Documents considered by the Committee on 8 May 2013, including the following recommendations for debate:

Reform of the Common Agricultural Policy
Further amendments to EU restrictive measures against the Syrian Regime
European Elections 2014
Economic governance: European Semester and macroeconomic imbalances
House of Commons
European Scrutiny Committee

First Report of Session 2013–14

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Report, together with formal minutes

Ordered by The House of Commons
to be printed 8 May 2013
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 “Legal base”) Treaty establishing the European Community
EM Explanatory Memorandum (submitted by the Government to the Committee)*
EP European Parliament
EU (in “Legal base”) Treaty on European Union
GAERC General Affairs and External Relations Council
JHA Justice and Home Affairs
OJ Official Journal of the European Communities
QMV Qualified majority voting
RIA Regulatory Impact Assessment
SEM Supplementary Explanatory Memorandum
TEU Treaty on European Union
TFEU Treaty on the Functioning of the European Union

Euros

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

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is 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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Meeting Summary

Common Agricultural Policy — emerging agreement to be debated

We are recommending four sets of proposals for debate this week. Changes to the Common Agricultural Policy have been under discussion for some time, and were debated in a House of Commons European Committee in January 2012. However, as negotiations intensify, it is clear that further far-reaching changes may be proposed in the run-up to a final agreement by the end of June. The Committee has received regular updates from the Government and we have decided that these documents should be debated again, preferably on the floor of the House, before a conclusion is reached.

2014 European elections — proposed changes to the electoral process

The second debate we are recommending relates to the European elections in 2014. This originates from a recommendation by the Commission to Member States to make changes to their electoral processes in order to make the elections to the European Parliament in 2014 more directly relevant to citizens of the EU. The UK Government is highly critical of the proposals, which include a recommendation for a single voting day across the EU and a single time of closing of the polls. The proposals are not legally binding but we agree with the Government’s concerns and are recommending the documents for debate, again on the floor of the House.

Deploying high-speed electronic communication networks — Reasoned Opinion

We are recommending that the House adopts a Reasoned Opinion on a proposed Regulation on measures to reduce the cost of deploying high-speed electronic communications networks. The Committee takes the view that this proposal does not comply with the principle of subsidiarity and that the policy objectives would be better approached at the EU level if they were modified and contained in a Directive rather than a Regulation.

We are also recommending a set of documents relating to economic governance for debate in European Committee.

Sanctions measures — scrutiny issues

There are two Chapters of the Report relating to sanctions measures — in Somalia and Myanmar/Burma. In both cases we ask the Government to work with the European External Action Service to keep us better informed about the progress of proposals through scrutiny to avoid the need for an over-ride at the latest stages of agreement. We are concerned that this important area of scrutiny is not working particularly well at the moment, and we are likely to take this forward as part of our current scrutiny inquiry.

EUBAM Libya — local capacity

We are also reporting on steps to establish an Integrated Border Management Assistance Mission in Libya (EUBAM Libya), asking for further information urgently from the
Minister (in particular his view of the local administration’s capacity to support the mission) before we clear the document.

**Climate change and renewable energy — request for an Opinion**

The Committee also considered various proposals relating to climate change — a Commission Communication on climate policy, a Commission Report on Renewable Energy and a Green Paper on Climate and energy policies 2030. All three are reported to the House because of their importance to the climate change debate and the run-up to the International Climate Change Agreement due in 2015, and we will be asking the Energy and Climate Change Committee for its formal ‘Opinion’ on the proposals.

**Other documents reported**

We are also reporting on documents relating to the European Defence Agency, the EU Justice Scoreboard, origin marking for imports from third countries, the 2013 Budget, protection of intellectual property rights outside the EU, financing EU external action, animal tests for cosmetics and EU-Syria relations.

The Committee’s report will be published next week. The draft Reasoned Opinion will be published separately on Monday.

The tenth oral evidence session of the scrutiny inquiry has also taken place this week — with Sir Jon Cunliffe, the UK’s Permanent Representative to the EU. The transcript will be available on the Committee’s website next week, but the session is available to view now on www.parliamentlive.tv.
1 Reform of the Common Agricultural Policy

(a) Draft Regulation establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy

(33259)
15396/11
COM(11) 625

(b) Draft Regulation on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)

(33261)
15425/11
COM(11) 627

(c) Draft Regulation on establishing a common organisation of the markets in agricultural products (Single CMO Regulation)

(33258)
15397/11
COM(11) 626

(d) Draft Regulation on the financing, management and monitoring of the common agricultural policy

(33257)
15426/11
COM(11) 628

Legal base
Articles 42 and 43(2) TFEU; co-decision; QMV

Department
Environment, Food and Rural Affairs

Basis of consideration
Minister’s letter of 2 April 2013

Previous Committee Reports
(a) HC 42–xlii (2010–12), chapter 2 (23 November 2011)
(b) HC 428–xlii (2010–12), chapter 3 (23 November 2011)
(c) HC 428–xlii (2010–12), chapter 19 (23 November 2011)
(d) HC 428–xlii (2010–12), chapter 18 (23 November 2011)

Discussion in Council
Not applicable

Committee’s assessment
Politically important

Committee’s decision
Cleared (decision reported on 31 January 2012; for debate on the Floor of the House)

See para 1.8 below.
**Background**

1.1 In the light of its proposal for the Multi-annual Financial Framework (MFF) for 2014–20, which established the budgetary framework and main orientations for the CAP, the Commission put forward in October 2011 a number of documents relating to its future. These included an over-arching Impact Assessment,\(^2\) which was accompanied by these four draft Regulations setting out detailed proposals dealing with specific aspects of the CAP. We reported these to the House at some length on 23 November 2011, when we recommended the over-arching Impact Assessment for debate in European Committee A, together with documents (a) and (b); and, although we were content to clear documents (c) and (d), we did identify these as relevant to that debate (which subsequently took place on 31 January 2012).

1.2 Since then, we have reported to the House on two further occasions — on 21 November 2012, in advance of the Agriculture Council on 28–29 November, when the Cypriot Presidency had planned to achieve partial general agreement, and on 13 February 2013, following a vote in the European Parliament’s Agriculture Committee. We also received — but did not report to the House — a letter of 7 March from the Secretary of State for Environment, Food and Rural Affairs, (Mr Owen Paterson), setting out subsequent developments, and outlining the position which the UK proposed to take at the Council on 18–19 March, when the Presidency would be seeking a mandate for the trilogue negotiations with the European Parliament and Commission.

**Minister’s letter of 2 April 2013**

1.3 We have since received from the Secretary of State a letter of 2 April 2013, confirming the outcome of the European Parliament vote, and outlining the agreement reached by the Council in 18–19 March.

1.4 The Minister describes the first of these as mixed. On the one hand, text which enabled farmers to be paid twice for undertaking the same environmental activities was removed, the Commission’s ‘Greening’ proposals were made voluntary, and an earlier vote by its Agriculture Committee to block transparency amendments was reversed. However, in other areas, the Parliament voted through amendments which represented a significant step backwards on CAP reform, reducing the level of market orientation of agriculture and increasing the budgetary pressures for old-style market support payments. In particular, coupled support payments were extended to a wider range of sectors (including tobacco), and the amount which may be spent on such support increased up to 18% of Member States’ national ceilings. In addition, a UK proposal to add clarity on the regional implementation of the CAP within a Member State was rejected.

1.5 The Minister’s says that the Government’s approach in the Council was therefore mindful of these potentially damaging outcomes, but he reports that the mandate which the Presidency succeeded in securing for the trilogue negotiations contained many of the UK objectives, including a number of importance to the Devolved Administrations. However, there are also several outstanding issues for the UK which may require further

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1.6 Looking ahead, the Minister says that formal ‘trilogue’ negotiations were due to begin on 11 April, the Presidency’s aim being to conclude these in mid-June, in order to keep its aim of securing a final agreement in late June on track. He adds that, whilst the outcome of March Council was in the main positive, the UK is under no illusion as to the scale of the challenges it will face during the ‘trilogue’ process, where compromises will be sought by the Presidency, Parliament and Council to secure a final agreement. It will therefore be necessary to monitor developments very closely, not only to try and secure further important amendments on issues such as double funding, sugar, coupled support and internal convergence, but also to defend the amendments which have successfully been secured, for example on market reforms under the CMO Regulation. Officials are now working closely with UKRep to identify the most effective approach for influencing the ‘trilogue’ process, where the UK negotiating lines will remain consistent with what has already been cleared through the scrutiny process.

Conclusion

1.7 As we have noted, these documents have already been cleared either by virtue of our Report of 23 November 2011 or the debate in European Committee on 31 January 2012, but we have since then reported the progress of the negotiations to the House on 21 November 2012 and 13 February 2013. We have therefore considered carefully how we should deal with the documents at this stage.

1.8 On the one hand, we have stressed that, having already cleared them, we have no wish to constrain the Government’s negotiating flexibility or to invoke the scrutiny reserve. On the other hand, these proposals are clearly of major financial and political importance, and we feel it would be wrong for the House not to have a further chance to consider them before the completion of the trilogue negotiations, bearing in mind that the Secretary of State’s statement on 26 March about the outcome of the March Council was a written one. Consequently, notwithstanding the debate which took place in January 2012, we are — exceptionally — recommending that these documents should be the subject of a further debate (and moreover that we see considerable merit in this taking place on the Floor of the House). In doing so, we would again like to make clear that our purpose is to enable Members to question the Government, and that we do not intend that our recommendation should in any way inhibit the Government’s freedom of action in connection with the trilogue negotiations.

3 HC Debs, 26 March 2013, Cols. 88–90 WS.
ANNEX: Outcome of Agriculture Council on 18–19 March

Single Common Market Organisation Regulation

The outcome was good for the UK, in that the Council has agreed to continue on the road of reform and market orientation, maintaining a genuine safety net for producers against pressure to increase market intervention, and agreeing end dates to quota systems for sugar and wine, albeit later than planned.

The UK was able to fend off calls to review or increase reference prices, which could have increased the use of market intervention and seen more money taken from direct payments to extend the safety net for producers. It is also content with the final package of measures on producer organisations, which includes the option for Member States to formally recognise those in new sectors, and enables the extension of their rules and fees to non-members to remain at the discretion of Member States.

A compromise proposal was agreed to end the sugar beet regime in 2017, two years later than previously agreed, but ahead of the 2020 end date proposed by some other Member States (although the UK was disappointed that no commitment was made on cane imports, and will continue to press for fair treatment for refiners).

A new transitional system for authorisations of vine plantings was agreed, due to run from January 2019 to the end of 2024, but will not apply to the UK’s small but growing wine industry.

The Council also confirmed that exceptional measures should only be used when other measures in the Regulation are insufficient, making it clear that normal market management instruments are separated from measures to be taken in a crisis.

Direct Payments Regulation

The UK was successful in securing important flexibility to deliver Greening through a national scheme, thus giving scope to consider how to deliver environmental outcomes in a way which is straightforward for farmers and secures value for money for UK taxpayers.

The Young Farmers scheme remains voluntary, and similarly the optional nature of the Small Farmers scheme has been confirmed (although it is disappointing that Council has agreed that participants should be exempted from cross compliance controls).

The UK succeeded in securing the option to roll over existing entitlements in England, providing a potentially useful alternative to undertaking a reallocation exercise, and the competitiveness of the largest farms has been protected by ensuring that the capping of large claims is at the discretion of the Member State.

The biggest disappointment was the outcome on coupled payments, which had previously been has successfully phased out for most commodities. Although the UK had some limited success in restricting the expansion of coupled payments to new sectors, the Council position allows for the percentage ceiling for coupled payments to be raised to 7% for Member States (such as the UK) which have largely decoupled, and 12% those which have not. Whilst short of the Parliament’s proposed 18%, this is above the original
Commission proposal and not at a common level for all Member States, and a significant number of Member States are expected to apply pressure during the ‘trilogue’ process to raise the percentage ceiling beyond 12% and closer to the Parliament’s position.

It was also disappointing that Council rejected the Commission’s proposal for internal convergence which would have meant a full move away from historic payments by 2019, but it was possible, on behalf of the Devolved Administrations, who have not yet moved from historic to area payments, to secure flexibility for a smoother transition, with an initial minimum step of 10% rather than 40%. In addition, the inclusion of heather in the definition of permanent grassland is important for Scotland, as is the inclusion of text which allows the granting of reserve entitlements to new as well as young farmers.

**Rural Development Regulation**

The Council agreement represents a balanced position, which will enable Member States to safeguard and enhance the rural environment, to foster competitive and sustainable rural business, and to support thriving rural communities.

The UK secured important changes on mapping Areas facing Natural Constraints (ANC) to better identify land that is truly constrained, and Member States will also have an extra two years until 2016 to prepare for ANC designation, thus addressing a number of concerns expressed by the Devolved Administrations.

However, the UK was in a minority in arguing against double funding of greening activities, allowing farmers to be paid twice under both Pillars for delivering the same activities, and was disappointed that a minimum spend for environmental activities was not secured.

Also, the Irish Presidency mistakenly removed from its proposed compromise on the Regulation wording which is relevant to the calculation of a portion of the UK’s rebate, and, although this was corrected in the compromise changes tabled subsequently, the article was put in square brackets and referred it for resolution in the framework of the Council deliberation on the EU Own Resource Decision, following objections from a few Member States. However, at UK insistence, it was also made it clear that this issue needed to be resolved before the Rural Development Regulation could be agreed.

**Finance and Controls (Horizontal) Regulation**

Overall, the Council agreement was a good result, with the Council focussing on reducing costs and burdens, and a more proportionate approach to disallowance procedures being particularly welcome. The UK also strongly welcomed the transition period for paying agencies to develop the appropriate control systems for Greening, but was disappointed there is no provision to enable farmers to refrain from applying for a Greening payment without an additional penalty being imposed.

The UK welcomed the removal of the new standard on protection of carbon rich soils under cross compliance, as it did not consider the requirement proposed would have had sufficient demonstrable environmental benefits to justify the increased administrative burdens. It was however disappointed that some elements of the Commission’s cross compliance proposal, such as the removal of a ban on hedge-cutting during bird breeding
season, have been watered down, and it would also have liked to see more changes, particularly aimed at allowing a more proportionate treatment of minor breaches of animal ID rules.

A key priority has been to secure a new specific provision on regionalisation in order to clearly recognise the role of regional administrations in delivering the CAP, and this has been secured with the inclusion of a new article (subject to clarification that this refers to the whole of the CAP).

Finally, the UK were pleased to see the retention of Commission proposals on the publication of beneficiaries’ data, and, with the European Parliament voting in favour of increased transparency, it is confident that opposition to these proposals has now been removed.
2 Further amendments to EU restrictive measures against the Syrian regime

|---------|--------------------------------------------------------------------------------------------------|

**Legal base**  
Article 29 TEU; unanimity

**Department**  
Foreign and Commonwealth Office

**Basis of consideration**  
Minister’s letter of 7 May 2013

**Previous Committee Reports**  

**Discussion in Council**  
28 February 2012

**Committee’s assessment**  
Politically important

**Committee’s decision**  
For debate on the Floor of the House (decision reported on 13 March 2013)
Background

In its 1 March 2013 Fact Sheet, the European Union describes its response to the crisis in Syria thus:

“The European Union has responded decisively to the violent repression of anti-government protests in Syria, which began in March 2011. The EU called for an end to the deteriorating situation in Syria and the unacceptable levels of violence, which continue to cause suffering to millions of Syrians and destruction of infrastructure and cultural heritage.

“The EU strongly urged the regime to stop targeting civilians, halt airstrikes and artillery attacks, and calls for an immediate end to all violence. The EU remains deeply concerned by the spill-over effects of the Syrian crisis in neighbouring countries and reiterates its attachment to the sovereignty, independence and territorial integrity of Syria.

“The EU has condemned in the strongest terms the widespread human rights violations, which according to the Independent International Commission of Inquiry may amount to crimes against humanity. It has also condemned several times actions aimed at inciting inter-ethnic and interconfessional conflict. The EU further called on the regime to free political prisoners, in particular peaceful activists, women and children.

“As the violence and repression continued, the EU decided to introduce restrictive measures to increase pressure on the government of President Bashar al-Assad. In total, 21 sets of restrictive measures have been introduced since the beginning of the crisis (see annex for an overview). The EU has called consistently for President Assad to step aside and make way for a peaceful transition, along the lines of the action plan adopted by the League of Arab States (LAS).”

2.1 We reproduce the overview referred to therein at the Annex to the chapter of our most recent Report on this Council Decision. Scrutiny of the original Council Decision 2011/782/CFSP and other related Council Decisions and Council Regulations is detailed in our previous Reports.

The latest Council Decision

2.2 The EU’s restrictive measures against the Assad regime in Syria were (via this Council Decision) extended for a further three months (until 1 July 2013) and amended, to enable Member States to provide the Syrian opposition with non-lethal equipment and technical assistance to protect civilians.

2.3 In his Explanatory Memorandum of 7 March 2013, the Minister for Europe (Mr David Lidington) explained that this Council Decision would thus allow:

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5 See headnote.
— the sale, supply, transfer or export of non-lethal military equipment or equipment which might be used for internal repression for the protection of civilians or for the Syrian National Coalition for Opposition and Revolutionary Forces (SNC) intended for the protection of civilians; and

— the provision of armoured non-combat vehicles to the SNC intended for the protection of civilians; and allow provision of technical assistance, brokering services and other services for the SNC intended for the protection of civilians.

2.4 He also says that the Council had issued a declaration to:

— clarify that the EU accepted the SNC as legitimate representatives of the Syrian people;

— reiterate that, under the Common Position 2008/944/CFSP (CP944), Member States retained discretion over the transfer of military technology and equipment, and likewise that CP944 did not prohibit Member States from operating more restrictive national policies;

— reminded each Member State of its obligation under CP944 to circulate to other Member States, in confidence, an annual report on its exports of military technology and equipment;

— agreed that the implementation of the exemptions would be reviewed before the 1 June 2013 rollover date; and

— confirmed that the accompanying Council Decision did not set a precedent for other EU arms embargos.

2.5 In his statement of 6 March 2013, the Foreign Secretary (Mr William Hague) set out the rationale for these changes in greater detail. With regard to what was now to be offered to the Syrian opposition, he said:

"On Thursday, we finalised with our European partners a specific exemption to the EU sanctions to permit the provision of non-lethal military equipment and all forms of technical assistance to the Syrian National Coalition where it is intended for the protection of civilians.

"This is an important advance in our ability to support the opposition and help save lives. Such technical assistance can include assistance, advice and training on how to maintain security in areas no longer controlled by the regime; on co-ordination between civilian and military councils; on how to protect civilians and minimise the risks to them; and on how to maintain security during a transition. We will now provide such assistance, advice and training.

"We intend to respond to the opposition’s request to provide equipment for search and rescue operations and for incinerators and refuse collection kit to prevent the spread of disease. We will help local councils to access funds and equipment to repair

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electricity and water supplies to homes, and we will respond to the opposition’s request for further water purification kits and equipment to help civilian political leaders operate and communicate.

“We will also now provide new types of non-lethal equipment for the protection of civilians, going beyond what we have given before. In conjunction with the National Coalition, we are identifying the protective equipment that will be of most assistance to them and likely to save the most lives. I will keep the House updated, but it will certainly include, for instance, armoured four-wheel drive vehicles to help opposition figures move around more freely as well as personal protection equipment including body armour.”

