for calculating leverage — the ‘gross’ method and the ‘commitment’ method. The Regulation leaves open the possibility of the Commission adopting an additional ‘advanced’ method of calculating leverage on the basis of technical advice provided by the European Securities and Markets Authority.

Additional own funds and professional indemnity insurance

7.6 AIFMD requires AIFMs to hold additional own funds or professional indemnity insurance to cover potential liability claims in the event of professional negligence. The Regulation defines the liability risks and determines the conditions for determining the appropriate levels of own funds and professional indemnity insurance.

Operating conditions for AIFMs

7.7 The Regulation sets harmonised standards for the operating conditions set out in AIFMD:

- clarifying how AIFMs can be assessed to act honestly, with due skills, care and diligence, in the best interest of the AIFs, to treat investors fairly and to employ appropriate resources and procedures;
- setting out requirements for AIFMs' conflicts of interest policies;
- setting out requirements for AIFMs' risk management systems, including how the AIFMD requirement for a permanent risk management function, which must be functionally and hierarchically separated from operating units, is to be implemented;
- specifying in more detail requirements for a liquidity management system for AIFs other than unleveraged closed-ended AIFs, so that underlying liquidity risk can be monitored and managed, including how special arrangements for handling illiquid assets are to be managed;
- requiring AIFMs to consider liquidity limits where appropriate and conduct stress tests;
- setting out arrangements for ensuring the interests of firms that repackage loans into tradable securities and the AIFMs that invest in those securities are aligned, for example by requiring that the originator retains an economic interest in the securities; and
- setting out how these requirements are to be implemented, including arrangements that qualify as retained economic interest.

General organisational requirements

7.8 AIFMD has a general requirement for AIFMs to have appropriate human and technical resources for the proper management of AIFs. The Regulation sets out requirements, including responsibilities of senior management, audit and compliance function, separation of compliance and internal audit functions and systems to safeguard information and ensure business continuity.

Valuation

7.9 The Regulation sets out requirements for AIFM's valuation policies and how they are to be applied, ensuring they are applied consistently and contain a review process.

Delegation of AIFM functions

7.10 AIFMD allows AIFMs to delegate the performance of function to third parties provided that this is for objective reasons, for example, for reasons of efficiency to gain access to specialist skills, and that an AIFM does not delegate to the extent that it becomes a letterbox entity and can no longer be considered the manager of the AIF. The Regulation:

- specifies conditions under which the AIFM may delegate, and the circumstances in which the AIFM would have delegated its functions to the extent that it becomes a letterbox entity;

- provides rights to competent authorities to ensure the delegation is being carried out appropriately; and
- specifies arrangements for ensuring effective supervision and avoiding conflicts of interest.

Depositary

7.11 AIFMD requires appointment of a depositary to ensure cash flows are properly monitored, to provide oversight of the management of the assets and, where this is possible, to hold assets in custody. It provides that the depositary is liable for certain losses. The Regulation:

- contains detailed provisions about the obligations and rights of depositaries, which specify the activities depositaries must undertake to meet each of these obligations and which assets are to be held in custody;
- specifies due diligence obligations; and
- specifies how the loss of a financial instrument held in custody is defined and the liability of depositary for that loss — this includes liability of a depositary for loss in an unaffiliated third party and the extent to which the depositary may discharge liability for that loss.

Transparency requirements

7.12 AIFMD sets out requirements on AIFMs to report to regulators and investors, to allow for assessment of systemic risk and other risks. The Regulation:

- sets out minimum standards for reporting, including content and format, and, where appropriate, frequency; and
- specifies the threshold above which an AIF would be considered to be employing leverage on a substantial basis and hence be subject to enhanced reporting and oversight requirements.

Cooperation arrangements with third countries

7.13 AIFMD requires regulators to put in place cooperation arrangements with non-EEA regulators for the purposes of effective supervision. The Regulation sets out some aspects of the cooperation arrangements.

Exchange of information relating to potential systemic consequences

7.14 The Regulation specifies what information, as a minimum, should be exchanged between regulatory authorities.

The Government's view

7.15 The Economic Secretary to the Treasury (Sajid Javid) says that the Government is comfortable with much of the Regulation, which is very broad-ranging and informed by work by national regulators through the European Securities and Markets Authority. He comments that the measures in the Regulation should allow AIFMD to be implemented successfully, bringing the benefits of stronger investor protection, improved monitoring of systemic risk and opening up of the single market. The Minister quotes two examples approvingly:

- third country arrangements, where the Government considers most of the provisions relating to third country access, such as the regulations for cooperation agreements with third country regulators, to be appropriate and the basis for continuing trade with third countries; and
- operating conditions, where the Government considers many of the operating conditions, for example around liquidity management, to be appropriate in achieving their aims of ensuring standardised investor protection.

7.16 However the Minister continues that there are a number of areas in which the Regulation diverges from the European Securities and Markets Authority advice and where the Government believes they have the potential to impose some unnecessary cost and potentially restrict flexibility for the industry to meet investors' needs. He says these areas include a letterbox entity test, depositary provisions and leverage.

7.17 On a letterbox entity test the Minister says:

- that there is potential for the Regulation to be interpreted in an unduly prescriptive manner, which would limit the ability for AIFMs to delegate portfolio and investment management in the interests of efficiency, access to skills and other grounds; and
- the Government considers, however, that there remains scope for the Financial Conduct Authority to take a proportionate approach in application which prohibits true letterbox entities but does not impede legitimate business models.

7.18 The Minister says that the depositary provisions could impose a greater level of cost than is necessary to provide effective investor safeguards, noting as examples that:

- the Regulation requires depositaries to perform cash reconciliations, whereas this is a task best performed by AIFMs and verified by depositaries; and
- the Government considers the European Securities and Markets Authority's advice, that all collateral should be excluded from the scope of custody, to be appropriate, whereas the final text excludes only some type of collateral.

7.19 The Minister says that the Government would have preferred the Regulation to permit the advanced method for calculating leverage, which would allow regulators and investors a more nuanced understanding of AIF's exposure. He adds, however, that the opportunity for the Regulation to permit this in future upon further work by the European Securities and Markets Authority is welcome.

Conclusion

7.20 The Minister tells us that he will write to us again if the Government decides to oppose the Regulation. However, given the reservations about the Commission’s proposal that the Minister has drawn to our attention, we should like to hear, before considering this document again, about whichever outcome the Government decides on. Meanwhile the document remains under scrutiny.

8 Unified Patent Court

(33058)
11533/11
—

Draft Agreement on a Unified Patent Court and draft Statute

<i>Legal base</i>	—
<i>Department</i>	Department for Business, Innovation and Skills
<i>Basis of consideration</i>	Minister’s letter of 14 January 2013
<i>Previous Committee Reports</i>	HC 428–xli (2010–12), chapter 2 (9 November 2011); HC 428–xliii (2010–12), chapter 5 (7 December 2011); HC 428–xlv (2010–12), chapter 2 (20 December 2011); HC 1799 <i>The Unified Patent Court: help or hindrance?</i>
<i>Discussion in Council</i>	February 2013
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Cleared; further information requested

Unitary patents and the Unified Patent Court

8.1 The Unified Patent Court (UPC) is part of a package of measures designed to establish and enforce a unitary patent. It will offer the opportunity to obtain patent protection for new inventions across participating States from a single application, administered by one organisation. EU Regulations (implemented under enhanced co-operation) covering languages and establishing the concept of a unitary patent are also part of the package. These were cleared by the Committee in December⁴² before being adopted by the Council in the same month.

8.2 The UPC Agreement sets up a court common to the participating States as part of their judicial system and will eventually have exclusive jurisdiction concerning the infringement and validity of both European bundle patents (currently granted by the European Patent

42 HC 86–xxii (2012–13), chapter 14 (5 December 2012).

Office (EPO) according to the European Patent Convention (EPC)) and European patents with unitary effect.

8.3 Currently a company or individual seeking patent protection across Europe must register their patent in each individual state where it is to take effect (if granted centrally by the European Patent Office (EPO), these are known as “bundle patents”). They are also required to pursue any legal action to enforce the rights provided by the patent in the national courts of each State where the alleged infringement took place. A unitary patent (or “European patent with unitary effect”) by contrast will need to be registered just once (with the EPO) and is intended to confer simultaneous and homogeneous legal protection in all States who have signed up to the agreement.

8.4 The UPC will be comprised of a Court of First Instance, consisting of a central division and local or regional divisions, hosted by member states or groups of member states, and a Court of Appeal to be sited in Luxembourg.

Previous scrutiny

8.5 We conducted an inquiry into the draft Agreement establishing the UPC when it became clear from correspondence with the intellectual property professions that there was strong opposition to the proposals. In our Report⁴³ we drew the following conclusions from the evidence we received:

- we agreed with those who so strongly opposed the inclusion of Articles six to eight in the unified patent Regulation, giving the ECJ jurisdiction over the infringement of unitary patents;
- we recognised that a patent court which represents the traditions of 25 EU Member States, including Germany and Austria, would have to allow for bifurcation, but the probable consequences of this appeared to us to be so grave, for the UK in particular, as to question the validity of a unified patent court in the EU in the first place;
- the requirement for multinational panels of judges possessing the highest standards of competence in patent litigation was unrealistic. Several of the witnesses concluded that it would be impossible to train such a large number of judges, who do not have the relevant experience, to an acceptable standard. We had little reason to prefer the assurances of the Government to the contrary over the experienced views of patent lawyers;
- despite the Government’s insistence that “there is a very strong commitment from all those involved in negotiations that the patent and court system should be affordable for SMEs” and “you can be sure that the one thing the Department for Business is not going to be doing is wanting to make small and medium-sized businesses disadvantaged”, the patent professions remained unconvinced. We shared the concerns expressed by the professions that the UPC would be prohibitively expensive, and also took the view that the EU impact assessment needed to be urgently revisited;

43 HC 1799 (2010–12), *The Unified Patent Court: Help or Hindrance?* (25 April 2012).

- with regard to exclusivity and transitional provisions, we concluded that the UPC should not be given a monopoly over both unitary and European patents until its capabilities had been proved;
- the location of the Central Division would be crucial, as it would inevitably have significant influence on the practice and procedures of the Court, as well as bring significant economic advantages to the host city. Bringing the Central Division to London (already a centre of international arbitration) would both build the credibility of the Court and bring economic benefits to London. If the Central Division was located outside the UK, there would be far less requirement for the high level of patent expertise that currently existed in this country; and
- on supplementary protection certificates, both the patent professions and the Government seemed to agree that certain provisions were urgently required.

8.6 Our overall conclusions were as follows:

“Although the theory of a unitary patent and unitary patent court in Europe has long been thought desirable, the practice has long been elusive. The latest attempt appears, regrettably, to be a further example of this. Moreover, some of the criticisms raised by witnesses result from traits that are so ingrained in the operation of the EU that a legitimate question arises whether an effective unitary patent can ever be achieved within the confines of the EU’s internal legal order.

“We conclude overall that the draft agreement on the Unified Patent Court is likely to hinder, rather than help, the enforcement of patents within the European Union. This will particularly be so for SMEs, the main intended beneficiaries. Given our concerns, it is vital that the UK Government adopts a strong position reflecting the concerns of practitioners in final negotiations, as well as calling for the Central Division to be in London in order to mitigate the most damaging effects of a unitary EU-wide patent.”

8.7 Following the publication of the Report, we were gratified to be informed that the Prime Minister had secured a deal at the European Council in June last year to remove the UPC’s jurisdiction over the infringement of unitary patents, this having been one of the most vehemently expressed concerns of witnesses who provided evidence to our inquiry, and a central conclusion of our Report.

8.8 The Prime Minister also secured a deal at the European Council for an important part of the central division to be located in London. The seat of the central division will be in Paris, with specialist technology sections set up in London and Munich according to subject matter. The London section will deal with invalidity actions in the chemical and pharmaceutical fields. It will also deal with infringement actions in these fields, transferred from local or regional divisions. The local or regional divisions will handle infringement actions and will be set up at the request of participating States.

The Minister's letter of 14 January 2013

8.9 In his letter, sent at our request, the Parliamentary Under-Secretary of State for Business Innovation and Skills (Lord Younger) explains the latest substantive changes to the text of the Agreement:

- Article 5(1a) now states that the seat of the central division will be Paris with specialised sections set up in London and Munich. The Agreement has also been amended to include infringement provisions for unitary patents (principally in articles 14f, 14g and 14h) — previously the Agreement only included infringement provisions for European (bundle) patents. These changes implement the June European Council agreement;
- Another proposal under the Polish Presidency in December 2011 was the extension of the transition period during which patent owners may continue to use national courts for European bundle patents. This has been implemented in Article 58. The transition period has been extended from five to seven years with the possibility of the period being extended by another seven years;
- Also, the revision clause (Article 58d), has been changed to broaden the scope of the review;
- In addition, the Presidency has further clarified the position regarding Supplementary Protection Certificates (SPCs). In particular, Article 15 has been amended to make it clear that the UPC will have competence to hear disputes relating to infringement and revocation of SPCs. The transitional arrangements have also been amended to make it clear that applicants may opt out of SPCs granted on a European bundle patent; and
- The suggestion from the June European Council regarding the changes to the provisions around a defendant's right to request a transfer of an infringement case from a local division to the central division (if the defendant is domiciled within the European Union) are not included in the final text.

8.10 In all, the Government sees an effective patent litigation system as a crucial part of the overall package to deliver a business-friendly unitary patent. The UPC is required for the overall functioning of the unitary patent and is an important step in removing trade barriers between EU Member States and delivering growth for Europe. The Agreement has been revised to address a number of concerns from UK stakeholders and the current proposal is the best deal available, the Minister says.

Impact on UK law

8.11 The UPC aims to create a single legal system for patent protection in Europe. The Agreement sets out (at Articles 25–28) the provisions for the actions that constitute infringement. Decisions of the court will be based on: EU Law, the UPC Agreement, the EPC, other international agreements on patents and national law.

8.12 In order to make patent protection uniform across the participating States, each State signing the agreement will need to ensure that its laws are in compliance with the obligations under the Agreement and the Regulations.

8.13 The first instance Court will mostly be either a local or regional division. It will be possible to apply to set up local and or regional court divisions (not national courts). The Government's Intellectual Property Office (IPO) is considering different options regarding local and regional divisions.

8.14 The Ratification process will require amendments to national legislation to recognise the rights afforded to the owner of a unitary patent and the jurisdiction of the UPC. This will primarily affect the Patents Act 1977 (as amended). The IPO is exploring implementation options with officials in other Departments and with Devolved Administrations (on matters of justice).

Languages

8.15 There are a number of language provisions with the Court and its divisions. These include the operational language of the division, the language of proceedings, the language of court documents and the language of judgements. The provisions are set out in the related regulation and in the Court Agreement.

Entry into effect

8.16 The whole system (unitary patent and court) comes into force three months after the UK, France and Germany and ten other states have ratified the Agreement, but not before 1 January 2014. At that point, applicants for patents through the EPO will be able to ask for unitary coverage in all participating States (or as many as have ratified the agreement) at the grant stage.

8.17 It is unlikely that a sufficient number of States will have ratified the agreement by January 2014 to enable it to enter into force on that date. The Agreement is not yet signed and some States will have referenda before they can complete the process.

8.18 There will be a transitional period of seven years (from the entry of the agreement into force) during which individuals and companies with or seeking patent protection from the EPO using the "bundle" patent system, may opt out of the jurisdiction of the UPC and continue to use national courts for litigation instead. After five years, the Administrative Council will perform a consultation with users, on the basis of which the transitional period may be extended by a further seven years.

8.19 Further negotiations among the signatories will also be necessary to finalise the rules of procedure for the court, to set the level of patent and court fees and establish the governance mechanisms for the court. The Government will ensure that it continues to influence the operational details related to the Agreement and that the views of UK stakeholders are considered in the wider discussions. Separately, signatories will need to consider whether to establish local or regional divisions of the court.

Funding

8.20 The EU is not a party to the court agreement which means that there will not be an EU contribution to the set-up costs of the court. The Agreement provides that in the transitional period the Court will be supported by contributions from the Contracting Member States. Long term the Court is expected to be financed by its own financial revenues. The UK supports a system whereby the court will eventually be self-funded primarily through court fees.

8.21 Contracting Member States will be expected to subsidise the operating costs initially and at least in the transitional period, but the level of contributions is expected to fall as the court begins to recoup costs through court fees. The Government agrees that this model of funding is the correct method. The UK will also need to incur the additional costs of hosting part of the central division.

8.22 Exact details of the fee structures for the court are yet to be decided, so detailed information on potential funding or support during the transition phase is not available, however the costs for maintaining facilities for a local court and central division are not expected to exceed £1 million per court per annum.

8.23 Court fees will be fixed by an Administrative Committee composed of one representative from each member state, each with one vote. There are a number of related issues which impact on the affordability of the Court for users, for example, the costs to access the court. The UK will be actively involved in negotiations to finalise the remaining details over the coming months.

Cost Benefit

8.24 Creating a unified patents regime for Europe is an important element of the Government's growth strategy and a key recommendation from the 2011 Hargreaves review of Intellectual Property and Growth. The Court Agreement is one part of the package of measures necessary to establish this.

8.25 The European Commission's Impact Assessment of April 2011 considered key aspects of the unitary patent. The Government's own initial analysis of the unitary patent suggests that the option to obtain protection for new inventions across 25 Member States (through the unitary patent) would offer businesses savings in translation and validation costs (against the current system for protection in the same States) of up to £20,000 per patent.

8.26 A unified Court system will save businesses the expense of having to enforce patents in more than one State. Discussions on detailed arrangements, for example on funding and user charges, are continuing, so at this time it is not possible to provide an estimate for the savings to business from the court element of the package.

Conclusion

8.27 **We thank the Minister for his helpful letter. We note the changes to the UPC Agreement since we published our Report, *The Unified Patent Court: help or hindrance?*, on 3 May last year. The most significant change is the removal of the ECJ's**

jurisdiction over the infringement of unitary patents, which was a principal recommendation of our Report. We are also pleased to note that at least part of the Central Division will be located in London; that there is scope for extending the transitional provisions by a further seven years; and that Supplementary Protection Certificates will fall within the UPC's jurisdiction.

8.28 However, many of the concerns with the UPC still remain, in particular the effect of bifurcation on forum shopping, the training and quality of UPC judges, the prohibitive expense of using the unitary patent and UPC, particularly for SMEs, and the lack of an up-to-date Commission impact assessment (we remain doubtful at this stage of the benefits to business suggested by the Minister in paragraph 8.24 above).

8.29 Given that the negotiations on the UPC Agreement have now concluded, we are content to clear it from scrutiny. The Minister says, however, that:

“Further negotiations among the signatories will also be necessary to finalise the rules of procedure for the court, to set the level of patent and court fees and establish the governance mechanisms for the court. The Government will ensure that it continues to influence the operational details related to the Agreement and that the views of UK stakeholders are considered in the wider discussions. Separately, signatories will need to consider whether to establish local or regional divisions of the court.”⁴⁴

8.30 In the light of this, we would be grateful if the Minister would write to us at the conclusion of the negotiations on the rules of procedure summarising their content and explain to what extent they mitigate the outstanding concerns we list above, and to what extent they reflect the views of the stakeholders which the Government will be consulting.