Our assessment

2.6 As both the Minister (in his letter of 8 March, in which he apologised for the override in this instance) and the Foreign Secretary (in his statement) noted, these negotiations were protracted and continued up to the deadline — and given the context, this was not surprising. In these circumstances and on this occasion, we did not object to scrutiny having been overridden. But if the House was not to be told about such changes prior to the event, then it needed to be told as much as possible afterwards.

2.7 In the first instance, we said that if the Minister was to rely upon a declaration (c.f. paragraph 2.5 above), then he should provide a copy of it along with his Explanatory Memorandum and the Council Decision.

2.8 Secondly, a number of other questions arose:

- what was the equipment — other than armoured non-combat vehicles — that might otherwise “be used for internal repression” and was to be provided “for the protection of civilians or for the Syrian National Coalition for Opposition and Revolutionary Forces (SNC) intended for the protection of civilians”;

- what were the prior limitations to the types of assistance that could be provided to the opposition and the amendments needed to effect these; what support was already permissible under the existing terms of the embargo; what protections were in place to prevent the diversion of support to extremists in Syria; and what the best way was to define and refer to the Syrian National Coalition for Opposition and Revolutionary Forces (c.f. the third tirit of paragraph 2.11 below).

- A propos the Foreign Secretary’s statement:

  — what the “new types of non-lethal equipment” were that he said would be provided for the protection of civilians, going beyond anything provided hitherto;

  — once it had been determined, what protective equipment was to be provided that, in the view of the National Coalition, “will be of most assistance to them and likely to save the most lives”;

7 HC Deb, 6 March 2013, col. 963.
— how the use of any and all of the equipment provided was to be monitored, so that it was not misused or did not fall into the hands of groups for which it was not intended (the Foreign Secretary having referred only to “best endeavours” and adverse impact on any such further assistance if this were to happen).

2.9 Given these questions and the evident level of interest among Members, we concluded that a debate on the Floor of the House, for an hour and a half, was appropriate. We recommended that it should take place as soon as possible. We asked the Minister to respond to our questions and to set out the Government’s latest thinking about the way forward when opening the debate.

The Minister’s letter of 7 May 2013

2.10 The Minister for Europe writes further to the Foreign Secretary’s Statements to Parliament on 15 April8 and 6 May with an update on the Government’s policy on the EU Syria arms embargo, as follows:

“I share the Committee’s grave concern at the growing catastrophe in Syria and the substantial humanitarian consequences and security risks facing the region. In one recent week alone, another 100,000 people fled Syria, bringing the refugee total to its current level of over 1.3 million. Millions more are feeling the effects of Assad’s violent oppression.

“As the Foreign Secretary has set out, the Government’s priority is a political settlement to the conflict. However, the prospects of an immediate diplomatic breakthrough are slim. We cannot stand by while the situation in Syria continues to deteriorate at an ever more rapid pace. That is why the Government has significantly increased its humanitarian assistance to Syria and neighbouring countries; and why we are stepping up our non-lethal assistance to the Syrian National Coalition, as a means of increasing pressure on the Assad regime to enter negotiations on a political settlement. We will ensure that any Government assistance is a necessary, proportionate, and lawful response to a situation of extreme humanitarian suffering and that there is no practicable alternative. The government’s diplomatic efforts on Syria and practical assistance are mutually reinforcing, and should not be seen as alternative strategies.

“The impact of the Syria crisis on national security

“The conflict is precipitating a growth of extremism in Syria which poses current and future risks to UK national security. As the conflict has progressed, violent Islamist groups have been gaining ground in Syria and have attracted a large number of foreign fighters of all nationalities, including a substantial number of UK citizens. The overall number of foreign fighter travelling to Syria is greater than for all other arenas of jihad combined. The Government’s support for the moderate opposition is aimed at countering the rise of extremist groups within the opposition.

8 See the Annex to this chapter of our Report.
“Informing Parliament on developments in HMG policy on Syria

“HMG’s policy on Syria has been consistent in not ruling out any options for resolving the crisis in Syria. We have to be prepared to do even more to help to save lives. Our policy on Syria cannot be static in the face of this growing calamity.

“As the Foreign Secretary said to the House on 15 April, the UK Government has taken no decision that we would like to send arms to the Syrian opposition. However, the UK and France argue that we will need further amendments to the EU arms embargo, or even to lift it altogether. As things stand, we need greater flexibility if we decide that urgent action is necessary, for example in response to a specific incident or continued grave deterioration on the ground, or to create the conditions for a successful political transition.”

2.11 The Minister concludes by referring to the great importance that he says he attaches to his responsibilities towards Parliament, including ensuring that the Committee has the opportunity to scrutinise these sorts of decisions; saying that, although he unfortunately had to override scrutiny on this Council Decision and the accompanying implementing Regulation, he is grateful for the Committee’s understanding on this matter; and noting that the debate “will provide a good opportunity for Members to look at our policy on this important issue.”

Conclusion

2.12 We leave it to whichever Foreign Office Minister speaks on behalf of the Government in the debate on the Floor of the House to explain why it will have taken at least two months to schedule a debate that we recommended should take place as soon as possible after our meeting on 13 March.

2.13 Though the Minister continues to reiterate his commitment to ensuring that the Committee can do its job, we note that we have yet to receive an Explanatory Memorandum on the implementing Council Regulation of 18 April, which would have enabled the Minister to provide answers to at least some of the questions raised in our previous Report.

2.14 We consider this chapter of our Report to be relevant to the debate that we recommended on 13 March.

2.15 In the meantime, we shall retain the document under scrutiny.

Annex: Written Ministerial Statement of 15 April 2013

Non-lethal Equipment for Syrian Opposition

The Secretary of State for Foreign and Commonwealth Affairs (Mr William Hague): I informed the House on 6 March 2013, Official Report, column 961, that I intended to
provide additional non-lethal equipment to the Syrian opposition in order to help save lives. I have today laid a departmental minute containing details of that gift.

The gift includes:

five 4x4 vehicles with ballistic protection and 20 sets of body armour to the Syrian opposition National Coalition’s assistance co-ordination unit;

three 25-tonne trucks, one 20-tonne truck, four 12-tonne trucks, six 4x4 SUVs, five pick-ups, one recovery vehicle and four forklifts to ensure that the assistance co-ordination unit has the means to deliver assistance in the quantities necessary to have an impact on the suffering in Syria; and

three advanced civil resilience kits for regional hubs and 22 basic civil resilience kits for other local councils; 107 generators; 130 solar powered batteries; hundreds of radios, water purification kits and rubbish collection kits; as well as basic administrative equipment — laptops, VSATs and printers. This equipment will support local administrative councils, through the National Coalition, to extricate the injured from the rubble in the aftermath of a mortar attack and to provide clean water and refuse management equipment to prevent the spread of disease.

Making the gift was a matter of special urgency because of the appalling and deteriorating situation on the ground and the urgent need to help the Syrian opposition deliver support to civilians. Owing to the Easter recess, this gift was notified to the Committee of Public Accounts to consider on Parliament’s behalf. I also wrote to the Chairs of the Foreign Affairs Committee, Defence Committee and Committee on Arms Export Controls to inform them of this process. As no objections were received, we have now proceeded with the arrangements to make these gifts.
## 3 European Elections 2014

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<tr>
<td>(a)</td>
<td>Commission Communication on preparing for the 2014 European elections and enhancing their democratic and efficient conduct</td>
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<td>(34797) 7648/13 COM(2013)126</td>
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<tr>
<td>(b)</td>
<td>Commission Recommendation on enhancing the democratic and efficient conduct of the elections to the European Parliament</td>
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<td>(34798) 7650/13 COM(2013)1303</td>
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### Legal base
- (a) —
- (b) Article 292 TFEU

### Documents originated
- 12 March 2013

### Deposited in Parliament
- 26 March 2013

### Department
- Foreign and Commonwealth Office

### Basis of consideration
- EM of 17 April 2013

### Previous Committee Report
- None; but see (34226) 13777/12 and (34259) 13842/12: HC 86–xix (2012–13), Chapter 2 (7 November 2012) and (34523) 17469/12: HC 86–xxvii Chapter 1 (16 January 2013) and (34688) HC 86–xxxv Chapter 10 (13 March 2013), HC 86–xxxviii Chapter 2 (17 April 2013)

### Discussion in Council
- Not applicable

### Committee’s assessment
- Legally and politically important

### Committee’s decision
- For debate on the Floor of the House; further information requested

### Background and scrutiny

3.1 These two Commission initiatives, a Communication and a Recommendation, are new documents which we have not previously scrutinised. However, they are related, in some respects, to the proposed Regulation on the statute and funding of European political parties and foundations on which we have already reported.10 On our recommendation, a debate on that proposal took place in European Committee on 6 February 2013.11

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11 http://www.publications.parliament.uk/pa/cm201213/cmgeneral/euro/130206/130206s01.htm.
Similarly, in our Report of 17 April 2013,\(^\text{12}\) we also recommended for debate a Court of Auditor’s Opinion on the proposed Regulation.\(^\text{13}\)

3.2 The 2014 European elections will be the first since the Treaty of Lisbon (ToL) entered into force. The current documents propose non-legally binding measures on the conduct of those elections by Member States, which the Commission believes will increase the democratic legitimacy of the EU. The Communication states that the Commission is committed “to fully exploiting the existing Lisbon provisions to further enhance transparency and the European dimension of the European Elections.” The Commission continues:

“This is particularly relevant in view of the actions required at EU level to address the financial and sovereign debt crisis. This can also act as a stepping stone towards further Treaty reforms to enhance the European Union’s basis as a democratic organisation”.

The legal context

3.3 Whilst document (a), the Communication, outlines the background of the measures proposed, document (b), the Recommendation, sets out the formal proposals in detail.

3.4 Article 288 TFEU states that “Recommendations and opinions shall have no binding force”. As such the Recommendation is not a legislative act, but a legal act pursuant to Article 289 TFEU. The Commission cites the legal base for the Recommendation as Article 292 TFEU, a purely procedural provision, which gives the Commission a broad power to adopt recommendations. The process of adoption does not involve the formal participation of the other EU institutions.

3.5 The wider legal context is relevant to the conclusions we draw at the end of the chapter, specifically as it relates to the:

- division of competences between the EU and Member States over the running of the European Parliament elections;
- extent of the EU’s competence over political parties participating “at European level” (as opposed to domestic political parties) in this election process;
- division of institutional competences between the European Council and the European Parliament over the nomination and election of a Commission President; and
- prevention of multiple-voting by EU citizens in both Member States of origin and residence, by the exchange of data between Member States.

\(^{12}\) See headnote.

\(^{13}\) (34688) 6321/13; Opinion No 1/2013 concerning draft Commission Regulations on the statute and funding of European political parties and foundations and to amend the Financial Regulation (EU, Euratom No 966/2012) as regards the financing of European political parties.
**The running of European Parliament elections**

3.6 The role of the European Parliament in representing the EU citizen and the right of the citizen to participate in the EU democratic process are asserted in Articles 10(2) and 10(3) TEU. Article 14(2) TEU states that “The European Parliament shall be composed of representatives of the Union’s citizens.” It makes provision for the maximum number of MEPs and provides for the allocation of MEPs to Member States which is “deggressively proportional”. Article 14(3) TEU states that “The members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot”.

3.7 Article 223 TFEU provides that:

> “The European Parliament shall draw up a proposal to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, which shall act by a majority of its component Members, shall lay down the necessary provisions. These provisions shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements.”

**Political parties “at European level”**

3.8 Article 10(4) TEU states that “Political parties at European level contribute to forming European political awareness and to expressing the will of citizens”.

3.9 Article 224 TFEU\(^\text{14}\) states that:

> “The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, by means of regulations, shall lay down the regulations governing political parties at European level referred to in Article 10(4) of the Treaty on European Union and in particular the rules regarding their funding.”

**Nominating and electing the President of the Commission**

3.10 Article 17(7)TEU provides that:

> “Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a

\(^{14}\) This is the legal base for the proposed Regulation referred to in footnote 10.
new candidate who shall be elected by the European Parliament following the same procedure.”

3.11 The nature of the role of the European Parliament in this process is reiterated in Article 14(1) TEU which states that “The European Parliament shall elect the President of the Commission”. Declaration 11 on Articles 17(6) and (7) TEU also states, that “the European Parliament and the European Council are jointly responsible for the smooth running of the process leading to the election of the President of the European Commission”. Additionally, Declaration 6 states that in choosing the President of the Commission: “due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States”.

**Prevention of multiple-voting by EU citizens**

3.12 Article 22(2) TFEU provides that:

“Without prejudice to Article 223(1) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.”

3.13 To safeguard the legitimacy of the European elections, Directive 93/109/EC provides for procedures ensuring that EU citizens can neither vote nor stand as candidates in both their Member State of origin and of residence in the same elections. The mechanism, set out in Article 13 to the Directive, consists in transmission of data “sufficiently in advance of polling day” by the Member State of residence to that of origin. The latter must then remove from its electoral rolls the citizens concerned (or prevent them by other means from casting their vote or standing as candidates).

**The documents**

3.14 To justify the measures proposed, the Communication points to the enhanced powers given to the European Parliament by the Treaty of Lisbon which consolidate the Parliament’s role as co-legislator with the Council. The Commission refers to the recognition, at Treaty level, of the European Parliament’s role in directly representing the EU citizen and the citizen’s right to participate in the EU democratic process.

3.15 The Commission also cites its 2010 report evaluating the low turnout of voters in the 2009 elections, in line with a decreasing trend, and says that its 2010 EU Citizenship report provides further evidence of the need to increase citizens’ engagement with European Parliament elections. This, it argues, can be improved by establishing connections between national and European political parties, a theme highlighted by

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President Barroso in his “State of the Union 2012” address. The elections’ importance is heightened, the Commission says, by the recent emphasis on democratic legitimacy in the development of an enhanced EMU, as outlined in the Commission’s 2012 “Blueprint for a deep and genuine economic and monetary union” and the Van Rompuy Report “Towards a Genuine Economic Union”.

3.16 The measures in the Recommendation fall into two categories. The first relates to the democratic conduct of the elections, the second to their efficient conduct. The measures are addressed variously to the Member States, European political parties and national political parties. The Commission hopes that the Recommendation will be acted upon by Member States in time for the 2014 Elections. The measures it contains are set out in further detail below.

**Democratic conduct of the elections**

**Affiliations between national and European political parties**

3.17 The Commission wants to make the connection between European and national political parties more visible, recommending that:

- national political parties should publicise their affiliation with European political parties in advance of campaigning in European elections (using campaign materials, communications and political broadcasts); and

- Member States should, within their electoral systems, “encourage and facilitate” the provision of information to voters about those affiliations (by allowing and encouraging the indication of affiliation on the ballots used in those elections).

3.18 The recommendation aimed at national political parties mirrors the requirement on European political parties in Article 17(3) of the proposed Regulation on the statute and funding of European political parties and foundations. This requires European political parties “to take all appropriate measures, in the run-up to European Elections, to inform voters of the affiliations between national political parties and candidates and the European political parties”.

3.19 The Commission justifies these recommendations in the Communication by stating that:

“Increasing the visibility of European political parties during the whole electoral process, from the campaign to the casting of ballots, would increase the accountability of the political parties taking part in the European electoral process and improve the trust of voters in this process. It would make citizens more aware of the European repercussion of a vote cast for a national party”.


19 http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/134069.pdf. We scrutinised both the document at footnote 18 and this document, and on our recommendation, they were debated on the Floor of the House on 25 April 2013.

20 See footnote 10 above.
3.20 On the use of political broadcasts to promote affiliations, the Commission says this will enable EU voters to make informed choices and national political parties should employ them “in an environment promoting media pluralism and an open democratic debate, taking into account Article 11 of the Charter of Fundamental Rights of the European Union.”

**Common voting day**

3.21 The Commission recommends a common voting day for European elections across the EU, with polling stations closing at the same time. It reports that, currently, Member States hold European elections on different days and that this “entrenches the perception that European elections are primarily national elections and limits the impression that European elections are a common endeavour.”

**Nominating and supporting a candidate for President of the European Commission**

3.22 The Commission recommends that European political parties nominate a candidate for the President of the European Commission and publicise that nomination in the run-up to the European elections. A related recommendation requires national political parties to publicise the Presidential candidate they support, and that candidate’s programme, during their campaigning for European elections.

3.23 The nomination of candidates by European political parties has, the Commission points out, previously been endorsed by President Barroso in his 2012 State of the Union address and by the European Parliament in a resolution passed on 22 November 2012. The recommendation would “make concrete and visible the link between the individual vote of the EU citizen for a candidate for membership of the European Parliament and the candidate for President of the Commission supported by the party of the candidate MEP”. Referring to US electoral evidence, it asserts that this recommendation could increase turnout for the elections “by strengthening the link between the election of the representatives of the citizens with the election and election process of the head of the European executive.”

**The efficient conduct of the elections**

3.24 The Commission, noting that information exchange procedures required by Directive 93/109/EC have resulted in disproportionate burdens for national administrations, but recognising the need to prevent voting abuses (multiple voting), recommends that Member States:

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21 This provides the right to freedom of expression and the right “to receive and impart information and ideas without interference by public authority”.

22 See footnote 19.

23 European Parliament resolution of 22 November 2012 on the elections to the European Parliament in 2014 (2012/2829(RSP)). In this Resolution, the European Parliament urged the European political parties to nominate candidates for President of the Commission, noting that it expected those candidates to play a leading role in the parliamentary electoral campaign, in particular by personally presenting their programme in all Member States of the Union.
• set up one single contact authority for a smoother exchange of data with other Member States;

• take into account the different electoral calendars of other Member States when exchanging data; and

• provide additional personal data which may be necessary for more efficient identification of EU voters registered on the electoral rolls of their Member State of residence, using a uniform, single electronic mechanism.

The Government’s view

3.25 The Minister for Europe (Mr David Lidington), in his Explanatory Memorandum of 17 April 2013, notes that neither document is legally binding but are “merely a series of suggestions and interpretations, and the UK’s view is that they should be treated as such. The UK will take its own view as to whether these documents should be adopted”.

Democratic conduct of the elections

Affiliation between national and European political parties

3.26 Referring to the two recommendations aimed at making links between national and European political parties more obvious to voters, the Minister notes their relevance to the provisions in the proposed Regulation on the statute and funding of European political parties which are currently being negotiated and, given this, comments on their “unfortunate timing”. He refers to the purported rationale for the proposals — increased electoral transparency and increased voter turnout — but insists that:

“Participation in European elections is governed by the laws of Member States. National political parties participate in elections in the UK, not European political parties. There is nothing within UK domestic law which would prevent a national political party from making known its affiliation with a European political party, during the course of its election campaign. Conversely, there is nothing that can force a national political party to make known its affiliation with a European political party. It is the Government’s view that if national political parties wish to make their connection to European political parties known, at any time, then they are welcome to do so, but they should not be under any obligation in this regard.”