44 See paragraph 8.19.

9 EU Counter-terrorism Action Plan for the Horn of Africa and Yemen

(34239) 13388/12 JOIN(12) 24	Joint Communication: <i>EU Counter-Terrorism Action Plan for the Horn of Africa and Yemen</i>
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<i>Legal base</i>	—
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister’s letter of 25 January 2013
<i>Previous Committee Reports</i>	HC 86–xxiii (2012–13), chapter 4 (12 December 2012) and HC 86–xiii (2012–13), chapter 6 (17 October 2012); also see (33288) —: HC 428–xl (2010–12), chapter 11 (2 November 2011)
<i>Discussion in Council</i>	January 2013 Foreign Affairs Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

9.1 In December 2009, under the Swedish EU Presidency, the EU adopted “An EU policy on the Horn of Africa — towards a comprehensive strategy”. Following its adoption, Member States called on the EU to build on this and ensure that its responses to the various threats from the region (particularly piracy) were coherent, cohesive and tackled the root causes of the issues.

9.2 For present purposes, the Horn of Africa is defined as the countries belonging to the Inter-Governmental Authority on Development (IGAD)⁴⁵ — Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, South Sudan and Uganda.

9.3 Subsequent developments, and the Committee’s consideration thereof, are set out in our Report of 2 November 2011,⁴⁶ culminating in the adoption in November 2011, via Council Conclusions, of the EU Strategic Framework for the Horn of Africa. It focuses on five key areas:

- building robust and accountable political structures;
- contributing to conflict resolution and prevention;
- mitigating security threats emanating from the region;

⁴⁵ The Intergovernmental Authority on Development (IGAD) in Eastern Africa was created in 1996, to assist and complement the efforts of the Member States to achieve, through increased cooperation: food security and environmental protection; promotion and maintenance of peace and security and humanitarian affairs; and economic cooperation and integration.

⁴⁶ See headnote: HC 428–xl (2010–12), chapter 11 (2 November 2011).

- promoting economic growth; and
- supporting regional economic cooperation.

The Joint Communication

9.4 This Joint Commission/High Representative (COM/HR) Action Plan will implement the counter-terrorism strand of this Framework, taking advantage of (as they put it) the current window of opportunity to seek to identify counter-terrorism efforts that can contribute to achieving tangible progress towards several of these goals, while emphasising the crucial nexus between development and security and the critical connection between the Horn of Africa and Yemen.

9.5 The COM/HR say that their Action Plan also recognises the importance of the overarching relationship between the EU and the African Union, the EU's support for the African Union's continent-wide activities in counter-terrorism and the specific support given by the EU to AU led actions to restore security to the Horn of Africa, in particular the African Union Mission in Somalia (AMISOM). Their aim is:

“to promote local ownership and security by linking counterterrorism efforts to regional development, while strengthening social and political institutions in partnership with national governments in the Horn and in Yemen and regional institutions, as well as in coordination with other international actors such as the UN (implementation of the UN Global Counter-Terrorism Strategy).”⁴⁷

9.6 Their detailed proposals are set out in our Report of 17 October 2012.⁴⁸ The Minister for Europe (Mr David Lidington) said that international concern over instability in the region, as highlighted by the series of international conferences on Somalia, begun in London in February 2012, demonstrated the need for the EU to have a comprehensive and cohesive CT policy for the region. He thought that, in practice, the action plan should help to support and “de-conflict the activity of the EU and Member States in developing CT capability and strengthening human rights and the rule of law in the region”, and also be a useful tool for communicating with other multilateral organisations, such as the United Nations, Global Counter-Terrorism Forum and Financial Action Taskforce, in order to direct funding towards agreed priorities. He also said that the Commission had not yet consulted Member States collectively on the Action Plan, although it was originally proposed by the Danes with UK support in late 2011 and the substance remained largely unchanged. He was keen to see the Plan implemented, “as it outlines EU activity in areas where we believe the EU can play an important role in supporting reform, in particular: delivering support to wider law enforcement reform; improving border controls; and driving forward wider security sector reform in the region.” He would also welcome the proposed activity on countering terrorist financing and violent extremism.

47 In 2006, for the first time, all Member States of the United Nations agreed on a global strategy to coordinate their counter-terrorism efforts. The Strategy contains recommendations in four key areas: tackling the conditions conducive to the spread of terrorism; preventing and combating terrorism; building countries' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard; and ensuring respect for human rights for all and the rule of law while countering terrorism. For full information, see <http://www.un.org/en/sc/ctc/action.html> and www.un.org/terrorism.

48 See headnote: HC 86–xiii (2012–13), chapter 6 (17 October 2012).

Implementation of the plan would, he said, complement targeted work by the UK and others to help bring security and stability to the wider region in support of broader regional EU objectives.

9.7 With regard to the *Financial Implications*, the Minister said that the European Commission had set aside €8 million of funding for implementation of the action plan under its Instrument for Stability.⁴⁹

Our assessment

9.8 The background suggested that an Action Plan as proposed by the Commission and the High Representative was desirable. However, whether or not it would be seen in the same light by the prospective partners was less clear, since there was no mention of any consultation with them, either individually or collectively, which we found surprising, given the emphasis correctly placed on local ownership. We were also unclear as to what the Minister meant when he said that the Commission had “not yet consulted Member States collectively on the Action Plan”. The Minister was commendably keen to see implementation begin. But there was a disquieting lack of clarity not only about local and regional “buy-in” but also as to whether other Member States shared what appeared to be a COM/HR and Danish/UK vision.

9.9 We therefore asked the Minister to clarify these ambiguities, and to tell us how he saw the Action Plan being taken forward before the December Foreign Affairs Council meeting at which he expected relevant Conclusions to be adopted.

9.10 In the meantime, we retained the document under scrutiny.⁵⁰

Minister’s letter of 29 October 2012

9.11 In his letter of 29 October 2012 to us, the Minister agreed that the questions raised about the procedure for taking forward the Action Plan and for achieving local and regional buy-in were important. He noted that, at the External Counter-Terrorism Working Group, COTER, his officials, supported by other Member State representatives, had already voiced concerns both about the delay in presenting the draft text to COTER but more importantly about its publication on the Commission’s website before consultation with the Horn of Africa states included in the Plan. EU scoping studies in the Horn of Africa region were underway, with experts (including from the UK) meeting local and regional organisations; their findings and Member States’ views would be incorporated in the next draft of the Action Plan, ahead of discussion in November by the Political and Security Committee (PSC)⁵¹ and endorsement at November’s Foreign Affairs Council. The EAS planned to begin informal consultations with the Horn of Africa states included in the

49 The Instrument for Stability (IfS) is the financial instrument designed to address a number of global security and development challenges in complement to geographic instruments. In force since 1 January 2007, it replaced several instruments in the fields of drugs, mines, uprooted people, crisis management, rehabilitation and reconstruction. See http://ec.europa.eu/europeaid/how/finance/ifs_en.htm for full information on the IfS.

50 See headnote: HC 86–xiii (2012–13), chapter 6 (17 October 2012).

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

Plan immediately; the PSC would determine how the Horn of Africa states were to be formally approached. It remained the Minister's view that the buy-in of these states was crucial if the Plan was to be successful.

9.12 Our counterparts in the Lords' EU Committee had also raised some questions, in response to which the Minister explained that the first output from each study would be a mapping exercise of other donor activity. As the EU was in the earliest stages of designing its future counter-terrorism programmes in the Horn of Africa, it was too early to say at present what form the coordination with other donors would take. The Minister was very keen to see the EU step up its counter-terrorism activity in the region: but any activity resulting from the Plan must be complementary to, and not duplicate, ongoing or planned activity by Member States or other actors.

9.13 The Minister also wrote about the role of the African Union Mission in Somalia (AMISOM), noting the Government's full support for its efforts to create secure space in Mogadishu and southern Somalia and welcoming the advance of AMISOM and Somali forces, increasing the area recovered from Al Shabaab control. AMISOM had played a key role in helping to create the space and stability that had enabled political progress in Mogadishu, including the end of the transitional period. AMISOM was authorised through UN Security Council Resolution 2036 for up to 17,731 uniformed personnel to reduce the threat posed by Al-Shabaab and other armed opposition groups in four sectors of south central Somalia in order to establish conditions for effective and legitimate governance across Somalia. AMISOM received funding through the UN logistical support package, the EU Africa Peace Facility, the UN Trust Fund for AMISOM and through bilateral support. In 2011, the UK had contributed approximately £16 million in bilateral support to AMISOM, on top of its support through the UN and the EU; and had also played a leading role in ensuring that the Mission had the means to operate effectively by leading UN Security Council Resolution negotiations on AMISOM in the UN. In addition, the UK provided some support to pre-deployment training for AMISOM troops and a small advisory team providing in-country support and mentoring to AMISOM in areas such as stabilisation, strategic communications and medical advice.

Our assessment

9.14 We shared the Minister's concern that the Commission had posted this Action Plan on the internet before consulting those Horn of Africa states who were supposedly at its centre, and without whose commitment it would fail, and endorsed his view that their "buy-in" was crucial.

9.15 We also noted that it was plain that this Action Plan is but the first of several. While there might be many good reasons for the EU stepping-up its counter-terrorism activity outside the EU, doing so — in an area where such activity by nation states raises many controversial issues — required proper scrutiny. We hoped that the use of the verb "invite", with reference to the Commission obtaining Member States' views, was diplomatic politesse, though given the way it had acted thus far, we could not be sure: along with the countries concerned, Member States should likewise be at the centre and as of right, not by invitation. And the information made available to national parliaments should reflect this. As well as a further update after the November Foreign Affairs Council, we

asked for the Minister’s thoughts on how this can be ensured. At the very least, we presumed that he would agree with us that all such Action Plans should, like this one, be in the form of depositable documents, so as to enable proper prior parliamentary scrutiny.

9.16 In the meantime, we continued to retain the Action Plan under scrutiny.⁵²

9.17 On 29 November 2012, the Minister responded to further separate but related questions from our counterparts in the Lords’ EU Committee about the findings of the “scoping visits”. He explained that, to set the scoping studies into context, the overall objective of the exercise was the identification and formulation of future EU CT programmes in the region. These programmes would focus on two themes: countering violent extremism; and, regional law enforcement and countering terrorist financing. The scoping studies for the two programmes would be carried out over five and ten months respectively. The final reports, which would be delivered to the European Commission, would include a comprehensive and detailed outline of potential activities, together with draft Terms of Reference for the future EU programmes. The Minister was engaging closely with the experts taking part in the studies, both in London and through UK Posts overseas, to ensure that UK views were understood and reflected.

Minister’s letter of 6 December 2012

9.18 In his letter to us of 6 December 2012, the Minister said that the timetable had slipped to enable “a more comprehensive PSC discussion of a number of issues relating to the Horn of Africa region”, and that his officials continued “to seek clarity on the process going forwards and urge speed.” Despite his earlier concerns, he was now confident that UK views, together with those of other Member States, were being taken into account; with the Plan itself still in draft form, there would be further opportunities to comment.

9.19 Regarding parliamentary scrutiny, the Minister said:

“Action Plans aren’t defined in the Treaties. As a result, it is a term that can be used for a working document which would not usually be subject to scrutiny, or a more strategic document that would be more likely to be caught by the scrutiny process. The type of document that is appropriate is therefore likely to vary depending on its objective, and the subject area. However, we are aware of the Committee’s interest in this issue, and are committed to ensuring that Parliament has oversight of EU activities.”

9.20 The Minister concluded by expressing the hope that he had answered the Committee’s questions “to the best of my ability at this stage in the process”.

Our assessment

9.21 The answer was: “up to a point”. For example, the Minister still had nothing to say about how and when local partners were to be brought into the discussions.

⁵² See headnote: HC 86–xx (2012–13), chapter 8 (21 November 2012).

9.22 Also, whether or not Action Plans are defined in the Treaties was, we considered, a red herring — any Minister may deposit whatever he or she wishes to. The only practical problem would be if the document were to be *limité*; even then, the Minister can provide a summary to the Committee, rather than depositing the document. In short, such Action Plans (whether in a clearly depositable document, like this one, or in some other form) could be scrutinised if the Government was genuinely “committed to ensuring that Parliament has oversight of EU activities”, as the Minister said he was in his letter.

9.23 The fact that there were to be further EU counter-terrorism programmes in the region, aimed at countering violent extremism and building regional law enforcement capacity and countering terrorist financing, underlined all the more the need for proper, prior parliamentary scrutiny before decisions were taken, and of the subsequent outcomes. We therefore looked forward to further information in due course about the scoping studies.

9.24 In the meantime, we looked forward to hearing further from the Minister about the outcome of the PSC discussions and on the involvement of partner countries, before the Action Plan was endorsed; and continued to retain it under scrutiny.⁵³

The Minister’s further letter of 25 January 2013

9.25 The Minister says that the PSC approved the EU’s Counter Terrorism Action Plan for the Horn of Africa on 15 January, which he expects “to be wrapped up in wider Council Conclusions on the Horn of Africa, to be endorsed by the Foreign Affairs Council on 31 January.” He explains that the *Restreint* security classification prevents him from formally depositing the text of the Action Plan, but says that its content “is virtually identical to the Commission and High Representative’s Joint Communication to the Council” that he deposited along with his Explanatory Memorandum of 27 September 2011. As the substance remains largely unchanged from the original draft Plan proposed by Denmark, with UK support, the Minister professes himself delighted with the outcome, and hopes that the Committee will now feel able to clear it from scrutiny.

9.26 The Minister also says that, now that the Plan has been approved by the PSC, EU delegations in country will begin informal consultations with their host governments; and the EEAS will use the next meeting of the Global Counter Terrorism Forum’s⁵⁴ Horn of Africa Working Group in Addis Ababa on 5–6 March to begin formal consultations.

9.27 The Minister concludes thus:

53 See headnote: HC 86–xxiii (2012–13), chapter 4 (12 December 2012).

54 The Global Counterterrorism Forum (GCTF) was launched officially in New York at the level of foreign ministers on 22 September 2011. Turkish Foreign Minister Ahmet Davutoglu and U.S. Secretary of State Hillary Clinton chaired the event. The 30 founding members of the GCTF are: Algeria, Australia, Canada, China, Colombia, Denmark, Egypt, the European Union, France, Germany, India, Indonesia, Italy, Japan, Jordan, Morocco, The Netherlands, New Zealand, Nigeria, Pakistan, Qatar, Russia, Saudi Arabia, South Africa, Spain, Switzerland, Turkey, the United Arab Emirates, the United Kingdom, and the United States. See <http://www.thegctf.org/web/guest/home>.

According to the US State Department, the GCTF will provide a unique platform for senior counterterrorism policymakers and experts from around the world to work together to identify urgent needs, devise solutions and mobilize resources for addressing key counterterrorism challenges; and aims to increase the number of countries capable of dealing with the terrorist threats within their borders and regions. In addition to the adoption of the GCTF’s founding political declaration and remarks from GCTF Foreign Ministers, the launch included the announcement of two deliverables — one on the rule of law and one on countering violent extremism — thus highlighting the GCTF’s action-oriented focus from the outset. See <http://www.state.gov/j/ct/gctf/index.htm>.

“In the meantime, we continue to engage closely with the experts taking part in the scoping studies, whose main output will be draft Terms of Reference for the future EU programmes in the Horn of Africa on countering violent extremism, terrorist financing and regional law enforcement. I appreciate the interest that your Committee has taken in this issue and would be happy to update you again, as part of any further correspondence, when I have more information.”

Conclusion

9.28 We now clear the draft Action Plan.

9.29 In so doing, we make the following observations:

- we continue to find it extraordinary that given its aim — “to promote local ownership and security” — it is only after the Action Plan has been first published on the internet and subsequently approved that even informal consultations will begin with prospective partner countries;
- the “scoping studies” are presumably at least in part a recognition that the way forward from now on is to engage with those prospective partner countries at the outset;
- the outcome of these studies and the programmes that they are intended to establish — countering violent extremism, terrorist financing and regional law enforcement — are now of even greater political interest, not only in view of the adoption of the EU Sahel Strategy but also of recent developments in Mali and Algeria;
- that being so, we welcome the Minister’s offer of further updates about these future programmes; and
- we rely upon him to ensure that all such future Action Plans are likewise produced as Joint Communications, and thus subject to the prior parliamentary scrutiny that their political importance requires.

10 The EU and the Maghreb

(34612) 5118/13 JOIN(12) 36	Joint Communication: <i>supporting closer cooperation and regional integration in the Maghreb: Algeria, Libya, Mauritania, Morocco and Tunisia</i>
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<i>Legal base</i>	—
<i>Document originated</i>	17 December 2012
<i>Deposited in Parliament</i>	14 January 2013
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 28 January 2013
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	31 January 2013 Foreign Affairs Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

10.1 The Arab Maghreb Union/Union Du Maghreb Arabe (AMU/UMA) was created on 17 February 1989 at a meeting in Marrakesh of Heads of State of Algeria, Libya, Mauritania, Morocco and Tunisia. The main institutions are:

- the Council of Heads of State (last session in 1994);
- the Council of Foreign Ministers;
- the Steering Committee;
- the Justice Court: two members per country, to settle disputes between parties from member countries;
- Maghreb Advisory Chamber: with 30 MPs per country;
- Council of Ministers of Interior, Human Resources, Infrastructure, Economy and Finances, and Food Security;
- General Secretariat: established permanently in Rabat in 1992; Member States contribute on equal terms to its budget; the current Secretary General is Mr Habib Ben Yahia.

10.2 The fact that the AMU last met at Head of State level nearly 20 years ago hints at the political disputes that have hindered its development, particularly over the issue of Western Sahara⁵⁵ and during the Qadaffi regime in Libya.

⁵⁵ Western Sahara, formerly the Spanish colony of Spanish Sahara, is a disputed territory claimed by both the Kingdom of Morocco and the Polisario Front. Its legal status is, according to the United Nations, a non-decolonized territory and is included in the United Nations List of Non-Self-Governing Territories. Since the Madrid Accords of 1975, part

The Joint Communication

10.3 In its introduction, the Commission notes that the peoples of the Maghreb have been at the forefront of the historic events of 2011 and, more than in any other region within the Arab world, have embarked on a long process of change and reform. The European Union has, the Commission says, a major interest in the success of such democratisation and modernisation processes.

10.4 In the course of the past year, the Commission says that there has been renewed impetus from the countries of the Maghreb towards closer cooperation between them. This movement — which the Commission describes as still tentative and yet to translate into comprehensive steps — is “based on the recognition that the objectives of promoting prosperity, stability and democratic transformation at the national level cannot be fully realised in the absence of deeper relations between the countries of the Maghreb.”

10.5 The Commission says that the main purpose of this Communication is to set out ways in which the European Union might support closer cooperation between the countries of the Maghreb, drawing on its own extensive experience of integration and given its interest in the region as a neighbour and key partner for the five countries concerned. By doing so the Commission and the High Representative of the Union for Foreign Affairs and Security Policy (High Representative) seek to encourage on-going efforts by Maghreb partners to deepen cooperation at the level of the Maghreb and accompany them in this process. A stronger and more united Maghreb will, the Commission says, help address common challenges, such as instability in the Sahel, energy security, the need to create jobs and fight climate change: “These represent historic opportunities to deepen our partnership”.

10.6 More broadly, the Communication is seen as part of the overall EU response to the changes in the southern neighbourhood, and is intended to complement, not replace, the range of measures that the EU developed in the 2011 Communications that established a Partnership for Democracy and Shared Prosperity and set out a renewed approach to the European Neighbourhood Policy — both of which highlighted the importance of greater south-south (and sub-regional) integration as complementary to other bilateral and regional initiatives. The present Communication is also said to build on the Commission Communication, “Increasing the impact of EU development policies: an Agenda for Change”, described as “the Commission’s revised policy for a results-oriented use of external assistance funding”.

10.7 The Commission stresses that the impetus for change and the decisions as to how integration might best be achieved lie solely with the countries of the Maghreb themselves; and that, consequently, the offer set out in the Communication:

“is made in a spirit of solidarity and partnership at a critical moment in the on-going debate within the Maghreb concerning the pace and depth of integration at the sub-regional level. Nonetheless, while the proposals here could bring benefits to the

people of the Maghreb region as a whole, they could also be beneficial if developed on a more limited bilateral basis or in an asymmetric manner across the region.”