Common voting day

3.27 The Minister, similarly, states that this recommendation is made with poor timing; too close to the elections themselves and to the recent deliberations of the European Parliament and Council on a prospective date for the elections. Noting that Member States historically have held their elections on different days (Thursday to Sunday), the Minister insists that the UK will not be changing its “long tradition” of holding elections on a Thursday to accommodate a suggested common voting day. Instead, he says that “electoral diversity” across the EU should be respected. He continues that the aim of increasing voter turnout would not be achieved “by this insistence of electoral homogeneity, and could instead have the opposite impact” and that the proposal for a common voting day, with
polling stations closing at the same time “seems impractical give the time-zone differences within the European Union”.

**Nominating and supporting a candidate for President of the European Commission**

3.28 The Minister acknowledges the freedom of European political parties to nominate candidates for Commission President and for national parties to express support for candidates, should they so choose. But he takes issue with assertions made by the Commission about the selection process for the next Commission President. The Minister disputes the link the Commission makes between this recommendation and the potential to increase voter turnout as being thinly based on US electoral experience. He also objects to the unwarranted weight that the Commission assigns to the European Parliament’s role in stating that the elections would play a key role in determining which candidate becomes President. The Commission, the Minister says, suggests that the Commission President can only be chosen from among candidates nominated by European political parties. The Minister disputes this saying Article 17 TEU “places no limits on the European Council in its choice of candidates for the Commission President”, subject to the requirement in Article 17(3).

**The efficient conduct of European elections**

3.29 The Minster reports that, after giving consideration to the creation of an “Information Exchange” as a single depository for voter data, the Government has concluded that it would be “unworkable in practice and is disproportionate to the nature of the problem that it is designed to address (double voting at European elections).” Nor would it address the significant problem, which the UK has already identified, of the provision of incomplete data by other Member States which often cannot be processed, says the Minister. He says that “out of 85,473 records received ahead of the 2009 European Parliamentary elections, the UK was only able to process 28,513 due to insufficient or no information about last registered address”. He adds that given outstanding concerns, the Government is considering how best to administer, proportionately, the requirements of Directive 93/109/EC ahead of the 2014 elections.

**Conclusion**

3.30 We recognise that these two documents, a Communication and a Recommendation, do not have any legally-binding force pursuant to Article 288 TFEU. As such they do not entail any immediate legal or financial obligations for the UK.

3.31 Communications and Recommendations, though, carry political weight and can act as an intermediate step to future, binding, requirements. The Commission hints at this when it states in the Communication that it is committed “to fully exploiting the existing Lisbon provisions to further enhance transparency and the European dimension of the European Elections”. It continues: “[t]his is particularly relevant in view of the actions required at EU level to address the financial and sovereign debt crisis. This can also act as a stepping stone towards further Treaty reforms to enhance the European Union’s basis as a democratic organisation”.
3.32 It is the possibility of subsequent Commission-led legally binding measures which most concerns us: we think the measures in the Recommendation which are addressed to national political parties and national elections, particularly on a common voting day, represent a clear intention to interfere with Member States’ electoral arrangements and traditions and to restrict national parties’ freedom to act, without power being conferred on the EU to do so. We also agree with the Government that the Commission places an emphasis on the role of the European Parliament and elections in the nomination of the next President of the Commission which is not warranted by Article 17(7) TEU.

3.33 The prominence already given to these measures in the national press underlines the view that they are of considerable public interest. We agree, and consider them of such legal and political importance that they should be debated on the Floor of the House.

3.34 Before the debate takes place, we ask that the Government writes to us with a more detailed analysis of its views on the competence of the Commission to propose each of the measures in the Recommendation, and with its views on how the Commission is likely to follow up these two documents.
4 Economic governance: European Semester and macroeconomic imbalances

(a) (34856) 8660/13 COM(13) 199
Commission Communication: Results of in-depth reviews under Regulation (EU) No. 1176/2011 on the prevention and correction of macroeconomic imbalances

(b) (34877) SWD(13) 125
Commission Staff Working Document: In-depth review for the United Kingdom in accordance with Article 5 of Regulation (EU) No 1176/2011 on the prevention and correction of macroeconomic imbalances

Legal base
Documents originated
Deposited in Parliament
Department
Basis of consideration
Previous Committee Report
Discussion in Council
Committee’s assessment
Committee’s decision

10 April 2013
22 April 2013
HM Treasury
Two EMs of 30 April 2013
None
21 June 2013
Politically important
For debate in European Committee B, together with related documents previously recommended for debate

Background

4.1 In March 2010 the Commission proposed a “Europe 2020 Strategy”, to follow on from the Lisbon Strategy. This strategy is aimed at promoting smart, sustainable and inclusive economic growth. It was endorsed by the March 2010 European Council. During the latter half of 2010 the Council adopted, in the context of the Europe 2020 Strategy, broad guidelines for the economic policies of the Member States and the EU and guidelines for the employment policies of the Member States, together the “Europe 2020 integrated guidelines”.

4.2 The June, September and October 2010 European Councils considered and endorsed measures to increase coordination of EU economic governance, including strengthening the Stability and Growth Pact and an annual “European Semester”. The European

24 (34483) 16513/12, (34487) 16671 + ADDs 1–2: see HC 86–xxvi (2012–13), chapter 3 (9 January 2013); and (34486) 16669/12 + ADDs 1–2: see HC 86–xxvi (2012–13), chapter 6 (9 January 2013).
27 (31573) 9231/10, (31574) 9233/10: see HC 428–i (2010–11), chapter 9 (8 September 2010), HC 428–v (2010–11), chapter 3 (27 October 2010) and Gen Co Debs, European Committee B, 10 January 2011, cols. 3–30.
Semester is an EU-level framework for coordinating and assessing Member States’ structural reforms and fiscal/budgetary policy and for monitoring and addressing macroeconomic imbalances. It attempts to exploit the synergies between these policy areas by aligning their reporting cycles, which would tie together consideration of National Reform Programmes (reports on progress and plans on structural reforms, under the Europe 2020 Strategy) and Stability and Convergence Programmes (reports on fiscal policy, under the Stability and Growth Pact).28

4.3 In January 2011 the Commission published its first “Annual Growth Survey” — it noted that this marked the start of the new cycle of EU economic governance and the first European Semester.29 In January we considered the third Annual Growth Survey and recommended it for debate in European Committee B.30

4.4 The Macroeconomic Imbalances Procedure (MIP)31 is a mechanism designed to identify and, if necessary, correct harmful macroeconomic imbalances across the EU, which were a key cause of the current sovereign debt crisis. The procedure forms an element of the European Semester. The first stage of the MIP is publication by the Commission of an annual Alert Mechanism Report. Its purpose is to identify which Member States may have macroeconomic imbalances. If a Member State is deemed at risk, the Commission conducts a more detailed assessment contained within an In-Depth Review (IDR). (As Cyprus, Greece, Ireland, Portugal and Romania are under enhanced economic surveillance they are not subject to IDRs.)

4.5 We considered the 2013 Alert Mechanism Report and an associated Commission Staff Working Document in January and recommended them for debate in European Committee B. In the Report the Commission assessed each Member State against a scoreboard of 11 macroeconomic indicators that monitor the potential development of problematic external and internal imbalances based on data for 2011. The Commission:

- identified 13 Member States as showing signs of potential macroeconomic imbalances — Belgium, Bulgaria, Denmark, Spain, France, Italy, Hungary, Malta, the Netherlands, Finland, Slovenia, Sweden and the UK; and
- said that the UK exceeded the thresholds for three of these indicators — general government debt, private sector debt and export market share.32

4.6 There are three alternative outcomes following the publication of IDRs. First, the Commission might find that none of the indicators that exceed their threshold represents a macroeconomic imbalance within a country and no further action would be taken at this point. Secondly, the Commission might identify that one or more of the indicators that

30 Op cit.
32 Op cit.
exceed their threshold represent an imbalance, but that none are deemed to be “excessive”. Under this scenario, the Commission would propose non-binding recommendations under Article 121(2) TFEU, the same legal basis as country-specific recommendations issued as part of the European Semester. These recommendations would be to address the identified imbalances under the “Preventive Arm” of the procedure and would need to be agreed by Council approval through QMV. They would subsequently be made public under Article 121(4) TFEU. Thirdly, if the Commission considers that an “excessive” imbalance exists, it would propose, subject to Council approval by QMV, placing the Member State in an “Excessive Imbalances Position”. This would involve more stringent requirements, which could, in the case of non-compliance by eurozone Member States, result in escalating sanctions up to and including a non-refundable fine of 0.1% of GDP. For non-eurozone countries non-compliance would not lead to sanctions, but it would be made public.

The documents

4.7 Last month the Commission published the findings of IDRs into the 13 Member States identified in the 2013 Alert Mechanism Report. The Commission Communication, document (a), summarises its overall findings and its findings for each Member State. The main findings are that:

- all 13 Member States have macroeconomic imbalances;
- in 11 Member States, namely Belgium, Bulgaria, Denmark, France, Italy, Hungary, Malta, the Netherlands, Finland, Sweden and the United Kingdom, imbalances were not excessive — all 11 will receive non-binding recommendations in June, which will reflect the analysis in the IDRs;
- two countries, Spain and Slovenia, have excessive imbalances;
- macroeconomic adjustment is taking place though with differences in nature and pace across the Member States; and
- weak economic activity and the fragile economic outlook in some cases may have aggravated both the risks and the cross-country spillovers from the macroeconomic imbalances which have been analysed.

4.8 The Commission says of Belgium that it “is experiencing macroeconomic imbalances, which deserve monitoring and policy action” and uses the same formulation for the other ten Member States without excessive imbalances. It identifies several key issues in their economies pertaining to:

- in the case of Belgium, external competitiveness of goods and high level of public debt;
- Bulgaria, the impact of deleveraging in the corporate sector, competitiveness and labour markets;
- Denmark, to the housing market, the high level of indebtedness in the household and private sector and external competitiveness;
• France, deterioration in the trade balance and competitiveness levels and high public debt;
• Italy, loss of competitiveness and high public indebtedness;
• Hungary, private sector deleveraging in a context of high public debt and a weak business environment;
• Malta, sustainability of the public finances and the strong link between the domestically-oriented banks and the property market;
• the Netherlands, private sector debt and deleveraging pressures, inefficiencies in the housing market and a large current account surplus;
• Finland, deterioration in the current account position and weak export performance;
• Sweden, private sector debt and deleveraging, inefficiencies in the housing market and a large current account surplus; and
• the UK, high levels of mortgage debt and external competitiveness.

4.9 The Commission considers that “Slovenia is experiencing excessive macroeconomic imbalances” and that urgent policy action will be needed to address the rapid accumulation of imbalances. It points to a particular risk regarding the financial sector in light of corporate indebtedness and deleveraging, which the Commission thinks is made worse by a predominance of state ownership. As for Spain the Commission considers that it also “is experiencing excessive macroeconomic imbalances”. Although the Commission recognises that adjustment is taking place, it notes risks from high levels of domestic and external debt and thinks that recent economic developments have made the situation in Spain more serious.

4.10 The Commission’s Communication is accompanied by the 2013 IDRs for the 13 Member States concerned. That for the UK, running to 65 pages, is document (b). It comprises an executive summary, introduction, macroeconomic scene setter, in-depth analysis of selected topics and policy challenges. Within the executive summary, the Commission notes that the macroeconomic imbalances identified within the UK’s 2012 IDR, specifically high levels of household debt and external competitiveness, remain. It is also judged that the macroeconomic imbalances that the UK is experiencing pose a greater threat to growth than to stability. The introduction sets out the legal base for the MIP, the various steps of the procedure and Commission’s rationale for subjecting the UK to an IDR for a second time to examine further the persistence of imbalances or their unwinding.

4.11 The macroeconomic scene setter sets out the severe impact the financial crisis has had on the UK economy and gives an overall assessment of the UK’s performance against all of the macroeconomic indicators in the Commission’s scoreboard. The analysis highlights the value of assessing country-specific circumstances. For instance, the UK continues to generate net positive foreign income flows, despite having a Negative International Investment Position.
4.12 The in-depth analysis section reviews the external competitiveness and levels of household/corporate sector debt for the UK. The Commission notes that the UK is the worst performer of any Member State on its export market share indicator, although acknowledges that this is influenced by the sharp depreciation of sterling when measuring the UK’s exports in euros. Despite losing export market share, from 2007 to 2011, export volumes increased by 3.3% in the UK, at a time when GDP contracted by 2.3%. The Commission also acknowledges the extent to which the weak growth in the EU has constrained the UK’s external demand.

4.13 On the subject of private sector debt, the Commission notes that the level of household debt remains high and considers that it constitutes an imbalance. The progress of deleveraging in both the corporate and household sectors is highlighted, but the Commission reflects the inevitable tension between the conflicting aims of deleveraging with a need for access to credit to provide for investment-led growth. It acknowledges the range of demand and supply side measures that the Government is undertaking to stimulate the housing market.

4.14 The policy challenges section reflects the Commission’s preferred Government response to the issues raised within the IDR. To improve external competitiveness it advocates policy action in infrastructure, skills and access to finance. To address household indebtedness, action is recommended to increase residential construction, to reform property taxation and to encourage longer term private renting.

**The Government’s view**

4.15 On the Commission Communication, document (a), the Financial Secretary to the Treasury (Greg Clark) says that:

- the Government welcomes the publication of the IDRs;
- these come at a crucial juncture where the EU and eurozone urgently need to tackle its fiscal deficits and debt, improve its economic growth prospects and take action to correct harmful macroeconomic imbalances;
- the UK being placed in the “preventive arm” of the MIP means that no further action will be taken under the procedure; and
- more generally, while eurozone countries are potentially subject to sanctions under the MIP, the UK is not subject to fines or sanctions at any stage of the European Semester process.

4.16 On the next stages of the European Semester the Minister says that:

- the Commission is likely to present a package of draft country-specific advice to Member States in late May;
- since Spain and Slovenia have been identified as having excessive imbalances, the Commission may present a recommendation for a Council recommendation establishing the existence of excessive imbalances in these Member States, thereby triggering the corrective arm of the MIP;
• if, as expected, the Commission comes forward with such a recommendation as part of its package of country-specific advice in late May, a decision on excessive imbalances can be expected at the ECOFIN Council on 21 June;

• Member States which do not have an excessive imbalance, such as the UK, will receive non-binding recommendations as part of the Commission’s package of country-specific advice, which are expected to reflect the analysis contained in the IDR; and

• the advice addressed to Member States under the European Semester will be formally endorsed by Heads of State or Government at the European Council on 27–28 June.

4.17 In his Explanatory Memorandum on the UK IDR, document (b), the Minister says that the Government takes note of the Commission’s assessment placing the UK in the “preventive arm” of the MIP and reiterates that, this means, consistent with the Commission’s approach that Member States that had taken effective policy action to address imbalances would not be subject to follow-up measures, that no further steps are foreseen under the procedure, and that the UK is not subject to sanctions under the MIP or at any point in the European Semester.

4.18 The Minister then comments that:

• the Government continues in its efforts to increase exports as part of the strategy to rebalance the economy;

• the OBR’s March 2013 forecast shows UK exports growing strongly in future years, above 5% per year from 2015;

• import growth is expected to be weaker, leading the trade deficit to narrow and driving a positive contribution to GDP growth;

• with the Autumn Statement 2012 the Government announced £70 million in additional funding for UK Trade and Investment, along with additional flexibilities, to enable it to deliver improved services and refocus its activities on the highest value opportunities and emerging markets;

• in 2011, the EU still represented approximately half of the UK export market, but exports to emerging markets have been rising faster since 2009;

• the unsustainable pre-crisis borrowing in the private sector was accompanied by an increasing reliance on poorly regulated growth in the financial sector;

• the Government’s macroeconomic strategy as set out in the June 2010 Budget is designed to lay the foundation for a stronger more balanced economy in the future;

• private sector debt is falling as a proportion of GDP (from 221% in 2007 to 205% in 2011) but remains above the Commission’s threshold of 160%;
• the level of household debt should be seen in the context of the UK’s internationally high owner-occupation rate and households’ stock of financial and housing assets (79% of household debt is secured against property);

• the UK housing market is undergoing a period of gradual recovery;

• household debt has fallen as a proportion of income from 175% in the first quarter of 2008 to 144% currently;

• in the 2013 Budget, the Government announced £5.4 billion of financial support to tackle long term problems in the housing market;

• this builds on the £11 billion the Government has already committed to investing in housing during this Spending Review period; and

• the Government is providing £225 million more funding for affordable housing through the guarantees programme to support a further 15,000 affordable homes by 2015.

Conclusion

4.19 We have recommended that the Alert Report Mechanism and its related Commission Staff Working Document be debated in European Committee B, once the UK IDR is available. According to the Office for National Statistics, the UK’s GDP growth rate has significantly improved since then. Accordingly we now recommend that the IDR, document (b), together with the overarching Commission Communication, document (a), be joined in a European Committee B debate with the earlier documents. We have also recommended the Annual Growth Report for debate in European Committee B.

4.20 Given the stage now reached in the European Semester we suggest that this document should also be melded into the one debate.

4.21 However the debate should not take place until we have seen and been able to recommend for the same debate the forthcoming country-specific recommendations. But the debate should take place before the ECOFIN Council of 21 June.
5 Climate and energy policies 2030

Commission Green Paper: A 2030 framework for climate and energy policies

Legal base

Document originated 27 March 2013
Deposited in Parliament 5 April 2013
Department Energy and Climate Change
Basis of consideration EM of 16 April 2013
Previous Committee Report None, but see footnote
Discussion in Council No date set
Committee’s assessment Politically important
Committee’s decision Not cleared; Opinion sought from the Energy and Climate Change Committee under Standing Order No. 143 (11)

Background

5.1 The Commission notes that the EU has a clear framework for its energy and climate policies up to 2020, aimed at integrating objectives such as reducing greenhouse gas emissions, securing energy supply and supporting growth, and involving targets for emission reductions, uptake of renewable energy, and energy savings, and supported by a regulatory framework aimed at creating a single market for energy. It says that, whilst good progress is being made, there is a need now to consider a new framework for policies in this area up to 2030, bearing in mind the long investment cycles involved. It has therefore produced this Green Paper, which seeks to explore available options, and poses a number of questions on which responses have been invited by 2 July 2013.

The current document

5.2 The Commission says that the EU’s approach must enable it to meet its longer-term climate objectives set out in the Energy Roadmap 2050, whilst taking into account the changes which have taken place since the current framework was agreed in 2008–09, including the on-going economic crisis, budgetary considerations, developments in energy markets, the impact on household budgets and competitiveness, and the international dimension, including the efforts made more widely to reduce greenhouse gas emissions.

5.3 The Green Paper begins by reviewing the current policy framework, and the progress made towards the targets of achieving by 2020 a 20% reduction in emissions of greenhouse gases through the Emissions Trading System and Effort Sharing Decision; a 20% share of consumption for renewable energy following the introduction of indicative targets; and a
20% saving in energy consumption, through such measures as the Energy Efficiency Directive. It also notes the extent to which legislation on the internal energy market, and investment in infrastructure and new technology, has contributed to the security of supply, and affordability, of energy.