10.8 The Commission then reviews the various challenges facing the Maghreb, their implications and how the EU might develop existing relations and thereby help the Maghreb countries address those challenges, for example:

- all are undergoing democratic reforms;
- all suffer from weak growth, poverty and unemployment; there is an estimated need to create 1.8 million jobs by 2015 and 7.8 million by 2030; the agriculture sector needs to produce more and better; none of the Maghreb economies is genuinely diversified and based on a vibrant private sector;
- terrorism and international crime issues are of paramount concern in the region and beyond into the wider southern neighbourhood as well as the Sahel; Al Qaida in the Islamic Maghreb (AQMI) has brought together a network of terrorism notably in the Maghreb and in Mali;
- there are many challenges in the environmental sphere and in the exploitation of natural resources, and a vulnerability to man-made and natural disasters;
- migration and mobility play a key role in the EU’s relations with the Maghreb countries;
- stronger regional trade integration among the Maghreb countries, coupled with the establishment of deep and comprehensive free trade areas between Maghreb partners and the EU, would be mutually beneficial; and
- deepening the long-standing energy partnership (oil and gas trade, pipelines, the development of hydrocarbons, electricity interconnection), starting with renewable energy, enhanced energy efficiency and the development of an integrated electricity market, benefitting both parties.

10.9 Against this background, the Commission suggests a large number and wide range of measures of cooperation in all these areas. It also argues that there is a need for the various regional organisations and structures to be re-energised in order to meet common challenges, highlighting the proposed forthcoming Arab Maghreb Union Summit; the Union for the Mediterranean; and the so called “5+5” grouping (Algeria, France, Italy, Libya, Malta, Mauritania, Morocco, Portugal, Spain and Tunisia).

10.10 In conclusion, the Commission says that its proposals demonstrate the EU’s support for and direct interest in closer integration in the Maghreb. Strengthening bilateral relations between the EU and countries of the Maghreb can support this objective — albeit indirectly — through greater convergence of norms, regulations and policies: but progress in integration will depend first and foremost on the domestic efforts of partner countries; efforts at a Maghreb-wide level are needed to create real impetus in this field.

10.11 The Commission and the High Representative propose to launch a high level dialogue between the EU and the Arab Maghreb Union on these proposals. They also look forward to discussing these proposals with EU Member States and other EU

institutions in order to ensure a joined-up approach. They will also consult European and Maghreb stakeholders, including civil society representatives and business, on them. They also propose to ensure that these issues are addressed in the regular political dialogues which take place with the countries of the Maghreb. Through such exchanges, the Commission and the High Representative “hope to make a valuable continuing contribution to the developing debate concerning integration in the Maghreb”.

The Government’s view

10.12 In his Explanatory Memorandum of 28 January 2013, the Minister for Europe (Mr David Lidington) describes the Maghreb region as poorly integrated, noting that the estimated cost of this lack of integration is 1–2% of the region’s GDP, and describing the closed border between Algeria and Morocco, which together account for approximately 66% of Maghreb GDP and 77% of the region’s population, as a key factor.

10.13 More recently, the Minister says, focus on internal reform priorities in the Maghreb countries, such as constitutional change, has left little capacity for countries to pursue this initiative more fully.

10.14 Meanwhile:

“the UK has long viewed regional cooperation as beneficial for the region. The growing economies in the region and improved security would support the UK’s objectives on the Arab Spring and further our security, migration and prosperity agendas in the region in line with our Foreign Policy Priorities. More recently, events in Algeria demonstrate the need for a regional focus on security cooperation.

“UK engagement in support of Maghreb integration has so far focused on the economic elements, but this communication also supports the development of Maghreb cooperation in the areas of security and of managed migration. One of the initiatives involved a UK-hosted Wilton Park conference on the Maghreb Economy which brought together Ministers, senior officials and economic experts from the five Maghreb states (July 2012).

“Maghreb countries have publicly communicated a will to further this initiative and the EU is a key partner in our engagement to provide effective support. There has been small progress on organising the next Arab Maghreb Union (AMU) summit in Tunisia to bring together leaders from the Maghreb states. Recent high level engagement with Maghreb countries established their priorities to be building stability and security within their borders before securing movement on Maghreb integration. But we judge that Maghreb integration could build stability in the region.

“The UK believes the EU can play an important role in cementing cooperation by building on the focus on supporting democratic reforms in the countries. Priority areas for the UK include security and prosperity — with regard to prosperity this is

in an area where the UK's G8 Presidency could play a valuable role, including through the Deauville Partnership.”⁵⁶

Conclusion

10.15 **This is a non-legislative proposal that raises no other questions in and of itself. However, we consider that it should nonetheless be drawn to the attention of the House.**

10.16 **The Commission and High Representative's proposals are wide-ranging and arguably over-ambitious, especially given the central need for the Maghreb countries to want to move in this direction and the history of AMU cooperation thus far. But as recent events in Mali and Algeria have served to illustrate, there can be little doubt that it is in the UK's as well as the EU's interests for the effort to be made, particularly at this time of flux. We can but wish the exercise well.**

10.17 **We now clear the document.**

11 EU restrictive measures against Tunisia

(34629)	Council Decision amending Council Decision 2011/72/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia
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<i>Legal base</i>	Article 29 TEU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 22 January 2013
<i>Previous Committee Report</i>	None; but see HC 428–xlviii (2010–12), chapter 24 (25 January 2012); (34392) — and (34391) 15925/12: HC 86–xx (2012–13), chapter 21 (21 November 2012)
<i>Discussion in Council</i>	31 January 2013
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

11.1 The full background to the measures in question is set out in our previous Reports. The following is a brief summary.

⁵⁶ The Deauville Partnership, announced at the G8 meeting under the French Presidency in May 2011, supports the transition process in the Middle East and North Africa. The Deauville Partnership involves the G8 countries and Tunisia, Egypt, Jordan, Morocco, Libya, Kuwait, Qatar, Saudi Arabia, Turkey, the UAE and international financial institutions.

Council Decision 2011/72/CFSP and Council Regulation (EU) 270/2011

11.2 In January 2011, following major protests across the country, then President Ben Ali resigned and fled to Saudi Arabia. The new Tunisian Government subsequently requested that EU Member States instigate an asset freeze against the former President, his wife, family members and others, whilst investigations into the alleged corruption of the former regime were pending.

11.3 The Minister for Europe (Mr David Lidington) described the priorities of the new Tunisian transition government as “to re-establish order, to set the base for the democratisation of society and of the political system, and to address the economic and social problems which were at the root of the popular uprising”, going on to say that it was “of strategic importance that the UK supports that emerging democratisation process from the outset”, and that one of the ways in which the Government could do this was “by supporting the anti-corruption activities of the transitional Government.”

11.4 It was against this background, the Minister said, that the EU had proposed to adopt a Council Decision:

“in order to put in place a mechanism by which to freeze misappropriated assets. The effect of this will send a positive message to the interim Tunisian Government of support, whilst ensuring the uniform and consistent application of the asset freeze across the EU. However, the asset freeze will not enable Member States to seize any assets deemed to have been corruptly obtained, or return them to the Tunisian State. Further action, either through the EU, or domestically, will need to be taken in order to put such measures in place.”

11.5 The Minister also explained:

- it would be necessary to adopt an EU Council Regulation in order to give effect to the asset freeze;
- the Regulation would be directly applicable in UK law, although domestic legislation is required for enforcement measures, and to create penalties, in each EU Member State; and
- the procedures for designating individuals subject to the asset freeze complied with fundamental rights, i.e., individuals could be listed only where evidence existed that they were engaged in the activities listed under Article 1 of the Council Decision, and would be able to challenge their listing before the General Court of the European Union.

11.6 The Council Decision was adopted at the Foreign Affairs Council on 31 January 2011 as Council Decision 2011/72/CFSP.⁵⁷

11.7 In his Explanatory Memorandum of 19 January 2012, the Minister recalled the EU sanctions measures against individuals that included the former President, his wife, family members and close associates.

57 OJ No. L 28, 2.2.11, p.62. <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:028:0062:0064:EN:PDF>.

11.8 He continued his comments as follows:

“Investigations into the alleged corruption of individuals listed in the sanctions measures are ongoing in Tunisia.

“Over the past year, Tunisia has made impressive progress in its transition to democracy. Tunisia’s first democratic elections took place on 23 October and the new three-party coalition government was sworn in on 24 December. Addressing the corruption of the previous regime will continue to be a priority for the new administration.

“The imposition of a uniform and consistent asset freeze across the EU sends a strong message of support for efforts to tackle the corruption of the previous regime and reclaim stolen assets. However, the asset freeze does not enable Member States to seize any assets deemed to have been corruptly obtained, or return them to the Tunisian State. Further action through the criminal justice system is required before such measures can be taken. The EU has offered technical assistance to the Tunisian authorities to ensure that they fully understand the legal procedures that must be followed in order to secure return of frozen assets.”

11.9 Though the extension of these measures raised no questions, we reported it to the House because of the interest in developments in north Africa in the aftermath of the “Arab Spring”.⁵⁸

The further draft Council Decision

11.10 This draft Council Decision extends Council Decision 2011/72/CFSP until 31 January 2014.

The Government’s view

11.11 In his Explanatory Memorandum of 22 January 2014, the Minister for Europe (Mr David Lidington) says that, “over the past two years, Tunisia has continued to make impressive progress in its transition to democracy, with addressing the corruption of the previous regime continuing to be a priority for the new administration; but that, in a post-revolutionary environment, this is inevitably a slow process.”

11.12 The Minister continues his comments as follows:

“The asset freeze does not itself enable Member States to seize any assets deemed to have been corruptly obtained, or return them to the Tunisian State. Further action through the criminal justice system is required before such measures can be taken. The conditions necessary to facilitate the lifting of restrictive measures imposed on persons under Council Decision 2011/72/CFSP have not yet been achieved, however the EU has offered technical assistance to the Tunisian authorities to ensure that they fully understand the legal procedures that must be followed in order to secure return of frozen assets. We therefore support the aspiration to extend the current restrictive

58 See headnote: HC 428–xlvi (2010–12), chapter 24 (25 January 2012).

measures to allow investigations into the alleged corruption of listed individuals to be completed and ensure that the structures and processes in Tunisia are in place to return misappropriated assets to their rightful owners.