5.4 The document then identifies a number of key issues for consideration. These include:

The use of targets

The Commission notes that there are differing views about the usefulness of targets, including the level at which they should be set and whether they should be legally binding. It suggests that, whilst there is a broad consensus on the need for interim greenhouse gas reduction targets if the EU is to achieve its aim of a 80–95% reduction by 2050, further consideration needs to be given to the role of targets for renewable energy and energy efficiency (and the possible interaction between them), how these should be expressed, how far they should be aspirational or binding, and the balance between action at EU and Member State levels.

Coherence of policy instruments

The Commission notes that a combination of measures will be needed, which will interact with each other, and that it is also necessary to take into account the extent to which the approach to the targets for 2020 has led to different approaches by Member States in areas such as support schemes for renewables, energy efficiency, and taxation. It suggest that a balance needs to be struck between concrete measures at EU level and Member States’ flexibility to operate in ways most appropriate to their own circumstances: and it also highlights the role which EU financial support, particularly through Cohesion Policy and Research Programmes, plays in relation to climate change and renewable energy, and the role of globally agreed standards and policies in areas such as shipping and aviation.

Impact on competitiveness

The Commission notes that energy policy must contribute to EU competitiveness, but cautions on the danger of rising energy prices, and of international developments (in particular the impact of US shale gas) leading to an increasing divergence between EU prices and those of other major industrial economies. It adds that the various drivers of national energy costs need to be analysed, with the issues to be addressed including greater market integration, exploitation of oil and gas resources, diversified supply routes, international climate negotiations, legislation on aviation and maritime emissions, and the continuing impact of the Emissions Trading System, including the distribution of revenues from it.

Capacity of Member States

Finally, the paper notes that the current policy framework takes into account the differences between Member States in terms of wealth, industrial structure, energy mix, exploitable renewable sources and social structure, and the need to consider
how far any future framework should do so, pointing out that, although
differentiated targets may promote fairness, they also work against the objectives of
the internal energy market and increase costs. It says that decisions in this area must
depend on comprehensive information about Member State-specific circumstances.

5.5 The Green Paper concludes by inviting comments on a number of questions (see the
Annex to this chapter).

The Government’s view

5.6 In his Explanatory Memorandum of 16 April 2013, the Secretary of State for Energy
and Climate Change (Edward Davey) says that his Department is currently coordinating
the UK’s response to the Commission’s consultation, but he notes that there is a significant
discussion in the EU about the future of its climate and energy policy, with investors
having expressed concerns about the uncertainty over the future regime after 2020, bearing
in mind their long planning horizons.

5.7 The Minister says that, domestically, the UK already has a clear approach to a long-
term climate and energy framework, setting five-yearly carbon budgets to 2027, with a
trajectory for emissions reduction in line with the global ambition to keep temperature
rises below 2°C. In addition, it has supported the Commission’s 2050 Roadmap, which
identifies that the cost-effective pathway for the EU to achieve the shared objective of
cutting 1990 emission levels by 80–95% in 2050 will involve reductions of 25% in 2020,
40% in 2030 and 60% in 2040.

5.8 The Minister also says that the ultimate goal is to secure the EU-wide emissions
reduction objective for 2050 cost effectively, and that the Government has not yet formed a
position on the 2030 framework. However, it considers that the focus of any potential
package for 2030 should be on ensuring that the economically efficient decarbonisation
pathway can be taken in a way which promotes EU competitiveness and security of supply.
He adds that Member States will benefit from having a clear framework for climate
ambition, but that consideration should be given as well to flexibility at the national level
on how to achieve the transition to a low carbon economy in a cost effective way, with
Member States able to select the most appropriate energy mix to meet their needs. In
particular, it will be important for any EU framework to support the UK’s own electricity
market reform, designed to promote investment in low carbon technologies competing on
price over time.

Conclusion

5.9 This document addresses a subject of some topical interest, and highlights a
number of policy areas where further action may be needed in the not too distant
future, and consequently we think it right to draw it to the attention of the House. As it
is essentially a progress report, we think it unlikely that it raises issues which require
further consideration at this stage, but, before taking a definitive view on this, we would
welcome the formal Opinion of the Energy and Climate Change Committee on the
significance of the Report, in accordance with Standing Order No. 143 (11). In the
meantime, the document remains under scrutiny.
Annex: Questions posed in the Green Paper

General

- Which lessons from the 2020 framework and present state of the EU energy system are most important when designing policies for 2030?

Targets

- Which targets for 2030 would be most effective in driving the objectives of climate and energy policy? At what level should they apply (EU, Member State, or sectoral), and to what extent should they be legally binding?
- Have there been any inconsistencies in the current 2020 targets and if so how can coherence of potential 2030 targets be better ensured?
- Are targets for sub-sectors such as transport, agriculture, industry appropriate, and, if so, which ones? For example, is a renewables target necessary for transport, given the targets for carbon dioxide reduction for passenger cars and light commercial vehicles?
- How can targets better reflect the economic viability and the changing degree of maturity of technologies in the 2030 framework?
- How should progress be assessed for other aspects of EU energy policy, such as security of supply, which may not be captured by the headline targets?

Instruments

- Are changes necessary to other policy instruments and how they interact with one another, including between the EU and national levels?
- How should specific measures at the EU and national level best be defined to optimise cost-efficiency of meeting climate and energy objectives?
- How can fragmentation of the internal energy market best be avoided, particularly in relation to the need to encourage and mobilise investment?
- Which measures could be envisaged to make further energy savings most cost-effectively?
- How can EU research and innovation policies best support the achievement of the 2030 framework?

Competitiveness and security of supply

- Which elements of the framework for climate and energy policies could be strengthened to better promote job creation, growth and competitiveness?
- What evidence is there for carbon leakage under the current framework and can this be quantified? How could this problem be addressed in the 2030 framework?
• What are the specific drivers in observed trends in energy costs and to what extent can the EU influence them?

• How should uncertainty about efforts and the level of commitments that other developed countries and economically important developing nations will make in the on-going international negotiations to be taken into account?

• How to increase regulatory certainty for business while building in flexibility to adapt to changing circumstances (for example, progress in international climate negotiations and changes in energy markets)?

• How can the EU increase the innovation capacity of manufacturing industry? Is there a role for the revenues from the auctioning of allowances?

• How can the EU best exploit the development of indigenous conventional and unconventional energy sources within the EU to contribute to reduced energy prices and import dependency?

• How can the EU best improve security of energy supply internally by ensuring the full and effective functioning of the internal energy market (for example, through the development of necessary interconnections), and externally by diversifying energy supply routes?

Capacity and distributional aspects

• How should the new framework ensure an equitable distribution of effort among Member States? What concrete steps can be taken to reflect their different abilities to implement climate and energy measures?

• What mechanisms can be envisaged to promote cooperation and a fair effort sharing between Member States whilst seeking the most cost-effective delivery of new climate and energy objectives?

• Are new financing instruments or arrangements required to support the new 2030 framework?
6 Renewable Energy Progress Report

Legal base

Document originated 27 March 2013
Deposited in Parliament 5 April 2013
Department Energy and Climate Change
Basis of consideration EM of 19 April 2013
Previous Committee Report None, but see footnote
Discussion in Council No date set
Committee’s assessment Politically important
Committee’s decision Not cleared; Opinion sought from the Energy and Climate Change Committee under Standing Order No. 143 (11)

Background

6.1 The Renewable Energy Directive 2009/28/EC sets out requirements for securing renewable energy a 20% share of EU final consumption by 2020 (together with a 10% share in transport), with each Member State being set mandatory individual targets. The Directive also requires measures to be taken to address the administrative barriers faced by renewable energy projects, together with improvements to the rules and operation of the electricity grid in order to improve access for renewable electricity, and it establishes a comprehensive sustainability scheme for biofuels and bioliquids, with compulsory monitoring and reporting requirements.

The current document

6.2 Each Member State is required under the Directive to report to the Commission every two years on its progress towards the 2020 target, and the purpose of this document is to assess that progress, and to report on the sustainability of biofuels and bioliquids consumed in the EU.

Progress in renewable energy development

6.3 The Report notes that most Member States have experienced a significant growth in renewable energy, with the shares of 20 Member States and the EU as a whole in 2010 being at or above the level of their commitments, and above the first interim target for 2011–12. However, it warns that the outlook for 2020 is less optimistic, due to the economic crisis (and associated impact on the cost of capital for infrastructure projects),

For the UK, these are 15% renewable energy overall and 10% for transport.
ongoing administrative and infrastructure barriers, and disruptions to policy and support schemes. As a result, it says that further measures will need to be taken by Member States.

6.4 The Report also gives details of sectoral developments, noting the shortfalls now anticipated in the deployment of both onshore and offshore wind power and in biomass and biofuels compared with original expectations, the only exception to this being solar power, where substantial cost reductions in the past few years have led to a surplus against expected deployment, which is due to be sustained at least in the short to medium term.

Policy measures

6.5 The Report identifies the market failures across the EU which have acted as a barrier to the delivery of renewable energy, and the policy interventions which are required — and have been implemented — to remedy these. It expresses concern that many Member States have taken insufficient action to address administrative barriers, particularly in relation to planning and permitting, pointing out that sub-optimal processes can significantly increase the costs of renewable energy deployment. It says that the Commission will continue to investigate Member States’ removal of these barriers, and will launch infringement proceedings where they have failed to act. It also notes the importance of grid infrastructure, and the urgent need for investment in this and for updated electricity grid operations (including the arrangements and cost sharing rules for using the grid, where it says that, despite the progress made by most Member States in both areas, more needs to be done).

6.6 The report draws attention to the current variety of renewable energy support schemes operated by Member States, and says that the Commission has been preparing, in consultation with Member States, guidance (which is due to be published later in 2013) on best practice for achieving cost effective and consistent schemes, with the aim of ensuring that any market interventions address failures without adding or maintaining distortions. In addition, the Commission says it will promote a common, European approach to offshore wind development.

Sustainability of biofuels

6.7 The report notes that the bulk of EU biofuels production and consumption is dominated by five Member States, and sets out details of the sources of biofuels consumed in the EU in 2010. It also highlights the fact that the Commission’s scrutiny of Member States’ transposition of the biofuel sustainability criteria has exposed some gaps, and that legal proceedings have begun to ensure that effective sustainability regimes are in place in all Member States. At the same time, 13 “voluntary schemes” for certifying the sustainability of biofuels have been approved by the Commission, enabling biofuel producers around the world to comply with high EU standards.

6.8 The report also notes that the Commission’s monitoring of specific measures for air, soil and water protection found that current EU practices under agricultural and environmental legislation apply to biofuel feedstock production, and that additional
specific measures are not required (although it comments that, as the pressure on agricultural resources increases, it will be important to ensure that the measures in place continue to be adequate). The report also highlights a number of other key findings about biofuels, covering issues such as global and EU usage; the impact of demand on land use and prices; and the estimated carbon dioxide savings associated with biofuels use. However, it points out that the latter do not currently include the effect of indirect agricultural intensification or indirect land use change, which might significantly reduce the savings. It adds that this is particularly relevant for the “first generation”, often food crop-based, biofuels, which are likely to have the highest indirect land use impact, and that this lay behind the amendments it has proposed to the Fuel Quality Directive and Renewable Energy Directive, which seek to take fuller account of those effects.

The Government’s view

6.9 In his Explanatory Memorandum of 19 April 2013, the Secretary of State for Energy & Climate Change (Edward Davey) says that the report does not have any direct policy implications for the UK, which he suggests has so far made steady progress against the requirements of the Directive, with renewable energy overall having increased from a starting-point of 1.3% in 2005 to 3.8% in 2011. He adds that the UK has taken a robust line on the sustainability of biofuels, ensuring that those used in the UK meet the Commission’s criteria, and that it believes the most appropriate way to address indirect land use change issues is through the introduction of mandatory factors into greenhouse gas calculations.

6.10 The Minister draws attention to the UK’s programme of Electricity Market Reform, which the Government is seeking to introduce through the Energy Bill, and which aims to ensure that the UK remains a leading destination for investment in low-carbon electricity. He also notes that the introduction of a fast-track planning regime for major infrastructure on 1 March 2010 under the Planning Act 2008 was an important step in addressing administrative barriers in the UK, in that it sets deadlines for determination of planning applications, including renewable generation infrastructure of more than 50MW onshore or 100 MW offshore, with the Renewables National Policy Statement, approved by Parliament in July 2011, setting out how policy on renewables should be applied to such applications.

Conclusion

6.11 This document addresses a subject of some topical interest, and highlights a number of policy areas where further action may be needed in the not too distant future, and consequently we think it right to draw it to the attention of the House. As it is essentially a progress report, we think it unlikely that it raises issues which require further consideration at this stage, but, before taking a definitive view on this, we would welcome the formal Opinion of the Energy and Climate Change Committee under Standing Order No. 143 (11). In the meantime, the document remains under scrutiny.

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7 International climate policy beyond 2020

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<th>Commission Communication: The 2015 International Climate Change Agreement — Shaping international climate change policy beyond 2020</th>
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**Legal base**

Document originated: 26 March 2013

Deposited in Parliament: 10 April 2013

Department: Energy and Climate Change

Basis of consideration: EM of 22 April 2013

Previous Committee Report: None

Discussion in Council: No date set

Committee’s assessment: Politically important

Committee’s decision: Not cleared; Opinion sought from the Energy and Climate Change Committee under Standing Order No. 143 (11)

**Background**

7.1 According to the Commission, international efforts to address climate change fall far short of what is needed to prevent a damaging 2°C rise in global temperatures above pre-industrial levels, and the growth in greenhouse gas emissions will have to be reversed before 2020, and then decline every year thereafter. It says that it is only by acting collectively, with greater urgency and ambition, that the worst consequences of a rapidly warming planet can be avoided, and it notes that negotiations on a new international agreement to address these issues were launched in 2011, with the agreement due to be completed by the end of 2015, and to come into operation from 2020 onwards.

**The current document**

7.2 This Communication invites views on the work needed to conclude such an agreement, and on the actions needed between now and 2020. It begins by looking at the current state of play on international climate policy, and at the challenges and opportunities for the period 2020–30. It notes that the 2015 agreement will have to bring together into a single instrument a patchwork of binding and non-binding arrangements, and that it will be necessary to learn from the experience gained under the United Nations Framework Convention on Climate Change, the operation of the Kyoto Protocol, and the pledging process arising from the Copenhagen Conference in 2009 and at Cancun the following year, under which individual countries have undertaken to reduce their emissions. In particular, it says that the approach should be one of mutual interdependence and shared responsibility, capable of attracting the participation of all major economies, including those which have so far resisted legally binding commitments to reduce greenhouse gas emissions. In addition, it will have to reflect how the world has changed since climate negotiations begun in 1990, and how it will continue to change in future, notably the extent
to which emerging economies have become an increasing source of economic growth and emissions.

*Foundations of the 2015 Agreement*

7.3 The Commission suggests that, although there is general acceptance of the need to restrain global warming, previous pledges and commitments have been insufficiently ambitious to achieve this, and that it seems unlikely that it will be possible to agree precisely how this challenge can be shared in an equitable manner in 2015. Any new agreement will therefore have to provide the tools and processes needed to enable a further strengthening of individual and collective ambition, whilst demonstrating that countries can do more collectively and discouraging them from waiting for other to act before taking action themselves. In particular, it says that all major economies and sectors will need to contribute in a equitable, transparent and accountable manner.

7.4 However, the Commission also points out that climate change policy cannot stand alone, but must instead help to support economic growth and the broader sustainable development agenda, and be “mainstreamed” across all policy areas, forming a key component in strategies for energy, transport, industry, agriculture and forestry. Consequently, the 2015 Agreement must reinforce broader sustainable development objectives, with encouragement also being given to bilateral, multilateral and regional initiatives which complement and accelerate the achievement of its aims.

*Designing the Agreement*

7.5 The Commission stresses that, if the new Agreement is to deliver more than earlier such agreements, it must contain legally binding commitments which apply to both developed and developing countries, be ambitious in its objectives, contain effective incentives for implementation and compliance, and be widely perceived as fair and equitable. It adds that there is also a need to encourage countries to take on new and ambitious mitigation and adaptation commitments, and to respond to scientific advances, with sufficiently flexibility to adjust both to developments in scientific knowledge and to changes in technology (and its costs). In particular, it says that the EU should promote a comprehensive and integrated approach to implementation, which would include the key issue of mobilising appropriate global finance, and that it intends to present a proposal which would address this. It also suggests that there will need to be an increased focus on the use of market-based mechanisms, notably emissions trading.

*The path towards an Agreement in 2015*

7.6 The Commission notes that the UN negotiating process has become more complex, and that decision-making by consensus has often resulted in agreements representing the lowest common denominator, which fail to meet public expectations or to respond adequately to the scientific evidence. It therefore suggests that the effectiveness of the negotiating process could be strengthened in a number of ways, for example by developing rules of procedure to facilitate the reaching of decisions other than by consensus; reviewing the frequency of meetings; more informal exchanges ahead of technical meetings;
strengthening the contributions of stakeholders; and a strengthened role for the
Convention Secretariats.

The Government’s view

7.7 In his Explanatory Memorandum of 22 April 2013, the Secretary of State for Energy
and Climate Change (Edward Davey) notes that this is a consultative Communication
prepared by the Commission, and hence not a proposal for legislation, nor an agreed EU
position, and that it may inform, but not dictate, the development of EU policy in this area.

7.8 He adds that the document itself does not significantly contribute to the overall
international debate on the 2015 agreement, although he expects the process of stakeholder
consultation initiated by it to be useful. In the meantime, the UK’s view is that the 2015
agreement must be rules-based, legally binding, and applicable to all, and that it must also
include a mechanism which allows future increase of ambition in order to avoid a repeat of
the current emissions gap between the actions taken by the Parties and what is needed to
limit global temperature increases to below 2°C. He adds that the UK continues to stress
the importance of measurement, reporting, and verification, and of accounting rules, and
believes it is imperative that the new agreement should require all countries to have
mitigation commitments. It also believes that there is an urgent need within the EU to
progress thinking about ways in which the debate on the spectrum of commitments and
levels of ambition, and on the design and scope of the 2015 agreement, can be shaped, and
it expects the UK to contribute to this after the UNFCCC inter-sessional negotiating
meeting, which takes place in Bonn in June this year.

Conclusion

7.9 As the 2015 International Climate Change agreement will be an important
milestone, we think it right to draw to the attention of the House the Commission’s
thinking on the approach which the EU should adopt to the discussions leading up to it.
As with the Commission Green Paper39 on climate and energy policies for 2030, we
would welcome the formal Opinion of the Energy and Climate Change Committee on
this Communication before taking a definitive view on it. In the meantime, the
document remains under scrutiny.

39 (34814) 8096/13: see Chapter 5 of this Report.
8 Financing EU external action: 11th European Development Fund

- Commission Communication: Preparation of the Multiannual Financial Framework Regarding the Financing of EU Cooperation for African, Caribbean and Pacific States (ACP) and Overseas Countries and Territories (OCTs) for the 2014–20 period (11th European Development Fund)
- Council Decision on the position to be adopted by the European Union within the ACP-EU Council of Ministers Concerning the Multiannual Financial Framework for the Period 2014 to 2020 of the ACP-EU Partnership Agreement

Legal base
(a) —
b) Articles 209(2) and 218(9) TFEU; QMV; European Parliament to be informed

Department
International Development

Basis of consideration
Minister’s letter of 17 April 2013

Previous Committee Reports

Discussion in Council
To be determined

Committee's assessment
Politically important

Committee's decision
Not cleared; further information requested

Background

8.1 The European Development Fund (EDF) is the main instrument for delivering EU assistance for development cooperation under the Cotonou Agreement with ACP States and for financing EU cooperation with the OCT. The EDF is funded outside the EU budget by the Member States on the basis of specific contribution keys. Each EDF is concluded for a multi-annual period. The 10th EDF Internal Agreement, establishing the resources of the 10th EDF and their share in broad sub-categories, covers the period 2008–13, and includes provisions on implementation and financial monitoring. As the current 10th EDF period will expire at the end of 2013, the Communication and proposal for a Council Decision were produced in January 2012, to start discussions on the EU’s plans for 2014–20.

8.2 The Communication includes a draft EDF 11 Internal Agreement. The proposed overall figure for EDF 11 is set at €34,275.6 million. The UK’s share would be 14.33%. The Commission will present proposals for the Implementing and Financial Regulations at a later stage. The draft Council Decision is based around the proposed Internal
Agreement, and embodies the position to be taken by the EU in discussion at the EU/ACP Council of Ministers; once agreed with the ACP, it will then form a new annex to the Cotonou Agreement. They form part of the EU’s External Action (Heading 4 of the EU budget).

Our initial assessment

8.3 We considered the overarching Joint Communication on this package (and each of the relevant Instruments) in our 25 January 2012 Report. In that instance, we recalled the European Parliament’s sustained attempts to create an enhanced role for itself during the mid-term review of these Instruments in their present form, and the Joint Communication’s reference to its additional powers, in particular under the budgetary procedure, and to more European Parliament debate and scrutiny of the — presently non-budgetised — EDF by bringing it in line with the Development Cooperation Instrument (DCI, which covers EU development assistance to non-EU, non-ACP countries/OCTs). Again, with a view to ensuring the right balance of responsibilities, we asked the Minister for International Development (Mr Stephen O’Brien), also to keep a close eye on the details there.

8.4 The Commission had proposed a 50% increase in this voluntary fund. The Minister was right in judging this to be excessive. As the Commission noted, what was needed was to make this expenditure more effective.

8.5 As this was but the beginning of a process of discussion and negotiation, we retained the documents under scrutiny, and looked forward to hearing from the Minister about developments — if not sooner, then certainly in good time before the point at which any political agreement on the draft Internal Agreement or on the draft Council Decision was imminent.

8.6 Given the importance of this process, we also drew this and the other associated chapters of the Report to the attention of the International Development Committee.

Subsequent developments

8.7 The Committee has had two updates on the process thus far. On the first occasion, in June 2012, the Committee agreed to a Partial General Approach in order to enable the Presidency to begin negotiations with the European Parliament on the main external action financial instruments (pre-accession finance, European Neighbourhood Partnership, etc.) — without prejudice to the financial amounts, and with all documents retained under scrutiny. Then, in March 2013, the Minister (Lynne Featherstone) updated the Committee on the Heading 4 outcome of the next MFF agreed at the 7–8 February European Council, describing it as “a good outcome for development”: Heading 4 was allocated €58.67 billion, an increase slightly above a real freeze (Heading 4 stands at €57

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40 See (33559) 18726/11 and (33558) 18725/11: HC 428-xlvi (2010–12), chapter 8 (25 January 2012). For our consideration of the relevant financial instruments, see chapters 10, 11, and 15–19 of that same Report.
billion in the current financial framework), while the EDF remained off budget, with an allocation of €26.984 billion. The MFF now had to be agreed as a package by the European Parliament. Although the statements by the main party leaders had, she said, been “overwhelmingly negative about budget cuts so far”, she did not expect them to focus on Heading 4 or EDF levels specifically.

**Our further assessment**

8.8 Though the general direction of travel continued to be appropriate, there remained much that was yet to be decided — in particular, regarding the EP’s endeavours to obtain greater influence over the next budget programming cycle and to redefine areas which come under delegated acts.

8.9 In a separate letter to us about the Instrument for Pre-accession (IPA), the Minister noted that the effect of this would be to give the European Parliament a power of veto over programming decisions, and said that:

— the Commission and the Council were resisting this and arguing that such documents should be implementing acts subject to agreement by Member State committees;

— the Commission was seeking to define options for addressing this point in an effort to overcome the impasse; and

— the Government supported the Commission’s position.43

8.10 We noted that agreement on this matter needed to be reached before there could be agreement on the legislation for the Heading 4 external instruments. That being so, we asked the Minister to write to us when agreement on this matter was in prospect, with details of, and her views on, the prospective outcome, in good time for us to pursue with her any questions that might then arise.

8.11 Looking beyond that point, we noted that we had yet to receive any revised versions of the texts of the individual financial instruments or of the simplified and harmonised implementing rules and procedures applicable to those instruments. We therefore reminded the Minister that we needed to receive them, together with her views on them, in good time for questions arising to be considered, which would most likely need to be done via a debate.

8.12 In the meantime we continued to retain all the documents under scrutiny.

8.13 We also drew this chapter of our Report to the attention of the International Development Committee.44

**The Minister’s letter**

8.14 In her letter of 17 April 2013, the Minister writes to update the Committee on negotiations on the 11th EDF for the period 2014–20.

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8.15 The Minister notes that Commission Communication 18431/11 and the Council Decision 18480/11 (on the position to be adopted by the EU within the ACP-EU Council of Ministers concerning the 2014–20 MFF for the Cotonou Agreement) were originally being treated in conjunction with the rest of the external assistance instruments of EU budget Heading 4: but then says that, given that the EDF negotiations are progressing at a faster pace than the other instruments, she now wants to address this separately; and that Member States will need to agree the final Internal Agreement at the 28 May Development Foreign Affairs Council, to enable a joint EU-ACP decision to be adopted at the 6–7 June annual joint ministerial meeting.

8.16 Recalling the European Council agreement on the 2014–20 MFF and the EDF allocation of €26.984 billion in 2011 prices (€30.506 billion in current prices), the Minister says that with final adjustments, including the contribution of Croatia and adjusting Member State contributions according to MFF allocation criteria such as GNI, the final UK contribution key is now 14.68% or €4.478 billion (still “a slight decrease from our current contribution of 14.82%”).

8.17 The Minister then says that, at the beginning of March, negotiations resumed on the EDF 11 Internal Agreement (which sets out overall EDF volumes and Member State contribution keys) and continues as follows:

“The first chapter sets out the relative share of the financing envelope for ACP, OCT and support costs, whilst the second chapter focuses on the implementation of financing. It sets out the process for contributions to the 11th EDF, and the mandate of the EDF Committee as a Member State oversight body for the funds. This second chapter remains largely the same as the last instrument and is uncontroversial.

“On the 19 March, the Council Presidency proposed a revised draft Internal Agreement on which negotiations are now based. The allocations for envelopes in Chapter 1 are proposed as follows:

“€28.943 billion (£24.803 billion) allocated to the ACP States (94.87% total EDF11, compared to 96.74% EDF10);

“€0.343 billion (£0.294 billion) allocated to OCTs (1.13% total EDF11, compared to 1.26% EDF10);

“€1.220 billion (£1.046 billion) allocated to the Commission for support expenditure (4% total EDF11, compared to 2% EDF10);

“The amount allocated to ACP states and OCTs has slightly reduced, as the result of a Commission request to increase its support costs. It has argued that EDF10 levels have been insufficient, leading to a need to finance a disproportionate share of these costs from the EU budget, which will not be possible for the next financial period.

“The UK has taken a strong line on this and, along with other Member States, we are pushing hard for the Commission to provide a detailed breakdown of proposed increases with sufficient justification, as well as outlining where they intend to make efficiency savings within the current proposal. This has already led to a reduction from the Commission’s original proposal of 5% of the EDF. Negotiations are expected to continue up to the end of April until approval of the final package at the
Development Foreign Affairs Council on 28 May. I am happy to address any remaining questions of the Committee and would like to reiterate that this is the date when we would request these EDF Communications to have been cleared from scrutiny.”

8.18 Finally, the Minister says:

“Following on from signing the Internal Agreement, the EDF implementing regulation (describing the programming and monitoring framework) and financial regulation (with rules for Member States’ contributions and budget implementation) will be debated in the ACP Working Group. I will be happy to write to the Committees again when these draft regulations are received from the Commission, and as key issues develop.”

Conclusion

8.19 The only figures in the draft Council Decision are set out in the Annex to this chapter of our Report. Before being able to clear the Commission Communication and the Council Decision, we ask the Minister to provide the corresponding figures that are now to be inserted in this Annex, and to indicate if she is happy with the breakdown.

8.20 We share the Minister’s opposition to the notion that the money available for development assistance should be reduced in order to increase the percentage spent on Commission support costs. We would like to know what this percentage was for the current EDF, and if there is any good reason why it should be exceeded in EDF 11 (unless Member States can reduce it to below that level, which would be even better).

8.21 We would also like her to provide us with:

— a list of all the external action and other instruments that are currently under discussion/negotiation, and where each of them is in the discussion/negotiation process (European Parliament or relevant Council working group);

— a summary of the state of play on them in the various discussions/negotiations; and

— an indication of when she expects to be able to provide the Committee with draft texts, so that we can consider her views on them and any questions that may arise and, if appropriate, send them for debate prior to any further decisions by the Council.

8.22 In the meantime, we shall retain the documents under scrutiny.

Annex 1c of the Council Decision

“ANNEX 1c

“Multianual financial framework for the period 2014–20

“1. For the purposes set out in this Agreement and for a period starting on 1 January 2014, the overall amount of financial assistance available to the ACP States within this
The multiannual financial framework shall be EUR 34.718.4 million, as specified in points 2 and 3.

“2. The sum of EUR 32.218.4 million under the 11th European Development Fund (EDF), shall be made available from the entry into force of the multiannual financial framework. It shall be allocated between the cooperation instruments as follows:

“(a) EUR 27.658.2 million to finance national and regional indicative programmes.

“This allocation will be used to finance:

|——| “the national indicative programmes of individual ACP States ;
|——| “the regional indicative programmes of support for regional and interregional cooperation and integration of Groups of ACP States;

“(b) EUR 3.960.2 million to finance intra-ACP and inter-regional cooperation with many or all of the ACP States. This envelope shall include structural support to the CDE and the CTA, and to the Joint Parliamentary Assembly. It shall also cover assistance with the operating expenditure of the ACP Secretariat referred to in points 1 and 2 of Protocol No 1 ‘on the operating expenditure of the joint institutions’;

“(c) EUR 600 million to finance the Investment Facility in accordance with the terms and conditions set out in Annex II ‘Terms and conditions of financing’) to this Agreement, under the form of grants for the financing of the interest rate subsidies and project-related technical assistance provided for in Articles 1, 2 and 4 of that Annex over the period of the 11th EDF.

“3. The operations financed under the Investment Facility, including the corresponding interest rate subsidies, shall be managed by the European Investment Bank (EIB). An amount of up to EUR 2.500 million in addition to the 11th EDF shall be made available by the EIB in the form of loans from own resources and will be subject to a revision clause at mid term. These resources shall be granted for the purposes set out in Annex II to this Agreement, in accordance with the conditions laid down in the statutes of the EIB and the relevant provisions of the terms and conditions for investment financing in that Annex. All other financial resources under this multiannual financial framework shall be administered by the Commission.”
9 Restricted measures against the regime in Myanmar/Burma


Legal base
Art 29 TEU; unanimity

Department
Foreign and Commonwealth Office

Basis of consideration
EM and Minister’s letter of 25 April 2013

Previous Committee Report
None; but see (33852) —: HC 86–ii (2012–13), chapter 20 (16 May 2012)

Discussion in Council
22 April 2013 Foreign Affairs Council

Committee’s assessment
Politically important

Committee’s decision
Not cleared; further information requested

Background

9.1 Starting with Common Position 1996/635/CFSP, the EU adapted and strengthened its sanctions regime against Myanmar/Burma in response to deteriorating circumstances on the ground and the continuing failure by the military government to make progress on human rights and national reconciliation. In line with EU sanctions policy, the EU sought to achieve change in Myanmar/Burma by placing pressure on those responsible for its policies, whilst minimising any adverse impact on the general population.

9.2 At the heart of this exercise was Aung San Suu Kyi (the pro-democracy leader and Nobel Peace Prize winner), who was placed under house arrest for many years.

9.3 The EU’s restrictive measures can be summarised as follows:

— a visa ban and assets freeze against named members of the military and security forces, the military regime’s economic interests and other individuals, groups, undertakings or entities associated with the military regime and their families;

— a comprehensive embargo on arms and equipment that might be used for internal repression;

— a ban on high-level government visits at the level of Political Director and above;

— a suspension of most non-humanitarian aid;

— prohibition on EU companies making finance available to named enterprises owned or controlled by the regime or by persons or entities associated with the regime;

— restrictive measures to cover imports, exports and investments in the Burmese timber, gems and precious metals sectors.
9.4 These were latterly embodied in Council Decision 2010/232/CFSP.


9.5 In April 2012, the restrictive measures were in Council Decision 2010/232/CFSP extended until 30 April 2013. However, all measures excepting the embargoes on arms and internal repression equipment were suspended.  

9.6 On 22 April 2013, the Foreign Affairs Council Conclusions:

— welcomed the developments towards democracy, a strong Parliament, freedom of expression, and the government’s efforts against corruption, as well as the efforts towards the release of remaining political prisoners;

— in response to these changes and in the expectation that they will continue, decided to lift all sanctions with the exception of the arms embargo;

— professed its readiness to cooperate with Myanmar/Burma in a wide range of areas, while underlining the need to release unconditionally the remaining political prisoners, deal with inter-communal violence and the humanitarian risks for all displaced people in the Rakhine State and pursue and implement durable solutions to the underlying causes of the tensions, including addressing the status of the Rohingya;

— invited the High Representative/Vice President to discuss and propose a comprehensive framework for the EU’s policy and support to the ongoing reforms for the next three years;

— committed itself to support Myanmar/Burma’s political, economic and social transition and welcomed the Task Force to be launched later in the year, building on the Joint Statement agreed on 5 March 2013 during the visit to Brussels of President U Thein Sein.

**Council Decision 2013/184/CFSP**

9.7 This Council Decision repeats Articles 1 and 2 of Decision 2010/232/CFSP but does not include further restrictive measures: thus, instead of renewing and amending Council Decision 2010/232/CFSP, this Decision replaces Decision 2010/232/CFSP as the legislative act that now governs EU sanctions on Burma.

9.8 Article 3 of this Decision states that it shall apply until 30 April 2014, and that it shall be kept under review and renewed or amended as appropriate.

9.9 It was adopted by the Foreign Affairs Council on 22 April 2013.

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45 See (33852) —: HC 86–ii (2012–13), chapter 20 (16 May 2012) for the Committee’s consideration of the Council Decision that authorised these changes. The history of the EU’s policy towards Burma/Myanmar is set out in the various Reports referred to in the headnote to that Report.

46 The full Council Conclusions are set out at the annex to this chapter or our Report, and are available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/presdata/EN/foraffi/136918.pdf.
The Government’s view

9.10 In his Explanatory Memorandum of 25 April 2013, the Minister for Europe (Mr David Lidington) comments as follows:

“The lifting of suspended sanctions introduced by Decision 2013/184/CFSP takes place in the context of considerable strides towards reform in Burma. The last two years have seen significant releases of political prisoners, credible by-elections, and initial ceasefire agreements with the majority of ethnic groups. Aung San Suu Kyi is now a member of parliament and active leader of the opposition. There has been significantly enhanced freedom of expression. The Foreign Secretary discussed the situation in Burma with Aung San Suu Kyi on 9 April and agreed with her that now is the time for the EU to lift sanctions, with the exception of the arms embargo and ban on equipment that might be used for internal repression.

“The Conclusions of the Foreign Affairs Council of 22 April highlight EU concerns about the challenges that remain, including the need to release unconditionally the remaining political prisoners, to find a sustainable solution to the conflict in Kachin and improve humanitarian access. The outbreaks of violence in Rakhine State have led to a grave humanitarian situation and we are seriously concerned about the recent anti-Muslim violence. The Council Conclusions clearly set out the areas in which further progress is expected, and reiterates the EU’s commitment to engage constructively and critically with Burma as it seeks to resolve these challenges.

“Building on the landmark progress which the partial lift introduced by Decision 2013/184/CFSP recognises, the UK will work to catalyse deeper, irreversible reform in Burma. The UK will work alongside EU partners to use Member States’ collective influence on human rights, responsible trade, development, and political reform. UK policy will continue to evolve in line with progress. We will continue to be a constructive, supportive and critical partner, committed to supporting reform moves under the President and Aung San Suu Kyi.”

The Minister’s letter of 25 April 2013

9.11 The Minister says that this Council Decision had to be adopted before 30 April to prevent the sanctions regime automatically falling away in its entirety, and that the 22 April Foreign Affairs Council presented the last opportunity to formally adopt a Decision before the previous measures expired:

“However, despite my officials’ concerted efforts, a draft Decision was not circulated in time to be reviewed by your Committee at its first meeting following the Easter recess. As set out in my previous letter, a scrutiny override was therefore necessary to adopt the attached Decision at the Foreign Affairs Council.”

Conclusion

9.12 As noted above, Aung San Suu Kyi has been the cornerstone of EU policy. As the Foreign Secretary said at the time of the Council meeting: “The work of the EU in Burma is not remotely finished.” However, as Aung San Suu Kyi also said to the BBC:
“It is time we let these sanctions go. I don’t want to rely on external factors forever to bring about national reconciliation which is the key to progress in our country.”47

9.13 Elsewhere we deal with similar changes to the sanctions regime in Somalia, likewise in response to positive change. There, too, scrutiny was over-ridden, despite UK efforts to prevail upon the EEAS to provide a text more quickly — the reason given by the EEAS being that other business was more pressing. The Myanmar/Burma regime was presumably one such more pressing item. We therefore ask the Minister to confirm that it was debate in the Council around how best to respond not only to progress but also to all that remains to be done, including the unchecked Buddhist violence against the Muslim community that was going on in Myanmar/Burma at the time — and not EEAS orders of priority — that led to a timeline that produced this further over-ride.

9.14 We also ask him to confirm that whatever comprehensive framework for the EU’s policy and support to the ongoing reforms for the next three years is produced by the High Representative/Vice President is deposited for scrutiny in the normal way, together with an Explanatory Memorandum setting out his views on it.

9.15 In the meantime, we shall retain the Council Decision under scrutiny.

Annex: Foreign Affairs Council Conclusions on Myanmar/Burma of 22 April 2013

“1. The European Union has watched and supported the remarkable process of reform in Myanmar/Burma. It welcomes the developments towards democracy, a strong Parliament, freedom of expression, and the government’s efforts against corruption, as well as the efforts towards the release of remaining political prisoners.

2. The EU is willing to open a new chapter in its relations with Myanmar/Burma building a lasting partnership and to promote closer engagement with the country as a whole. In response to the changes that have taken place and in the expectation that they will continue, the Council has decided to lift all sanctions with the exception of the embargo on arms which will remain in place.