“The imposition of a uniform and consistent asset freeze across the EU sends a strong message of support to Tunisia for its efforts to tackle the corruption of the previous regime and reclaim stolen assets, as well as supporting the overall policy response to the Tunisian Government’s political transition and economic reform.

“Extending the Tunisian measures will also have an impact on HMG’s position on the restrictive measures on Egypt, which also concern assets of former regime members, believed to have misappropriated Egyptian State funds. The extension of the Tunisian measures will make it less likely that restrictive measures on members of the former Egyptian regime will be lifted in the EU when the regime comes up for renewal in March 2013. This protects HMG’s efforts to support the Egyptian judicial process and assist the Egyptians in the repatriation of misappropriated State funds.”

Conclusion

11.13 The renewal of these measures raises no questions in and of itself. But we are reporting it to the House nonetheless because of the level of interest in developments in “the new Tunisia”, and because it illustrates how the EU is endeavouring, in no doubt challenging circumstances, to help a new regime to develop a law-based approach that, if it can be developed in this sensitive area, will undoubtedly have a much wider positive spin-off.

11.14 We now clear the document.

12 EU co-financing for actions in the field of asylum and immigration

(34264) 14123/12 COM(12) 526	Draft Decision of the European Parliament and of the Council amending Decision No 573/2007/EC, Decision No 575/2007/EC and Council Decision 2007/435/EC with a view to increasing the co-financing rate of the European Refugee Fund, the European Return Fund and the European Fund for the Integration of third country nationals as regards certain provisions relating to financial management for certain Member States experiencing or threatened with serious difficulties with respect to their financial stability
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<i>Legal base</i>	Articles 78(2), 79(2) and (4) TFEU; co-decision; QMV
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister's letter of 21 January 2013
<i>Previous Committee Report</i>	HC 86–xvi (2012–13), chapter 2 (24 October 2012)
<i>Discussion in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background and previous scrutiny

12.1 The purpose of the draft Decision, which is described in our Sixteenth Report of 24 October 2012, is to enable certain Member States experiencing liquidity problems as a result of the economic and financial crisis to request an increase of up to 20% in the contribution made by the EU to projects which form part of their national programmes for implementing the European Refugee Fund, the European Return Fund, and the European Fund for the Integration of third country nationals, with a consequent reduction in their national contribution. The change proposed would be budget neutral, since it would not affect the distribution of Funds between Member States or the annual allocation of funding for each Member State.

12.2 The draft Decision is subject to the UK's Title V opt-in. Although the UK would not be a direct beneficiary of the proposed increase in the EU co-financing rate, the Minister for Policing and Criminal Justice (Damian Green) told us that the UK had “a direct interest in ensuring that Member States have access to the Funds intended to strengthen the EU's borders” and that “the Government would be concerned if vulnerable Member States could not access these Funds due to unaffordable levels of co-financing”.⁵⁹ He accepted that an increase in the rate of EU co-financing could result in the EU receiving less value, as the reduced contribution from beneficiary Member States would mean that EU funds were spread more thinly, but suggested that making it easier for Member States such as Greece to use its full allocation of EU funding would have wider benefits.

⁵⁹ See para 29 of the Minister's Explanatory Memorandum.

12.3 We expressed no objection in principle to the change proposed by the Commission, but noted the absence of any direct benefit for the UK. Whilst a decision to opt in might, at best, serve as an expression of solidarity with the (as yet) relatively small number of Member States eligible to request an increased EU contribution, a decision not to opt in would not affect their eligibility to do so. As, therefore, the factors for and against exercising the UK's Title V opt-in appeared to be finely balanced, we recommended that the Government's opt-in decision should be debated in European Committee B. The debate took place on 20 November 2012.

The Minister's letter of 21 January 2013

12.4 The Minister for Immigration (Mr Mark Harper) informs us that the Government has decided to opt into the draft Decision. He also provides further information on two issues raised during the debate which we consider may be of wider interest and reproduce here. The first concerns the number of illegal immigrants apprehended in the UK who have entered the EU via the Greek-Turkish border:

“It is very difficult to quantify the number of illegal migrants caught in the UK who have used routing through the Greek-Turkish border. However, there are indicators that many have done so. The indicators come from information obtained through targeted operations by individual Member States to measure intra-Schengen movements; debriefing of migrants at the EU external border and when arrested in the UK; and reporting from UK Border Agency. Furthermore, prior to the suspension of Dublin Regulation returns to Greece in September 2010, Greece provided the largest number of UK returns under the Dublin system.

“The Greek-Turkish land border has historically been the primary border crossing point used by illegal migrants to enter the European Union. Some 55,000 illegal migrants crossed the Greece-Turkey land border in 2011, accounting for an estimated 60–90% of all illegal migrants entering the EU. The figure fluctuates; however in the period from April to June of this year, Frontex reported the detection of 13,165 illegal migrants at the Greek-Turkish land border. This figure represents 57% of the total number of illegal migrants encountered at the EU external border. Since August a dramatic reduction in illegal land border crossings has been noted due to successful Greek operational activity, but this has inevitably resulted in displacement to sea routes and to a lesser extent to Bulgaria.”

12.5 The second issue concerns the use that Greece has made of four EU funds, referred to collectively as the SOLID Funds, which form part of the General Programme on Solidarity and Management of Migration Flows.

“Since the Funds were established, Greece has used them to finance a variety of projects. Greece has made use of the External Border Fund to:

- support the establishment of its integrated border management system; and
- strengthen its controls on land and maritime external borders through the purchase of equipment and means of transport.

“Greece has used the European Refugee Fund to finance:

- renovation of accommodation facilities for asylum seekers;
- provision of legal advisory services and legal aid to asylum seekers and persons granted internal protection;
- interpreting and translation services for the asylum authorities; and social care and related advisory services for vulnerable groups.

“Greece has used the European Return Fund to finance various projects, including:

- facilitation of forced returns;
- creation of a pre-removal detention centre;
- provision of services in detention centres including healthcare and legal aid;
- provision of assisted voluntary returns in conjunction with the International Organisation for Migration (IOM);
- provision of training to the Hellenic Police; and
- provision of better information to detainees and provision of consular documentation.

“Finally Greece has made use of the Integration of Third Country Nationals Fund to:

- introduce intercultural mediators in hospitals; and
- facilitate communication between immigrants and hospital staff, reduce cultural misunderstandings and promote non-discriminatory access to public health services.

“From this information it is clear that the Greek projects supported by the SOLID Funds address a number of issues that are of critical importance for the effective management of its border controls and its asylum and migration systems. Responsibility for ensuring the quality, value and effectiveness of individual projects supported by the SOLID Funds lies with the Greek authorities.”

Conclusion

12.6 We thank the Minister for informing us of the Government’s decision to opt into the draft Decision and for the helpful information he has provided in response to issues raised during the debate in European Committee. As, however, the Government’s opt-in decision was the principal reason for recommending a debate, we are disappointed that the Minister’s letter does not explain the reasons for opting in. Instead, these are set out in his Written Ministerial Statement of 25 January 2013 in the following terms:

“Practical cooperation and solidarity in support of well-managed migration is a powerful tool for securing British objectives in the wider EU sphere. This proposal is cost-neutral to the UK and will not result in additional UK budget commitments. It provides an opportunity to achieve British objectives while not undermining the primary responsibility of affected Member States to address weaknesses in their asylum and migration systems.

“The Government will continue to consider the application of the UK’s right to opt into forthcoming EU legislation in the area of justice and home affairs on a case-by-case basis, with a view to maximising our country’s security, protecting civil liberties, and enhancing our ability to control immigration.”

12.7 We have no further issues to raise on the substance of the draft Decision and clear it from scrutiny.

13 European Account Preservation Order

(33051) 13260/11 + ADDs 1–2 COM(11) 445	Draft Regulation creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters
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<i>Legal base</i>	Article 81(2) TFEU; co-decision; QMV
<i>Department</i>	Ministry of Justice
<i>Basis of consideration</i>	Minister’s letter of 11 December 2012
<i>Previous Committee Reports</i>	HC 428–xlii (2010–12), chapter 14 (23 November 2011); HC 428–xxxvii (2010–12), chapter 10 (12 October 2011)
<i>Discussion in Council</i>	No date set
<i>Committee’s assessment</i>	Legally important
<i>Committee’s decision</i>	Cleared; further information requested

Previous scrutiny

13.1 The aim of this proposal is to establish a self-standing European procedure for a protective measure, the European Account Preservation Order (the Order) to freeze the bank accounts of debtors in cross-border cases.

13.2 We first reported on it on 12 October 2011, and asked to be informed of the Government’s decision whether or not to opt into the proposal.

13.3 The then Secretary of State for Justice (Mr Kenneth Clarke) wrote on 31 October 2011 to say that the Government had decided not to opt into the proposal. Although the Government welcomed, in principle, the Commission’s proposal, because action in this area has the potential to be “a very valuable tool in the working of the internal market”, the majority of responses to the consultation raised significant concerns about the Commission’s text.

13.4 During the six week period from 3 August to 14 September 2011 departmental officials contacted over 130 individuals and organisations including academics, the legal profession, judiciary, the banking sector, debt charities, consumer organisations and court

users. The consultation paper and impact assessment were also available on the Ministry's website. Fifty responses were received. Of those, 13 (26%) recommended that the UK should opt-in to the proposal, 25 (50%) thought the UK should not opt in and 12 (24%) did not comment on or did not express a firm opinion either way on the opt-in. However, six of those recommending an opt-in and four of those who did not express a firm view, raised significant concerns which they believed needed to be addressed during negotiations. Therefore 35 of those consulted (70%) believed that the proposal as drafted presented difficulties for the UK legal systems.

13.5 The main concern raised in the consultation was that, unlike the UK domestic systems, the Commission's proposal was weighted too heavily in favour of claimants. As an order which freezes the bank account of an individual or a business could have serious consequences to reputation and livelihood most respondents believed there should be more safeguards for defendants. In particular the following concerns were highlighted:

- The threshold for obtaining orders was too low. While a court must be satisfied that there was a well founded claim (similar to, an English freezing injunction where there needs to be a good arguable case), unlike in domestic procedure there was no requirement to show that there was a real risk that the defendant would frustrate payment of the debt by dissipating assets. This was just one of the issues a court could consider and the test was omitted entirely when a creditor already had a judgment which was enforceable in the Member State of enforcement.
- Orders would be available without notice to the defendant. The expectation was that they would be considered on paper and there was no requirement that the claimant should make full and frank disclosure of all relevant facts. This was to be compared with domestic procedure where orders were usually made without notice but a return hearing date was set to enable a defendant to respond. The duty of full and frank disclosure under domestic law meant that the creditor must provide all relevant information, including issues that may adversely affect his/her application.
- There was no requirement for the claimant to provide any security to compensate a defendant for losses suffered from the wrongful grant of an order. Too much discretion was left to the courts of the Member State issuing the order. This was to be compared with domestic procedure where, in all but the most exceptional circumstances, a claimant was required to provide an undertaking to the court to pay any damages which the defendant sustains.
- While there are grounds on which a defendant could challenge an order, in many situations this would require a defendant having to apply to a court in another Member State with the extra cost and difficulties that would entail and, given the time limits in the proposal for claimants and courts, it could be a couple of months before an order was set aside. In the meantime the defendant would have no access to the amounts frozen.

13.6 Given the potential benefits of this procedure, however, the Government intended to participate fully in the negotiations with the hope of being able to opt in after adoption if sufficient changes are made to the text that resolve our concerns. The Minister undertook to keep the Committee informed of significant developments during the negotiations.

Minister's letter of 11 December 2012

13.7 The Secretary of State for Justice (Chris Grayling) now writes with an update on negotiations, which he says have moved slowly. The Council's Civil Law Committee did not finish its first consideration of the text until the end of September. The Cypriot Presidency has so far revised about two-thirds of the text. The European Parliament has only had an initial consideration of the proposal. The Minister's letter sets out the main changes.

Scope

Cross-border restriction

13.8 The Cypriot Presidency has recast the definition of what constitutes a cross-border case in Article 3. Under the revised text a cross-border case will be one in which at least one of the bank accounts to be preserved is located in a Member State other than (a) the court hearing the substantive dispute to which an application for an Order has been made; (b) the Member State in which the creditor has obtained a judgment or other enforceable decision which has been used as the basis for an Order; or (c) the State in which the creditor is domiciled. The moment for determining whether there is a cross-border case will be the date on which the application for an Order is received by the court with jurisdiction. The Civil Law Committee is still considering all the implications of this revised definition but the Minister believes this is a significant improvement over the Commission's text.

Inclusion of financial instruments

13.9 There has been a lot of discussion about whether/how financial instruments should be included within scope. The UK has joined with other Member States that have raised many concerns about how easy it will be for an Order to freeze a financial instrument given the fluctuating value and the often complex ownership arrangements. Others have pointed out the risk that such Orders will fall disproportionately on those less financially astute if financial instruments are excluded altogether. The Presidency has narrowed the scope by excluding over-the-counter derivatives but all involved in the negotiations recognise that more consideration needs to be given to this issue to strike the right balance between the effectiveness of these Orders and their practical application.

Impact on company restructuring and rescue

13.10 The Minister reminds us that a number of respondents to the consultation feared that the introduction of these Orders could be of particular concern to businesses in the process of restructuring or rescue where the freezing of a bank account could undermine the rescue and make insolvency more likely. Some wanted to ensure that companies in the process of restructuring were excluded from the scope of the proposal. The Government is continuing to explore whether such a restriction is possible but it has become clearer during further consultation with those respondents that for many if such a restriction in scope cannot be achieved, their concerns would be significantly alleviated by higher thresholds being applied to the granting of such Orders.

Improved protection for debtors

13.11 The lack of adequate protection for debtors in the procedure was the most significant concern raised in the Government's consultation. The Minister is pleased to report progress on this point in the following areas.

Threshold tests for obtaining an Order

13.12 In Article 7 the text has been clarified to explain that for a pre-judgment Order a court must be satisfied that the creditor is likely to succeed on the substance of his claim against the debtor. The majority of Member States has agreed the principle that the court must also be satisfied that in such circumstances an Order should be granted only where the creditor's claim is likely to be impeded or made subsequently more difficult as a result of a real risk of dissipation of assets. In the Commission's text this was only one of the issues that might be considered. The final wording has yet to be agreed, but the Minister believes this is significant movement in the right direction. He would also like to see this risk of dissipation extended to circumstances where an Order is requested post-judgment. While the UK has some support for this position not all Member States are yet convinced of the need for this.

13.13 The Government has also called for a requirement that the creditor make full and frank disclosure in his/her application form. This has also been accepted in both Articles 8 and 15 with the inclusion of a declaration that the information provided by the creditor is true and correct to the best of his/her knowledge and that any deliberate false statements might lead to sanctions. More work is needed on what these sanctions might be and how they might work.

Security

13.14 The Commission's text in Article 12 said that a court "may" require a security deposit or an equivalent assurance by the claimant to ensure compensation for any damage suffered by the defendant. The Presidency has proposed that in all but exceptional circumstances there should be a presumption of security. They have also proposed a new provision which spells out the liability of the creditor. There are mixed views about both of these Articles but the Minister is encouraged by the Presidency's suggestions.

Competence for issuing Orders

13.15 There has been majority support within the Civil Law Committee, including from the UK, for the ability to issue Orders to be limited only to courts. However, the ability for another authority to be able to issue an Order where the claimant has a judgment, court settlement or authentic instrument which is enforceable in the Member State of enforcement remains in the text in Article 14, at least for now. The Government will monitor this carefully together with its preference for the test of the risk of dissipation to be extended to such applications.

The use of an ex parte procedure

13.16 Most Member States accept that the Order should be issued without notice to the debtor although exactly how that is done has yet to be resolved. The Government has argued that while there should be a presumption of such an *ex parte* procedure, in appropriate circumstances a court should be able to decide whether to notify the debtor. It has also raised the possibility of a later opportunity to hear the debtor after an Order is made *ex parte*.

Challenges to an Order

13.17 The Government has called for debtors to be able to challenge an Order in a local court to be extended beyond the limited categories of debtor in Article 36. There has been some support for this suggestion but this is another area where more discussion is needed.

13.18 More helpfully the Presidency has suggested that where an Order has been obtained prior to the initiation of proceedings if those proceedings are not started within the set period an Order will automatically be revoked without the need for an application by the debtor. Where a judgment has been obtained a creditor will be required to initiate enforcement proceedings within a given period to ensure that the Order is not prolonged unnecessarily.

Provision of information about bank accounts

13.19 Many Member States have been concerned about the burdens that would be placed on both States and banks by the requirements of Article 17. The Cypriot Presidency has suggested that Member States could use “other appropriate and reasonable means” to provide information on bank accounts. More work is needed to clarify what this will mean for Member States. The Minister is hoping that the UK might be able to use its own system of obtaining the required information from the debtor with appropriate sanctions if the debtor uses advance knowledge of the possibility of the Order to then try and dissipate his/her assets.

13.20 The danger that this provision might encourage fishing expeditions has also been acknowledged. The Presidency has suggested that a creditor should have to specify the Member State in which the bank account is located. During the negotiations there was general agreement that creditors should also provide reasons as to why they believe an account is in a particular Member State.

Amounts exempt from an order

13.21 The Presidency has removed from Article 32 references to specific items which should be exempt from an Order. Instead they have used more general wording to state that “where the law of the Member State of enforcement provides that certain amounts are exempt from seizure, those amounts shall be exempt from preservation”. That will allow legal costs to be included, unlike in the Commission’s draft. The text no longer requires Member States to inform the Commission of the relevant rules for exemption which makes it easier for legal systems like ours where courts make decisions on a case-by-case basis, but exactly how our system will comply with this revised provision still needs to be clarified.

Mechanism for notification of Orders

13.22 The Presidency has streamlined the notification provisions for orders to allow greater flexibility in the way that courts and other authorities forward the orders between themselves and the ways they communicate with banks. This should speed up the process of implementing the Orders. This means that formal service of documents should be required only when the bank and debtor are notified of the Order. The text now clarifies the rules on service that should apply where the debtor is domiciled outside of the EU.

Conclusion

13.23 We thank the Minister for his helpful letter.

13.24 We noted when we last reported in November 2011 that the Government supported the principle behind the proposal, and would seek to opt in if a better balance between the rights of the claimant and of the defendant were struck during negotiations.

13.25 We note from this latest letter that several developments have gone the UK's way, with "significant improvements" in restricting the scope of the proposal to cross-border cases, in introducing a higher threshold for the granting of an Order, and in requiring security from a claimant to ensure compensation for any damage suffered by the defendant. But it appears to us that the Government should still have significant concerns about what type of financial instruments are included, on the safeguards for companies which are restructuring, on whether there should be exceptions to the presumption that an Order should be granted *ex parte*, on whether only courts should be able to issue an Order, on the scope for challenging an Order, and on the burdens placed on States and banks by the provision of information obligations.

13.26 Whilst we are content to clear the proposal from scrutiny now, because the UK has not elected to opt into it, we ask the Minister to write again with a further update once the negotiations in the Council and with the European Parliament have finally concluded. In the letter we also ask the Minister to say whether the Government is still considering opting-in post-adoption and, if so, whether it would re-consult fully on the final version of the proposal, the initial consultation having been overwhelmingly against it.⁶⁰ It is a course of action we would strongly recommend the Government take.