3. The EU congratulates the government of Myanmar/Burma on what has been achieved, but is conscious that there are still significant challenges to be addressed. It looks forward to working in partnership with the government, by establishing a regular political dialogue involving all concerned stakeholders:

— To achieve sustainable peace in Myanmar/Burma by addressing long-standing differences in an inclusive way, and in particular calling for an end of hostilities in Kachin State;

— To consolidate the democratic achievements so far and to move further towards full transition; in this regard, the EU is ready to share with Myanmar/Burma the recent experience on political transition and democratisation in some of its Member States;

— To strengthen human rights and the rule of law including through enhanced cooperation with the UN, in particular to ensure the protection of all minorities; to this end, the EU will explore ways to promote a regular human rights dialogue with Myanmar/Burma;

— To establish Myanmar/Burma as an active and respected member of the international community, by adhering to international agreements, including in relation to human rights, land mines, non-proliferation and disarmament, particularly supporting President U Thein Sein commitments to comply with the relevant UNSC resolutions

— To encourage trade and investment while promoting transparency and environmental protection. Furthermore, a swift reinstatement of the Generalized Scheme of Preferences to Myanmar/Burma will contribute to the EU’s policy of supporting the economic reforms. As a next step, the EU will explore the feasibility of a bilateral investment agreement;

— To promote inclusive and sustainable growth, as well as good governance to achieve the Millennium Development Goals in line with the government’s plans. The task is now to ensure that reforms are translated to economic benefits for ordinary people. The EU will maintain increased levels of development assistance, in coordination with other donors.

4. The EU stands ready to cooperate with Myanmar/Burma with regard to the following complex challenges while underlining its concerns on:

— The need to unconditionally release the remaining political prisoners, while noting with satisfaction the creation of a review mechanism and looking forward to the early completion of its work;

— The need to deal with inter-communal violence. The EU welcomes President U Thein Sein promise that all perpetrators of violence will be prosecuted, and his commitment to a multi-cultural, multi-ethnic and multi-faith society which should include addressing the root causes of the violence. In this context, the EU is studying the possibility of assisting the reform of the police service in Myanmar/Burma, in partnership with all appropriate stakeholders, in particular with the country’s Parliament;

— The need for urgent action to deal with humanitarian risks for all displaced people in the Rakhine State. At the same time, the government should continue to pursue and implement durable solutions to the underlying causes of the tensions that include addressing the status of the Rohingya;

— The need for unhindered and full access for humanitarian and development aid workers to all communities affected by conflict and sectarian violence.
5. Recognising that the period leading to general elections in 2015 is critical for the country’s overall transition, the Council underlines the importance of coordination and coherence in the EU’s response. Consequently, building on the elements above, as well as on its conclusions in April 2012, the Council invites the High Representative/Vice President to discuss and propose a comprehensive framework with priorities for the EU’s policy and support to the ongoing reforms for the next three years. Furthermore, the Council encourages relevant authorities in Member States and EU institutions to proceed without delay to joint programming of development aid for Myanmar/Burma while respecting the existing harmonisation efforts.

6. The EU will use all means and mechanisms at its disposal to support Myanmar/Burma’s political, economic and social transition and in this context welcomes the initiative of a Task Force to be launched later in the year, building on the Joint Statement agreed on 5 March 2013 during the visit of President U Thein Sein to Brussels.”

10 Integrated Border Management Assistance Mission in Libya (EUBAM Libya)


Legal base
Articles 28, 42(4) and 43(2) TEU; unanimity

Department
Foreign and Commonwealth Office

Basis of consideration
EM and Minister’s letter of 29 April 2013

Previous Committee Report
None

Discussion in Council
17 May 2013

Committee’s assessment
Politically important

Committee’s decision
Not cleared; further information requested

Background

10.1 In letters to the Committee in January and February this year, the Minister for Europe (Mr David Lidington) set out the political and security background and the planning considerations behind the proposal for a Common Security and Defence Policy (CSDP) mission to post-Qadhafi Libya, and the timescales within which such a mission might be launched.

The Minister’s letter of 29 April 2013

10.2 In his latest such letter, the Minister says that the planning phase for the mission, now tentatively named EUBAM Libya, has been exceptionally long. He explains that, ever since the fall of Qadhafi, some Member States have seen merit in the rapid deployment of an EU
team to Tripoli to provide support to the new authorities’ nascent security sector: but that the Government — with others — took the position throughout 2012 that “the Libyans were not quite in a position to engage with a mission, in part because of their natural preoccupation with the elections in July that year and the political uncertainty which followed.” The Minister then continues thus:

“That amber light has, to my mind, now changed to green. Our Ambassador has confirmed that the Libyan government is now more stable; its security organisations are better established. The Libyans have issued a strong request to the EU for help, advice and support. As we can act, and assess that our action would have impact, I believe we should now authorise deployment of a CSDP mission.”

The draft Council Decision

10.3 This draft Council decision will establish an EU civilian Common Security and Defence (CSDP) Mission for Libya. The mission’s mandate will be for 24 months and will consist of up to 165 people (at full operational capability):

<table>
<thead>
<tr>
<th>Head of Mission</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seconded staff</td>
<td>83</td>
</tr>
<tr>
<td>International staff</td>
<td>27</td>
</tr>
<tr>
<td>Locally-recruited staff</td>
<td>54</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>165</strong></td>
</tr>
</tbody>
</table>

10.4 The aim of EUBAM Libya is to support the Libyan authorities to develop capacity for enhancing the security of their borders in the short term and a broader Integrated Border Management (IBM) strategy in the longer term.

10.5 The mission will have three key tasks:

- To support Libyan authorities, through training and mentoring, in strengthening the border services in accordance with international standards and best practices;
- To advise the Libyan authorities on the development of a Libyan national IBM strategy;
- To support the Libyan authorities in strengthening their institutional operational capabilities.

10.6 The first year of the two year mission will cost the CFSP budget €30,300,000:
European Scrutiny Committee, 1st Report, Session 2013–14

<table>
<thead>
<tr>
<th>Budget Heading</th>
<th>Budget (Euros) (May 2013-May 2014)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel costs</td>
<td>8,267,971</td>
</tr>
<tr>
<td>Mission</td>
<td>1,162,080</td>
</tr>
<tr>
<td>Running expenditure</td>
<td>10,622,040</td>
</tr>
<tr>
<td>Capital expenditure</td>
<td>8,664,267</td>
</tr>
<tr>
<td>Representation</td>
<td>24,000</td>
</tr>
<tr>
<td>Projects (Training support)</td>
<td>1,047,800</td>
</tr>
<tr>
<td>Contingencies</td>
<td>511,842</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>30,300,000</strong></td>
</tr>
</tbody>
</table>

The Government’s view

10.7 In his Explanatory Memorandum of 29 April 2013, the Minister says that securing and managing Libya’s vast borders is both a challenge and a priority for the new Libyan government, and continues as follows:

“The country’s post-Qadhafi institutions are still immature and roles and responsibilities are ill-defined. Its land borders are over 4,300km long and flank six neighbours (Tunisia, Algeria, Niger, Chad, Sudan and Egypt), many of which have been affected by either the Arab Spring or the Sahel crisis. They are largely ungoverned due to their length, ruggedness of terrain and lack of governmental capacity. Its coastline is 1,770km long with very limited border control that is not coordinated with land elements. Weak border control allows markets in arms, people, and narcotics to thrive alongside everyday trafficking in fuel and goods, with consequences for the security of the region and potentially for Europe.

“Libya has become a transit route for forces which have contributed to destabilising much of Northwest Africa. It is possible that many of the extremists who occupied and brought misery to much of Mali transited through Libya and obtained their supplies there. The terrorist group which attacked the *In Amenas* oil facility, targeting among others British workers, is similarly thought to have used Libya for transit and supply. Smuggling has destabilised the Tunisian economy. Finally in Libya itself we have seen the clearest evidence of the threat posed by extremism in the form of the attacks on the US and French Embassies. Libya is also increasingly becoming a transit route for people and narcotics from sub-Saharan Africa to the region and into Europe. At the end of August 2012, the total number of refugees and asylum-seekers registered with UNHCR in Libya stood at approximately 10,000.”

10.8 Against this background, the Minister says that the EU is seen by the Libyan government and the international community as Libya’s lead partner on border security.

“The CSDP Mission would be the EU’s most significant contribution to assisting Libya with tackling its security priorities, and would be well targeted at an area where the EU has experience and expertise and would add significant value to what the Libyan Government is able to achieve.
10.9 The Minister notes that the Libyan government has given top level political support to
the planned CSDP mission and are keen for it to launch as soon as possible, and then
outlines some of the details thus:

“They have also specifically requested assistance to develop a bespoke IBM strategy
to cover their land, maritime and air borders. The Mission will develop pilot models
for land, maritime and air Border Crossing Points, and support the duplication of
these models across other sites in Libya before going on to monitor the setting up of
new crossing points by the Libyan authorities themselves. We expect the transition
from the Mission leading on setting up crossing points to monitoring Libyan-led
implementation to take place within the 24 month mandate. More precise details
will be worked up in time for the Operational Plan, 6 months into the Mission.

“During the first 6 months, the mission will start training for Immigration and
Customs Control staff at Tripoli airport, provide technical English language training,
and will design training for maritime border agencies, customs, naval coast guards
and border guards. The mission will also provide advice on establishing a maritime
rescue coordination centre, border guard training and public finance and
procurement. Longer term capacity building and institutional capacity building
activities will then start, once sufficient mission staff have deployed.

10.10 The Minister then notes that the UK has engaged heavily at the planning stage of this
mission, in particular by funding:

— an Integrated Border Management Expert to the Technical Assessment Mission
(TAM), who the Minister says has played a key role in defining mission objectives and
methodology; and

— a Border Security Adviser, embedded in the Libyan Border Guard Headquarters, who
he says has played a pivotal role in preparing the Libyan Authorities for the arrival of
the mission and will continue to engage with it once it has deployed.

10.11 The Minister then turns to the issue of staffing, recalling that in his letter of 12
February 2013 he reported that, based on the initial conceptual work, the mission would be
made up of approximately 70 staff, initially based in Tripoli, and continuing as follows:

“However, the TAM findings proposed a mission of 165 and contained revised
proposals on a possible future presence in southern Libya to be deployed for the
duration of the mandate.

“The increase in staffing is a result of two factors: thorough planning and
consideration of the required staff numbers required to carry out the tasks envisaged
by the mission, and a necessarily cautious approach to security, which has been
reinforced by the car bomb attack against the French Embassy on 23 April 2013. It
has been agreed that deployment of staff will be in phases, with an initial deployment
of only 53 staff, followed by two further phases of deployment. The UK will seek a
report on the success of the first phase, including Libyan capacity to absorb the
assistance and the operational need, before the second phase.”
10.12 The Minister then addresses the question of mission location, both at the outset and later during its mandate:

“The mission will initially only operate in Tripoli, but staff may make brief monitoring trips outside Tripoli if the security situation allows, to assess the results of training. The EEAS recognise that they must assess security conditions prior to any visit and make robust plans to protect staff. The UK would retain the option of withholding UK nationals seconded to the mission from visits to areas which are considered hazardous. The Libyan government are particularly concerned about their southern borders and with the threat of spillover from Mali to Libya and vice versa, there has been a desire for the mission to operate along Libya’s southern borders with a possible Mission base there. However, the current security situation in the south means that, for the time being, it is unlikely that members of the mission will be able to deploy there for any length of time. The UK has insisted that the mission does not commit to a base in the south at this stage. If plans to do so are raised during the mission, there will be the opportunity to block them if we judge that either the security situation, Libyan capacity, or Mission capacity does not allow for this. My officials have successfully negotiated an agreement at EU level that any Operational Plan containing such proposals would have to be agreed by the Political and Security Committee (PSC) and approved by the Council of Ministers — where unanimity would provide the opportunity for the UK to veto. Before any expansion is agreed, I will write to the Committees with details of the security assessment and plans for the new base.

10.13 The Minister then reiterates that the UK, with others, delayed the launch of EUBAM Libya for much of 2012 because they judged that the Libyans were not ready to receive it, and makes the following observations:

“That assessment has now changed, following high level political support from PM Zeidan and others to the EU’s Fact Finding Mission in November 2012. We assess that the Libyans now have an informed desire to host the mission and a readiness to engage with it. The TAM also highlighted concerns about Libyan capacity to engage at a technical level, but this has improved in recent months. In addition, my officials have secured a commitment for a report on Libyan operational buy-in before the launch of the mission and Libyan capacity will be the subject of a report which will be taken into account before the second phase of staff deployment. There will continue to be regular reporting to enable monitoring of the mission.”

10.14 The Minister also notes that it will be essential that the mission coordinates its activities with other actors on the ground, especially the UN, and says:

“Following the arrival of the UN Secretary General’s Special Representative, Tarek Mitri, UN relations with the EU have improved considerably and they have been coordinating more closely on border management issues.

10.15 With regard to the mission’s budget, the Minister says:

“My officials have been working closely with the Commission to ensure that the budget delivers value for money. There have been some significant and innovative
savings made, including phased budgeting of staff and good use of free equipment from other missions. My officials will continue to monitor this closely.”

“In addition, the UK will fund a number of secondees to the mission, including Deputy Head of Mission and a further 3 secondees into the core team of the mission. We will consider further secondees to the mission in due course.”

10.16 Finally, the Minister expects the Council Decision to be agreed by 17 May 2013 and, if approved, the mission to deploy on 1 June 2013.

10.17 The Minister expands on some of the key aspects of his Explanatory Memorandum thus:

“The current planned form of the mission was first set out to us by the External Action Service two weeks ago. I wanted to be sure that all concerned with the Mission had enough time to reflect on what was proposed. Two issues merited particular attention: the increase in the size and budget of the mission over what I described to you as likely in February this year and the apparent prospect of EU personnel deploying outside of Tripoli.

“So, acting on my instructions, British officials in Brussels first described our reservations and then blocked approval of the mission on 16 April. It is fair to say that this action caused difficulty for some of our partners, which I regret, but I felt it was essential to insist on more time for planning and scrutiny of the structure, tasking and budget of the mission. We negotiated hard through last week, making use of the fact that others were keen to progress quickly as a lever to secure the amendments we needed to see made. I instructed officials to scrutinise and seek improvements to the mission’s Concept of Operations in four areas:

“Scope

“We have obtained clarity on the fact that the mission will not post staff outside of Tripoli in current security circumstances. Any such deployment will require the express approval of Ministers in Council. I will write to you before any such deployment is made. The UK will retain the right to block the travel of any UK secondee if we judge the activity to be too dangerous; that is an option that we would prefer not to exercise of course and, in practice, we expect the EU’s mission security plans to be robust and appropriate.

Co-operation with the United Nations

“I was concerned that an EU mission might not engage properly with others engaged in Libya, particularly UNSMIL which has a broader remit for coordination of security and justice support to Libya. I am now satisfied that the right links with the UN have been made; we have secured the insertion of language in the mission’s documentation mandating it to collaborate with the UN and others.

Libyan Buy-in

“I was keen to obtain complete reassurance that the Libyan Government would make the best use of an expensive and risky CSDP deployment. Michael Aron, our
Ambassador in Tripoli, sent a telegram last week which provided the information I needed on this point. He said:

“The Government of Libya (GoL) sees border security as one of its top security priorities. Large swathes of the country’s land border are ungoverned, due to the sheer length and ruggedness of terrain and a lack of governmental capacity. In the South, there are large portions of empty land and borders identified on paper do not exist in reality. People, goods and weapons have almost total freedom of movement. In most southern areas, there is no clear designated responsibility for controlling borders and crossings.

“There is an urgent need for the GoL to stem the flow of illegal goods, weapons and people into, and out of, the country. It is in the EU’s interest that Libya is able to tackle the significant flow of irregular migrants crossing its borders for onward travel across the Mediterranean. The GoL have given top level political support to the planned CSDP mission — they’re keen for it to start as soon as possible.

Size and budget

“The memorandum sets out the mission’s anticipated strength. I appreciate that a team of up to 165 is substantially larger than the mission of 70 which I envisaged earlier this year. British officials have been interrogating this number and have insisted on line-by-line examination of the budget proposed.

“I am now satisfied that the mission’s strength is justified. Much of the increase in size results from the fact that reliable security cannot be obtained locally in Libya. The mission will therefore deploy with a robust and self-reliant team of contracted security personnel. The car bomb attack against the French Embassy underscores the importance of this careful approach to security of international personnel in Libya. The EAS has also explained that the estimate of 70 personnel related to the number of expert staff seconded to the mission and has pointed out that the number of secondees is now to be 84. This is an increase, but not a dramatic one. The higher number of secondees results from a more exact understanding of what will be required following a Technical Assessment Mission earlier this year. UK officials are continuing to examine the budget closely and push it downwards. You will find an explanation of staffing levels and the budget for the mission, which the UK has been able to negotiate downwards, in the Memorandum.”

10.18 The Minister concludes by saying that, having “delayed and renegotiated this mission”, he hopes that the Committee will share his judgement that “while this mission will be difficult, its objectives are important” and that “In response to requests for help at the highest levels, it is the right time for the EU to act”. He also hopes that the information provided in his letter and Explanatory Memorandum allows for “the in-depth and careful scrutiny you will no doubt want to undertake on this mission”, and says that his officials are on hand to provide any further information needed. He also draws attention to the possibility that any delay in launching the mission in May might well mean that the mission could not in practice arrive until after Ramadan, which this year falls between 9 July and 7 August: this “would give an unfortunate negative signal to the Libyans as to the EU’s will and capacity to support them in the important work of stabilising their country.”
Conclusion

10.19 We note that, though the new government is now committed to this mission at the highest level, there are still doubts about what the Minister terms “Libyan operational buy-in” — which, we understand, refers to the capacity of inevitably inexperienced officials to find the right individuals in the right numbers to benefit from the training on offer. The Minister says that he has secured a commitment for a report on this matter before the launch of the mission.

10.20 We further understand that this report will be produced by the prospective head of the mission and his core team, who are in Libya at present; and that it will be presented before 1 June (the planned deployment date).

10.21 This is a major mission, which will cost €30 million in the first year alone. It has plainly been very difficult to reach this point, with major concerns over top-level commitment, security and capacity to work with the local UN mission. We do not doubt the Minister’s judgement thus far. But we feel that we cannot clear this Council Decision while there is still a major uncertainty about the local administration’s capacity to provide the raw material for the mission — especially as such local difficulties have hampered the EU CSDP mission in the Sahel. Do doubts arise now because “the right individuals” are not likely to be tempted to abandon their present successful but potentially illegal career in border management? Or because the right individuals might well be reluctant to engage with EU training for fear that those who are currently controlling the borders will not tolerate their being trained to put them out of business? If neither of these, then what is the basis of the doubts at this juncture that requires a further report?

10.22 We ask the Minister to write to us before our meeting on 15 May with his comments and with further information about the head of mission (about whom we would have expected information to have been provided in the first instance), what his emerging findings are by then and what he is likely to recommend.

10.23 In the meantime, we shall retain the Council Decision under scrutiny.
11 General Budget 2013

(a) Draft Amending Budget No. 1 to the General Budget 2013:
7657/13 general statement of revenue: statement of expenditure by section: Section III: Commission

(b) Draft Decision amending the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the multiannual financial framework, to take account of the expenditure requirements resulting from the accession of Croatia to the European Union

Legal base
(a) Articles 314 and 322 TFEU; co-decision; QMV
(b) —

Documents originated 18 March 2013
Deposited in Parliament 21 March 2013
Department HM Treasury
Basis of consideration EM of 2 May 2013
Previous Committee Report None
Discussion in Council Not known
Committee’s assessment Politically important
Committee’s decision (a) Cleared (b) Not cleared, further information requested

Background

11.1 During the course of a financial year the Commission presents to the Council and European Parliament Draft Amending Budgets (DABs) proposing increases or reductions for revenue and expenditure in the current EU General Budget — there are about ten DABs each year.

11.2 The 2006 Interinstitutional Agreement (IIA), between the Council, the European Parliament and the Commission (which concerns budgetary discipline and sound financial management in the period 2007–13) — although legally and politically binding — is not based on any Treaty provision. Future agreements, including that for the period 2014–20 will be based on Article 295 TFEU.

11.3 Point 29 of the IIA provides that if new Member States accede to the EU during the period covered by a Multiannual Financial Framework (MFF) the Council and the European Parliament, acting on a proposal from the Commission, will adjust the MFF to take account of the expenditure requirements resulting from the accession.
The documents

11.4 Croatia will accede to the EU on 1 July and Draft Amending Budget (DAB) No 1/2013, document (a), concerns the incorporation of the commitment and payment appropriations the Commission deems necessary to cover expenditure in 2013 related to that accession.

11.5 The Commission proposes increases of €655.1 million (£554 million) in commitment appropriations and €374 million (£316.3 million) in payment appropriations. This reflects what was agreed at the Accession Conference of 30 June 2011, but excludes Heading 5 (Administration) because administrative expenditure for the accession is already included in the 2013 budget. The full costs of accession, including Heading 5, are reflected in the ‘Financial package agreed at the Accession Conference of 30 June 2011’ annexed to the DAB. This shows that the administrative costs of accession are €22 million (£18.6 million) in both commitment and payment appropriations.

11.6 The proposed appropriations will be allocated amongst the headings of the budget as shown in the table we annex to this chapter. These allocations reflect those proposed by the Treaty of Accession.

11.7 The Commission proposes, as in document (b), an amendment to the 2013 ceiling of the MFF to take into account the additional appropriations required for Croatian accession. The Commission requests an increase to the ceiling for commitment appropriations of €666 million (£563.2 million) and for payment appropriations an increase of €374 million (£316.3 million), both increases expressed in current prices.

11.8 In this document the Commission notes that failure to ratify the Accession Treaty by every Member State by 30 June would mean that the Treaty necessary for Croatia’s accession to the EU would not enter into force on 1 July.

The Government’s view

11.9 The Financial Secretary to the Treasury (Greg Clark), says that:

- the Government wholeheartedly supports and welcomes Croatia’s accession to the EU;

- this represents the achievement of a historic goal for Croatia, which together with its commitment to continued reform shows the way for other countries of the region in pursuing their European future;

- the Government notes that this DAB presents an exceptional case concerning the accession of a new Member State and agrees in principle with the need to reflect the costs of enlargement in the 2013 budget;

- it welcomes the fact that the commitment and payment appropriations proposed in DAB No 1/2013 reflect, and are limited to, what was agreed at the June 2011 Accession Conference; and

- it therefore accepts this element of the proposals.
11.10 However, the Minister continues that:

- the Government has been clear that it does not accept that there is any need to increase the overall MFF ceilings to account for these new appropriations;

- it has taken a leading role in arguing that overall ceilings are not increased as a result of this proposal;

- in July 2011, the Government secured Council agreement that the financial package for Croatia in 2013 should not require any revision of the EU’s overall ceiling for commitment appropriations;

- it therefore welcomes the Presidency’s compromise proposal to reallocate under existing commitment ceilings, which ensures that overall commitment ceilings remain unchanged;

- it does not believe the payment ceiling, which has a sufficiently large gap to cover the proposed payment increase, needs to be increased; and

- it cannot, therefore, support the Commission proposal or the Presidency compromise, of an increase of the payment ceiling.

11.11 On the financial implications of the proposals the Minister says that:

- the discrepancy between the commitment appropriations figure in the DAB and that in the proposed revision to the IIA reflects potential market interventions;

- if adopted unaltered, the in-year costs of this proposal for the UK would be approximately €56 million (£46 million) based on the UK’s approximate share of GNI-based contributions of 15%; and

- the UK abatement will, however, return some of this next year, although it is not possible to calculate the exact amount yet.

**Conclusion**

11.12 Since DAB No 1/2013, document (a), does no more than reflect the agreement reached at the June 2011 Accession Conference we clear it from scrutiny.

11.13 However, we note the problem with the proposal to revise the IIA, document (b), and presume that the Government will be voting against it. In that connection we ask the Government whether in its view, the matter is subject to QMV or unanimity. Accordingly we would like to hear in due course about developments and meanwhile the document remains under scrutiny.
### Annex

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<th>DAB 1/2013</th>
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1) Non pre-allocated expenditure given for illustrative purposes only.

### 12 Origin marking for products imported from third countries

(27155) Draft Council Regulation on the indication of country of origin of certain products imported from third countries

5091/06 + ADD1 COM(05) 661

**Legal base**

Article 133EC; QMV

**Department**

Business, Innovation and Skills

**Basis of consideration**

Minister’s letter of 24 April 2013

**Previous Committee Report**

HC 34–xviii (2005–06), chapter 10 (8 February 2006)

**To be discussed in Council**

Not applicable

**Committee’s assessment**

Politically important

**Committee’s decision**

Cleared

**Background**

12.1 Following concerns expressed over increasing evidence of imported products carrying misleading origin marks, the Commission put forward in December 2005 this proposal for
an EU origin marking scheme, under which imported industrial products (excluding foodstuffs) would be subject to common rules requiring the country of origin to be marked in an approved fashion.

12.2 In their Report of 8 February 2006, our predecessors noted that the majority of industry federations and consumer organisations had consistently opposed the proposal, on the grounds that no clear need for it had been demonstrated; that it was discriminatory as between third countries; that enforcement would involve additional customs controls; and that there would be extra costs on business and consumers. As these reservations were shared by the Government, our predecessors said that, although they did not see any need for the proposal to be considered further, they thought it right to continue to hold it under scrutiny for the time being, pending further information.

Subsequent developments

12.3 Since then, both they and we have received a number of letters from past and present Ministers, the gist of which has been that the proposal was put forward only as a result of strong pressure from Italy, that there were significant divisions between Member States, and that little or no progress had been made.

12.4 The most recent letter we received was one dated 17 December 2012 from the Minister of State for Trade and Investment (Lord Green of Hurstpierpoint), indicating that the Commission’s Work Programme for 2013 had confirmed its intention to withdraw the proposal (although he noted that the Programme was open to comment from the European Parliament and Member States, some of whom had expressed reservations about this). However, the Minister has now written again, enclosing formal confirmation that the proposal has indeed been withdrawn.

Conclusion

12.5 Since the proposal has been withdrawn, we are releasing the document from scrutiny.
13 Protection of intellectual property rights outside the EU

Commission report on the protection and enforcement of intellectual property rights in third countries

Legal base —
Department Business, Innovation and Skills
Basis of consideration EM of 23 March 2013
Previous Committee Report None
Discussion in Council None foreseen
Committee’s assessment Politically important
Committee’s decision Cleared

Background

13.1 Effective protection of intellectual property rights (IPRs) is essential in today’s knowledge society, where competitiveness relies essentially on creativity and innovation. EU companies need stable and safe IPR regimes, not only in the EU where this is already ensured to a large extent, but also abroad, where infringement of IPR can cause significant financial losses for EU right holders and legitimate businesses. EU consumers also need to be protected from the harm that can be caused by counterfeit imports, such as medicines, food and beverages, body care articles, toys and electrical equipment. Despite almost all the trading partners of the EU adopting legislation that implements at least the minimum standards set out in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), serious deficiencies have been noted in some countries in terms of the practical implementation of such legislation and the way it is enforced.

13.2 So as to focus its efforts effectively, the Commission carries out periodical surveys of the protection and enforcement of IPRs outside the EU. Information gathered through these surveys, together with other sources of information, helps the Commission determine a list of priority countries where deficiencies in the protection and enforcement of IPRs cause the greatest injury to EU interests, and where, therefore, the Commission will focus its efforts. The survey is a specific action point from the Strategy for the Enforcement of Intellectual Property Rights in Third Countries, adopted by the Commission in 2004, with the purpose of reducing the level of IPR infringements beyond EU borders. Information gathered through the 2010 survey has been used to prepare this report on the protection and enforcement of intellectual property rights in third countries. More than 400 replies were received, covering around 80 countries. Around 60% of respondents were businesses.

13.3 This report summarises the methodology used in determining the priority countries and provides a rationale for determining the updated list of priority countries. The report provides an assessment of the IPR situation by each priority country, acknowledging
positive efforts made, and highlighting areas which are still of concern. It also sets out EU action taken to improve the IPR regime in each priority country.

The report

Global results

13.4 On a scale from nought to ten (with nought being the worst), more than 70% of the respondents gave marks of five or lower in regard to the effectiveness of the current IPR (protection and enforcement) situation, reflecting a poor perception of the average level of IP protection in a number of third countries and confirming the need for continued action. Not surprisingly, the protection of IP was viewed by respondents as particularly problematic in certain third countries and these will require particular attention in the years to come.

13.5 Assessing the extent to which IPR protection and enforcement has improved over the last two years, more than two thirds of the respondents gave marks of five or lower (on the same scale), reflecting a stable situation (without noticeable improvement nor worsening at a global level).

Specific issues

13.6 The replies were variable in regard to the effectiveness of the IP protection mechanisms. The data suggests that problems in the area of copyright, designs, data protection and geographical indications were somewhat less frequent than for patents and trademarks (for both of which respondents gave scores of three and four with a higher frequency).

13.7 No clear trend in the replies could be identified on the effectiveness of enforcement mechanisms in connection with the various IP rights, with all of them attracting evenly distributed scores (centred on two which was consistently the most frequently assigned score).

13.8 Regarding the various enforcement mechanisms (administrative, civil, criminal measures, customs procedures) the replies suggest that the situation is worrying, with average marks below 2.5 for each of them (on a scale from nought to five), and marks of one and two attracting the most replies.

13.9 The most frequently suffered infringements related to trade marks (mentioned by 44% of the respondents), followed by patents and copyrights (each mentioned by about 24% of the respondents) and then the other IP rights to a lesser extent. These infringements were mainly linked to local sales and local production (mentioned by 43% and 37% of the respondents respectively), followed by importation into the country concerned (29%), while exportation from the country concerned either to the EU or to other third countries attracted lower scores (each of these two cases being mentioned by about 12% of the respondents).

13.10 30% of the respondents declared that infringement of their IP rights resulted in risks to the health or safety of customers, which is particularly worrying, the Commission says.
13.11 25% of respondents considered that there are differences in the treatment of enforcement cases between nationals and foreigners in the country concerned, and 17% considered that certain provisions of national IP law in the country concerned are specifically detrimental to foreign right. About 25% of the respondents reported local measures which, while not constituting IPR infringements as such, are nevertheless considered to be particularly detrimental to foreign right-holders.

**Updated list of priority countries**

13.12 The number of goods suspected of infringing IP rights, detained by customs at EU borders, remains disturbing, with more than 114 million articles detained in 2011 (corresponding to 91,245 interventions of customs services). Products for daily use and products potentially dangerous to the health and safety of European consumers now account for 28.6% of the total amount of detained articles (suspected trademark infringements concerning food and beverages, body care articles, medicines, electrical household goods and toys), up from 14.5% in 2010.

13.13 To better focus EU cooperation on IPR protection and enforcement with third countries, the Commission considers that the list of priority countries, first identified in 2006 and updated in 2009, has to be reviewed. It also says that many of the countries mentioned below are making substantial efforts to improve and strengthen their IPR protection and enforcement systems, for example by reviewing national legislation, increasing number of actions carried out by law enforcement bodies, and improving institutional capacity in the administrations concerned (in particular through the training of staff).

13.14 One of the main conclusions of the report is that China remains the main challenge regarding IPR enforcement, not only because it attracted the most responses and the strongest concerns from EU industry, but also because 73% of all suspect (imported) goods detained at EU borders in 2011 and not released came from China. However, in certain product categories, other countries were the main source, notably Turkey for foodstuffs, Thailand in the case of non-alcoholic beverages, Panama for alcoholic beverages, and Hong-Kong for mobile phones.

13.15 Deficiencies in IPR systems are identified not only in emerging countries, but also in certain developed countries. This is for instance still the case for Israel (significant issues regarding pharmaceutical-related IPR) and Canada (regarding the protection of pharmaceuticals and geographical indications). The USA has still not implemented two IPR-related WTO panel decisions that affect European right-holders.

13.16 Attempts by the EU and other supporters of an effective IPR system to constructively address enforcement problems in multilateral fora (WTO, World Intellectual Property Organisation (WIPO), World Customs Organisation (WCO)) continue to be opposed by countries such as India, Brazil, Ecuador, Argentina, Nigeria and others. This has prevented these institutions from addressing IPR enforcement issues that could be discussed and resolved multilaterally.
13.17 Priority countries are split into three categories with the highest priority (priority 1) being those countries where the situation regarding IPR protection and enforcement is the most detrimental to EU right holders. The priority countries are:

- priority 1: China;
- priority 2: India, Indonesia, the Philippines, Turkey; and
- priority 3: Argentina, Brazil, Canada, Israel, Korea, Malaysia, Mexico, Russia, Thailand, Ukraine, USA, Vietnam.

**China**

**Progress**

13.18 In recent years, China has made important efforts to align its legal system with international IPR standards. It has clear objectives and a long term strategy in the field of IPR, with the overall ambition to become an innovation economy by 2020. In this area the reference is still the National IP Strategy (NIPS) adopted in June 2008, which has been complemented by the 12th Five Year Plan released in March 2011 with the objective of developing an “innovative country”.

13.19 The new Patent Law that entered into force in 2009 was in this respect a major step forward. The (still on-going) revision of the Trademark Law, as well as the launch in 2011 of a new revision of the Copyright Law, will also constitute key components of the future IPR environment in China. The “Special Campaign against the infringements upon IPR and the Manufacturing and Sales of Counterfeit and Inferior Commodities” ended in June 2011 and the decision — influenced by the EU and others — to continue on a permanent basis the structure created to coordinate the Campaign demonstrates the increased importance given by China to IPR protection and enforcement. It is also evident that the Chinese authorities are making efforts to improve the understanding and knowledge of IP and the importance of its protection, among relevant officials involved in the protection and enforcement of IP. The strong increase in patent and trademark applications, including among Chinese stakeholders (92% of the patent applications in 2011 were filed by domestic applicants), also demonstrate the need for a well-functioning IPR system.

**Concerns and areas for improvement and action**

13.20 China remains the main concern of EU companies, as evidenced by both the comments provided by respondents to the survey and the fact that 73% of all suspect (imported) goods detained at EU borders in 2011 and not released came from China (without mentioning the significant damages reported by European companies due to Chinese counterfeit goods found on the Chinese or other non-European markets).

13.21 The improvements recently introduced have not kept pace with the scale of infringements, especially regarding online piracy and fake markets. The improvements that had been observed during the Special Campaign are under threat because the efforts of Chinese authorities has somewhat decreased, in particular at provincial level, after the end of this initiative. The situation is also due to the fact that access to the Chinese judicial
system remains difficult in practice, because of burdensome and costly legalisation and notarisation requirements, the lack of an effective preliminary injunction system, and the inadequacy of the damages awarded. It is also reported that criminal sanctions are still difficult to obtain. Moreover, the willingness of authorities to take effective action is at times — although improving — affected by a lack of effective cooperation between involved authorities, by insufficient training of the staff involved, and by a very low level of public awareness regarding IPR. A more recent worrying development is a noted increase in cases involving the theft of trade secrets in China, as well as cases of trade secret theft that occur outside China for the benefit of Chinese entities, combined with difficulties in gaining appropriate remedies through Chinese courts in such cases.

13.22 To an important extent the weaknesses of IPR enforcement in China are also due to the very unequal picture that exists between the provinces and cities. In the most advanced provinces or cities like Beijing or Shanghai the standards of the courts are reasonably good and improving while in other cities this is not yet the case. Moreover, the lack of independence of the judicial system in China creates additional burden to EU companies, locals are often favoured in opposition to foreigners, in particular in cases involving strategic industries or state-owned enterprises.

13.23 Additionally, China also tends to be wary of multilateral efforts to fight piracy and counterfeiting, and thus has to date not demonstrated real engagement for in-depth enforcement discussions in international fora.

**EU action**

13.24 The need for China to better protect IPR is a constant message conveyed by the Commission to Chinese authorities at all levels of government, including the highest level.

13.25 The EU and China in 2004 established a framework for co-operation and dialogue in the area of IPR, with two components: an EU-China IP Dialogue, which takes place once a year in Brussels or in Beijing and allows both sides to exchange information and prospective views on a wide range of IPR issues, including legislative, regulatory and enforcement aspects of trademark, patent, design, geographical indication and copyright protection; and an EU-China IP Working Group, which takes place twice a year in Beijing, with the participation of European industry. Unlike the Dialogue, the Working Group focuses on more concrete issues or sectors and is more technical in nature.

13.26 The co-operation and dialogue have been supported by technical co-operation activities within the IPR2 Project (of about €16 million for the 2007–11 period). This program ended in September 2011. A new co-operation programme is being prepared between China and EU which should be launched early in 2013.

13.27 The IP Dialogue, the IP Working Group and the IPR2 project have provided a unique opportunity for the EU to engage China in a constructive dialogue on IP issues of concern to the EU. As a result, China has for example taken a number of EU comments and concerns into account when revising some of its IPR legislation, relating namely to patents, copyrights and trademarks (especially, in this case, regarding bad faith trademark applications and well-known trademarks). However, despite these positive developments,
significant progress on priority issues for the EU is still needed, especially insofar as IPR enforcement in China is concerned.

13.28 Another positive development was the adoption in 2009 of an EU-China Action Plan concerning customs co-operation on IPR enforcement. This plan foresees the exchange of general risk information and trends, the creation of networks of seaports and airports to target high risk consignments, strengthening cooperation with other law enforcement agencies, and the development of partnerships between business communities and customs authorities in China and the EU. The second phase covers the period 2011–2012. Agreement has been reached to extend the Action Plan to a third phase starting in 2013. The creation of a network has provided the EU with very valuable insights into the possibilities for collaboration between customs of the associated airports and seaports. This has resulted in a number of concrete detentions and cases, some of them high-profile ones. The port-to-port approach has also facilitated information exchange and established strong working relations that should be maintained. The same applies with regards to the enhanced collaboration with business in the EU-China Customs activities on IPR enforcement. In 2012 a successful seminar took place on strengthening cooperation between customs and other law enforcement agencies in China. Overall, the EU is reasonably satisfied with the implementation of the Action Plan so far; however, at the same time it should be stressed that there is still much room for improvement.

13.29 So as to help EU small and medium-sized enterprises (SMEs) understand the peculiarities of the Chinese IPR system, the Commission has been providing support since 2008 through the China IPR SME Helpdesk. This service provides free-of-charge helpline, trainings, and web-based self-help materials.