13.27 We now clear the proposal on the understanding that a decision by the Government to opt in post adoption would trigger a new scrutiny reserve.

60 See para 13.5 above.

14 Statistics

(a) (32414) 5053/11 + ADDs 1–26 COM(10) 774	Draft Regulation on the European system of national and regional accounts in the European Union (Text with EEA relevance)
(b) (32808) 10632/11 —	ECB Opinion on a draft Regulation on the European system of national and regional accounts in the European Union (CON/2011/44)

<i>Legal base</i>	(a) Article 338 TFEU; co-decision; QMV (b) —
<i>Department</i>	Office for National Statistics
<i>Basis of consideration</i>	Minister's letter of 24 January 2013
<i>Previous Committee Reports</i>	(a) HC 428–xv (2010–11), chapter 6 (2 February 2011), HC 428–xxxv (2010–12), chapter 7 (7 September 2011) and HC 428–xliii (2010–12), chapter 12 (7 December 2011); (b) HC 428–xxxv (2010–12), chapter 7 (7 September 2011) and HC 428–xliii (2010–12), chapter 12 (7 December 2011)
<i>Discussion in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

14.1 Each Member State's National Accounts and Regional Accounts are compiled in line with definitions, accounting rules and classifications as laid out by the European System of Accounts, ESA 1995, established by Regulation (EC) No 2223/96. The ESA 1995 system was set up to meet the requirements of the economic, social and regional policy of the EU. And it allows monitoring of the economies of the Member States and of the economic and monetary union, through the use of comparable, up-to-date and reliable information on the structure and developments in the economic situation of each Member State or region.

14.2 The draft Regulation, document (a), presented by the Commission in December 2010, is to revise the existing EU guidelines for producing National Accounts and Regional Accounts to reflect the new economic environment, advances in methodological research and needs of users. The proposal is to embody an updated European System of Accounts, ESA 2010, revising ESA 1995 to reflect changes since 1995. ESA 2010 follows on from a revised International System of National Accounts, SNA 2008, published in 2009 by the IMF, the OECD, the UN Statistical Division, the World Bank and Eurostat. It reflects

developments such as new industries and products, the impact of globalisation and the expansion of financial services.

14.3 The draft Regulation has an annex providing a methodology on common standards, definitions, classifications and accounting rules. The annex has 24 chapters, dealing with overarching points, such as “general features and basic principles” (Chapter 1) or “quarterly national accounts” (Chapter 12), and a range of more detailed matters, such as “distributive transactions” (Chapter 4) or “contracts, leases and licences” (Chapter 15). A second annex sets out the programme required from Member States for transmitting for EU purposes the accounts, data and tables compiled according to the methodology to specified deadlines.

14.4 The draft Regulation:

- would be extended to the European Economic Area;
- is expected to be implemented by Member States by September 2014 — ESA 2010 will gradually replace all other systems as a reference framework of common standards, classifications and accounting rules for drawing up accounts of the Member States, so that results are comparable between Member States; and
- would empower the Commission to adopt delegated acts for the purposes of amending the two annexes — the Commission would carry out appropriate consultations during its preparatory work, including at expert level.

14.5 The European Central Bank (ECB) Opinion, document (b), comments on the draft Regulation, document (a). In it the ECB welcomes the intended consistency of the statistical concepts and definitions described within the proposed Regulation with, for example, the UN’s SNA 2008, the sixth edition of the IMF’s Balance of Payments and International Investment Position Manual, the fourth edition of the OECD Benchmark Definition of Foreign Direct Investment Position Manual and with the EU industrial activity classification, NACE Rev.2. It also welcomes the proposed consistency and harmonisation of methodologies. In consequence of more detailed technical comments the ECB proposes nine amendments to the draft Regulation.

14.6 In December 2011, when we last considered this matter in the light of a report on Council working group discussion, we said that:

- before considering the documents further we wanted to have another report of the working group discussions, towards the end of the Danish Presidency (or earlier if they were concluded before then); and
- we continued to want to hear in particular whether developments have undermined the Government’s original welcome for the proposal or whether the text emerging still meets the UK’s interests.

Meanwhile the documents remained under scrutiny.⁶¹

61 See headnote.

The Minister's letter

14.7 The Minister for the Cabinet Office (Mr Francis Maude) only writes now with the further information we requested. He first recapitulates the reasons for, and content of, the draft Regulation and reminds us that the proposed implementation date for the new ESA 2010 for Member States is by September 2014.

14.8 The Minister then tells us of progress since September 2011 and the implications for the UK, saying that:

- the Council Working Party on Statistics has met roughly on a monthly basis in 2012;
- the Government has continued to make significant contributions to the development of the proposal;
- the Working Party meetings have discussed and finalised the articles and recitals of the draft Regulation, Annex A on methodology and Annex B on the data transmission programme to the Commission (Eurostat);
- during this time, Eurostat has also initiated various task forces to help develop and improve the methodology;
- 26 Member States submitted derogations covering the proposed transmission programme;
- due to the extent of the changes and long lead time to collect new statistics, the Government has sought derogations allowing for delayed delivery of parts of the detailed data transmission programme beyond the implementation date of September 2014 — the last derogation being sought is for 2020;
- derogations for each Member State will only be formally agreed via an Implementing Act after the draft Regulation has been adopted;
- the Office for National Statistics (ONS) has set up governance structures and appropriate workstreams and is making progress to meet the proposed implementation date of September 2014;
- the proposal will affect a range of economic statistics produced by ONS covering the National Accounts, Regional Accounts, Balance of Payments, Public Sector Finance and Environmental Accounts;
- given the integrated manner in which many economic statistics are produced by ONS, this change forms a major programme of work;
- the impact of data changes will affect ONS customers and suppliers including other government departments — it will have close regard to these interactions, as part of the work programme; and
- the ONS is working to secure the necessary resources to deliver the programme — shifting production of the UK's National Accounts as defined by the new ESA 2010 is seen as a strategic priority.

14.9 The Minister tells us that the draft Regulation has now passed from the Council Working Party on Statistics and is advancing through the final stages of agreement between the Council and the European Parliament, with adoption by the latter scheduled for March. He says that the Government believes the emerging text still meets the UK's interests and will provide for national economic indicators that are in line with recent fundamental changes in the global economy and ensure EU-wide comparability of those indicators as well as other key statistical developments following the credit crisis.

Conclusion

14.10 We are grateful to the Minister for this latest, albeit very belated, account of developments on the draft Regulation. We note that the Government is content with the way the proposal has developed and having no further questions to ask clear the documents from scrutiny.

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

Department for Business, Innovation and Skills

(34530) Draft Regulation amending Regulation (EC) No.723/2009 concerning
17561/12 the Community legal framework for a European Research
COM(12) 682 Infrastructures Consortium (ERIC).

Department for Environment, Food and Rural Affairs

(34510) Report on the annual accounts of the Community Plant Variety Office
16818/12 for the financial year 2011 together with the Office's replies.
—

(34618) Draft Regulation establishing criteria determining when copper scrap
5219/13 ceases to be waste under Directive 2008/98/EC of the European
COM(12) 787 Parliament and of the Council.

Foreign and Commonwealth Office

(34631) Draft Decision concerning the temporary reception by member states
— of the European Union of certain Palestinians.
—

HM Treasury

(34576) Draft Regulation amending Implementing Regulation (EU)
17890/12 No.282/2011 as regards the place of supply of services.
COM(12) 736

(34588) Draft Decision on authorising the Kingdom of the Netherlands to
18085/12 apply a measure derogating from Article 193 of Directive 2006/112/EC
COM(12) 766 on the common system of value added tax.

(34600) Commission Delegated Regulation (EU) No.../.. of 19.12.2012
18039/12 supplementing Regulation (EU) No.648/2012 of the European
— Parliament and of the Council on OTC derivatives, central
counterparties and trade repositories with regard to regulatory
technical standards on the minimum details of the data to be
reported to trade repositories.

- (34601)
18040/12
—
Commission Delegated Regulation (EU) No.../.. of 19.12.2012 supplementing Regulation (EU) No.648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, risk mitigation techniques for OTC derivatives contracts not cleared by a CCP.
- (34602)
18041/12
—
Commission Delegated Regulation (EU) No.../.. of 19.12.2012 supplementing Regulation (EU) No.648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository.
- (34603)
18042/12
—
Commission Delegated Regulation (EU) No.../.. of 19.12.2012 supplementing Regulation (EU) No.648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade depositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data.
- (34604)
18043/12
—
Commission Delegated Regulation (EU) No.../.. of 19.12.2012 supplementing Regulation (EU) No.648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on capital requirements for central counterparties.
- (34605)
18044/12
—
Commission Delegated Regulation (EU) No.../.. of 19.12.2012 supplementing Regulation (EU) No.648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards on requirements for central counterparties.
- (34628)
17822/12
SWD(13) 445
Commission Staff Working Document — Annual Overview with Information on the Results of the Hercule II Programme in 2011 (Article 7 of Decision 878/2007 of 23 July 2007).

Formal minutes

Wednesday 30 January 2013

Members present:

Mr William Cash, in the Chair

Michael Connarty
Nia Griffith

Kelvin Hopkins
Henry Smith

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 15 read and agreed to.

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

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

[Adjourned till Wednesday 6 February at 2.00 p.m.]

Standing Order and membership

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

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

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

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

Current membership

Mr William Cash MP (*Conservative, Stone*) (Chair)
Mr James Clappison MP (*Conservative, Hertsmere*)
Michael Connarty MP (*Labour, Linlithgow and East Falkirk*)
Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)
Julie Elliott MP (*Labour, Sunderland Central*)
Tim Farron MP (*Liberal Democrat, Westmorland and Lonsdale*)
Nia Griffith MP (*Labour, Llanelli*)
Chris Heaton-Harris MP (*Conservative, Daventry*)
Kelvin Hopkins MP (*Labour, Luton North*)
Chris Kelly MP (*Conservative, Dudley South*)
Penny Mordaunt MP (*Conservative, Portsmouth North*)
Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)
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*)