13.30 Progress is also sought through negotiating an ambitious bilateral agreement on geographical indications. That would include a high level of protection from all the agencies, an ex-officio protection in China for our names (shortlist), and a single window to which to apply in the future. In parallel, we seek a joint action against counterfeiting in wines and spirits. These two initiatives were underlined at the September 20, 2012, EU-China Summit in Brussels.

**India**

**Progress**

13.31 Some limited improvements have been noted in Indian IPR legislation, for example regarding enforcement by customs services, as well as co-operation between various enforcement departments, IPR awareness amongst officials, and increased manpower in the Patent Office.

**Concerns and areas for improvement and action**

13.32 In India, several constraints applicable to the protection of patents are detrimental to EU companies. This applies in particular to certain aspects of patent law where restrictive patentability criteria combined with difficulties to enforce patents granted, and with extremely broad criteria being applicable for granting compulsory licences or for the revocation of patents, make the effective patent protection in India very difficult, notably
for pharmaceuticals and chemicals but also for other sectors where local innovation is being promoted. Another area of concern is the apparent absence of an effective system for protecting undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products against unfair commercial use, as well as unauthorized disclosure.

13.33 Further progress remains necessary regarding IPR enforcement, including through a stronger commitment of relevant authorities to fight IPR infringements, and through sanctions against infringers that act as an effective deterrent. It still appears that the implementation of IPR enforcement mechanisms needs further strengthening, especially outside of Delhi. Concerns have also been reported by respondents with respect to the length and uncertainty of the outcome of court proceedings, as well as insufficient trained officials, in particular in the judiciary. Strong engagement from the authorities to enforce IP and to improve the implementation of civil, criminal and customs procedures will remain very important not only for right-holders but also for creating a climate favourable to innovation.

13.34 The large number of locally produced infringing goods remains a source of serious concern, especially regarding patents and trademarks. Detentions of suspect goods of Indian provenance by EU customs are worrying notably for medicines and related products (a sector where India represented 28% of all articles detained in 2011), especially when considering the associated potential risks for patients' health. Another issue, making it more difficult for customs to take action, is that IPR-infringing medicines are often sent in small consignments (in terms of number of articles detained in postal traffic into the EU, about 36% were medicines in 2011, and about 35% of all postal articles detained by EU customs were shipped from India).

13.35 Externally, India often opposes multilateral efforts to address piracy and counterfeiting in fora such as WTO, WCO and WIPO. It is important that IPR enforcement discussions take place at these institutions and that India participates in the debate in an open and result-oriented spirit. The same considerations apply to the ongoing international climate change (United Nations Framework Convention on Climate Change (UNFCCC)) negotiations, where India (with other countries) push for measures which would weaken IPR protection in that area (such as patentability exclusions, systematic compulsory licensing).

**EU action**

13.36 The EU is pursuing a number of avenues of action. Most importantly, the EU is currently negotiating with India a Free Trade Agreement (FTA) including an IPR chapter, but so far progress has been very limited. An IP Dialogue was agreed with India in 2005, but has regrettably never been implemented due to reticence on the Indian side. Such a mechanism has demonstrated (with other third countries) its utility as a mean to informally and rapidly discuss emerging IPR issues, including concrete difficulties faced by right-holders.

13.37 The Commission recently adopted a proposal to amend the EU Customs Regulation (May 2011), which includes specific language clarifying the status of generic medicines in transit, and published related guidelines. One of the aims of this proposal was to ensure
that the problems that arose in recent years regarding the detention by EU customs of Indian generic drugs transiting via the EU would not reoccur.

**Indonesia**

**Progress**

13.38 Some improvements and positive developments have taken place in Indonesia over the last few years. Indonesian authorities have expressed more political will to improve their IP environment. The laws on the protection of patents, trademarks, designs, copyright and trade secrets appear to be relatively clear although some still lack implementing rules. Trademark registration is reported to be faster than in the past. Moreover, some further positive points were mentioned by respondents regarding enforcement, notably the willingness of Indonesian authorities to eradicate corruption (even if it is still reported as a serious problem), and to improve the effectiveness of the police and of the Commercial Court which handles IP civil legal cases.

**Concerns and areas for improvement and action**

13.39 Important weaknesses persist in the enforcement of IPRs in Indonesia, in particular in view of the absence of efficient and coordinated actions by enforcement bodies, and the lack of deterrent sanctions (many of the cases initiated are not prosecuted). In addition, there appears to be insufficient allocation of well trained staff.

13.40 Respondents also noted the lack of transparency in IPR registration procedures, involving limited public access to data, and stressed the lack of public awareness about the importance of IP protection and enforcement in Indonesia. Inadequate customs enforcement was mentioned in particular since inefficient border controls allow easy access for Chinese counterfeit products into the country. Digital piracy and, more broadly, corruption have also been reported to be widespread.

**EU action**

13.41 The EU has engaged in high-level discussions on IP with Indonesia, most recently in the framework of the EU-Indonesia Business Dialogue. Moreover, the third phase of the EU-ASEAN Cooperation Project on IPR (ECAP III) is in the process of being finalised and launched.

13.42 Given the positive feedback from users of the China IPR SME Helpdesk, and the IPR challenges in Indonesia, the Commission is now setting up an ASEAN IPR SME Helpdesk. This service, starting early 2013, will provide free-of-charge helpline, trainings, and web-based self-help materials.

**The Philippines**

**Progress**

13.43 Some improvements have taken place in the Philippines in the last two-three years, in particular regarding awareness-raising and training provided, increased cooperation
between public and private sectors as well as amongst IP authorities themselves. IP laws and regulations are, despite some shortcomings, described as “solid” by most respondents. The issuance (in November 2011) of guidelines and approved Rules of Procedure on IPR cases, which recommend the designation of 22 special IP courts, were signalled as one of the most recent and important positive developments in the IP field.

**Concerns and areas for improvement and action**

13.44 Reported weaknesses relate in particular to low public awareness, slow IP rights registration procedures. Moreover, insofar as IPR enforcement is concerned, deficient interagency coordination seems to remain a particular obstacle to effective IPR protection and enforcement. In particular respondents noted a lack of leadership, systems and procedures in the inter-agency task force that leads to weak coordination, gaps in enforcement and prosecution. The lack of data and information for effective decision-making, transparency of operations and monitoring of execution policies was also being reported. It also seems to be difficult for right holders to seek assistance from enforcement authorities, such as police agencies, in case of an infringement. As regards court proceedings, court cases are slow to be resolved, the system is reportedly overburdened and inefficient and sufficient IPR expertise seems to be missing at many levels. With regard to criminal enforcement, low numbers of arrests and successful prosecutions, along with inadequate punitive sanctions, fail to deter IPR violators. Overall strong political will to improve the situation both for IP protection and enforcement appears to be missing.

**EU action**

13.45 Work on re-launching the technical assistance program ECAP III (which would also cover the Philippines, in addition to other Asian countries) is underway and should enable training and capacity building to take place. An ASEAN IPR SME Helpdesk is also being set up.

**Turkey**

**Progress**

13.46 Tracking of piracy has improved as a result of training organised jointly by the Ministry of Culture and Tourism (MoCT), the Ministry of Interior (police), anti-piracy commissions and the judiciary. Anti-piracy commissions are working efficiently, and specialised IPR police units have conducted successful operations in the fight against piracy. The administrative capacity of the Turkish Patent Institute (TPI) has further improved as a result of tailor-made and jointly organised training programmes. Jointly organised events also helped improve the dialogue among IPR stakeholders. Consistency of the TPI final decisions with IPR courts has improved and appeals decreased. Latest statistics indicate that rejections of the TPI decisions by IPR courts were down by 30% compared to 2009. The speed of trademark registrations has also increased. Turkey is now an observer at the Customs Code Committee (IPR section) and shows willingness to cooperate regarding of customs enforcement.
Concerns and areas for improvement and action

13.47 Issues linked to bad faith registration, “similar” trademarks and industrial designs remain unresolved (although a positive development in this area is the on-going elaboration of new Examination Guidelines for the registration of patents, designs and trademarks). Existing structured dialogue mechanisms, such as consultation meetings between the TPI and IPR-holders, are still too weak to address systemic problems. Draft laws on patents, industrial designs, geographical indications and trademarks were prepared by the TPI in consultation with stakeholders. However, they have been pending for a long time at different levels of the law-making process. Judicial procedures including injunctions, and search and seizure warrants are still lengthy and the decisions of different courts in similar cases are not always consistent. Another concern is that the number of specialised IPR judges has decreased in recent years. Concerning customs enforcement, the centralised customs database and IT management system is not used effectively by the customs points to prevent counterfeit goods from entering the market. No accurate data are provided about checks and seizures against counterfeit goods. The effects of the 2008 decision of the Turkish Constitutional Court, which allowed the release of goods identified as counterfeit back to the market (estimated to be around two million items), are still being felt. Equally detrimental is the order to return counterfeit goods to the offenders, together with storage problems of the confiscated materials experienced by right-holders and difficulties in getting preliminary injunctions continue.

EU action

13.48 The second EU-Turkey IPR Working Group (WG), held in January 2012 in Ankara, included representatives of European industry, who were able to raise their respective concerns. The Office for Harmonisation in the Internal Market also presented its practice on bad faith trademarks, followed by discussions on likelihood of confusion and well-known marks. Turkey agreed to provide information on its review of its examination guidelines with regard to bad faith trademarks registrations. Overall, the meeting helped improve understanding between the two sides and has contributed to creating the basis for more open and fruitful discussions in the future. The third meeting of the IPR WG is foreseen for the first quarter of 2013.

Argentina

Progress

13.49 In general, the IP laws in Argentina are good and should provide tools for right-holders to defend their rights in court. Certain actions have been pursued in the area of customs and police against counterfeiting and piracy and some structural changes have been implemented to speed up trademark and patent examination and registration.

Concerns and areas for improvement and action

13.50 However, it has been reported that the process for obtaining judicial remedies is slow and disappointing in terms of its efficiency, the level of compensation and deterrence. The backlog of patent and trademark examinations is still problematic and there is a lack of
adequate protection of proprietary test data linked to medical and agrochemical products. The EU may also have concerns on new guidelines for patent examination in the field of pharmaceuticals. On-line piracy of music is widespread. The uncertain legal framework around internet service providers is potentially detrimental for the access to remedies for right-holders. Large quantities of counterfeit products are still on sale in the big towns and cities, often in special markets, and customs authorities do not make wide use of their ex-officio powers.

**EU action**

13.51 Although an IP Dialogue was launched in 2008, regrettably only one meeting has taken place so far. It would be important to continue this Dialogue, as it is a valuable platform for a constructive discussion and increased mutual understanding on IPR matters, and to improve the IPR situation in Argentina.

13.52 Given the positive feedback from users of the China IPR SME Helpdesk, and the IPR challenges in Argentina, the Commission is now setting up a Mercosur IPR SME Helpdesk. This service, starting mid-2013, will provide free-of-charge helpline, trainings, and web-based self-help materials.

**Brazil**

**Progress**

13.53 Domestic commitment towards a more effective system of protection and enforcement of intellectual property has continued. Resources and staffing levels have been raised within the national IP office (INPI) to speed up patent and trademark examinations and further increases are planned in the near future. The public-private cooperation under the National Council to Combat Piracy is also on-going and has carried out considerable training activities, organised seminars and workshops for enforcement authorities and the judiciary and set up visible campaigns such as the ‘City free of Piracy Project’ which has covered six of the major cities and will expand to a further six in the immediate future. The Brazilian copyright legislation is in the process of review in conjunction with a new law on the internet. Brazil is also developing a register of Geographical Indications (under INPI): 35 GIs were protected by end of October 2012, of which five EU GIs. More GIs are now in process of individual registration, both from Brazil and foreign countries.

**Concerns and areas for improvement and action**

13.54 Despite this visible local reform and activity, concrete improvements on the ground for IP right-holders have not fully materialised yet. Judicial proceedings remain slow and sanctions do not for the most part act as a deterrent. Internet piracy is rife and registration of trademarks and patents still take too long. Although Brazil promotes innovation and is interested in technology transfer, it appears that Brazilian taxation of licensing contracts and royalty payments can act as a disincentive to foreign companies. The role of Brazilian Health Surveillance Agency (ANVISA) in the patent examination remains an area of concern.
13.55 At an international level (in WTO, WIPO and WCO) Brazil is still reluctant to engage in discussions on the enforcement of IPR.

**EU action**

13.56 On a bilateral basis, however, discussions with Brazil which started in 2008 have continued in a positive and constructive manner through the annual IPR Dialogues. Geographical indications have also been addressed at the recent first meeting of the Dialogue on Agriculture, with a view to improving mutual understanding and protection. This forum for detailed exchange of information is providing a good basis for mutual positive developments. A Mercosur IPR SME Helpdesk is also being set up.

**Canada**

**Progress**

13.57 Positive developments have been noted recently in Canada, such as a recent copyright reform bringing Canadian legislation better in line with WIPO’s “Internet Treaties” (which still remain to be ratified by Canada, more than 10 years after their signature), and improvements planned regarding IPR enforcement (based on ACTA). Canada has also shown political will to address certain IPR issues, for example with its domestic copyright reform and by accepting to discuss with the EU the protection of geographical indications under the framework of the Comprehensive Economic Trade Agreement (CETA).

**Concerns and areas for improvement and action**

13.58 The Canadian IPR system still features shortcomings, which were noted a few years ago already, not only by foreign countries but also by domestic organisations. Despite recent positive developments, many issues remain to be addressed, in particular the lack of ratification by Canada of major IPR treaties relating to trademarks and copyright, weaknesses in the protection of pharmaceuticals and of geographical indications, in enforcement mechanisms (in particular regarding ex-officio customs seizures), and in the sharing of information between Canadian IPR enforcement authorities and right-holders. Moreover, the new copyright law includes broad exceptions which may prove detrimental to right-holders.

**EU action**

13.59 In the on-going negotiation of the bilateral “CETA” trade agreement between the EU and Canada, the EU still aims to attain the level of ambition expressed in the joint scoping report of 2009.

**Israel**

**Progress**

13.60 Positive developments have been noted especially regarding the amendment of several laws dealing with the protection of IPRs for medicines. In particular, an
amendment was adopted extending the period of data protection for medicines based on new chemical entities to six years (or six years and a half as from marketing approval in another recognized country). In addition, the Patent Act was amended to provide for the publication of patent applications after 18 months from filing. The legislative process is currently on-going as regards modifications to the patent term extension regime in Israel. Also steps have been taken to reduce the duration of the marketing registration procedure from 16 to 12 months.

**Concerns and areas for improvement and action**

13.61 The inadequate protection of IPRs in Israel remains a major concern. In particular, research-based pharmaceutical companies faced (in past tense as situation changed now and too early to draw conclusions) significant delays and difficulties as regards the protection and commercialisation of innovative pharmaceutical products in Israel. Patent applications were not published prior to the grant of the patent, which resulted in lack of any provisional protection for patent applicants. In addition, due to the Israeli system of pre-grant opposition and the lengthy examination of pharmaceutical patent applications (on average more than six years), the period during which patent applications remained unpublished and thus unprotected could last for several years.

13.62 In addition, the exclusivity period of protection for medicines, including, in particular, patent term extension is considerably limited due to a linkage with the period of protection available in one of a number of “recognised” countries (currently including the EU, the USA and a number of other countries). These measures are clearly detrimental to foreign innovative pharmaceutical companies.

13.63 As regards copyright, Israel has recently changed its copyright legislation but several concerns remain with regard to on-line piracy. Problems also persist as regards illegal live Internet streaming (affecting, in particular, European sports rights owners). Israel also needs to adopt clear rules on the liability for online intermediaries.

**EU action**

13.64 The EU has engaged in discussions with the Israeli authorities on some of the patent issues referred to above and these discussions have shown a willingness of Israel to take into account some of the concerns expressed. In particular it has been closely following the work on legislative amendments concerning IPR protection for medicines in Israel and has had constructive exchanges with Israeli authorities regarding some provisions that could negatively impact EU industry.

**Korea**

**Progress**

13.65 Improvements have taken place in particular regarding the amendment of IP laws, notably on copyright, as well as measures taken to address on-line piracy and sales of counterfeit goods, new customs IT tools, and actions taken by the relevant authorities when infringement was brought to their attention by the right-holders. The conclusion of FTAs with the EU and the US are also highlighted as positive points by respondents.
**Concerns and areas for improvement and action**

13.66 Serious concerns are still being reported by respondents, in particular concerning the requirements for patent applications and the way foreign operators are treated in the granting of patents and in their ability to enforce these before Korean Courts. In addition, there are still concerns raised regarding the high level of Internet piracy and the low — insufficiently dissuasive — level of penalties. Regarding copyright, the cumulative effect of certain Korean legislative measures — including the public performance right in sound recordings (2009) — has the practical effect of exempting the vast majority of businesses in Korea from the need to obtain a license for the public performance of music. In particular, the Korean measures could deprive EU right holders of the full exercise of their rights as agreed under the EU-Korea FTA.

**EU action**

13.67 A number of initiatives are intended to address these deficiencies. In particular, the EU and South Korea have concluded a Free Trade Agreement (FTA) which entered into force on 1 August 2011 and which includes an ambitious and balanced IPR chapter. Moreover, an annual IP Dialogue is established in the FTA between the EU and South Korea. Operators either already do work with relevant authorities or are willing to organise IP-related technical assistance or awareness-raising activities.

**Malaysia**

**Progress**

13.68 Positive developments regarding the IPR situation in Malaysia include the establishment of a specialised Intellectual Property Court, the amendment of the Trade Descriptions Act, the on-going amendment of the Copyright Act and the increased number of anti-piracy awareness campaigns. The result is that awareness regarding the importance of IPR protection is slowly improving.

**Concerns and areas for improvement and action**

13.69 As a general comment several respondents mentioned a certain apathy, insufficient understanding and political will of the Malaysian authorities as the main problem when it comes to IP protection and enforcement. More specifically, the following issues were pointed out regarding IPR protection: deficient regulation of IPR issues in general; lack of clear regulation of customs interventions and on the distribution of competences between concerned authorities; and a missing patent term restoration regime. Also, some respondents complained about Malaysia’s data protection system, where the protection starts running from the first marketing authorisation anywhere in the world, and expires if a marketing authorisation is not applied for in Malaysia within 18 month from the granting of the first authorisation. Moreover, insofar as IPR enforcement is concerned, there is a need to address the lack of express authority and power of the Customs Administration under the Customs Act 1967 and to put in place the required laws and procedures to facilitate the exercise of this power. Also, the sanctions for IPR infringements are considered insufficiently deterrent.
**EU action**

13.70 The EU and Malaysia are currently negotiating a Free Trade Agreement which would include an ambitious yet balanced IPR chapter. Malaysia also declared the objective of becoming a high-income country in 2020 through their New Economic Model (NEM) strategy, which specifically singles out innovation and the improvement of IP protection as one of the five key policy areas for reform, and whose provisions must be responsive to the changing needs of industry and researchers. An ASEAN IPR SME Helpdesk is also being set up.

**Mexico**

**Progress**

13.71 Mexico has made substantial efforts to enhance protection and enforcement of IPRs. In particular, in 2010 the Mexican Criminal Code was modified to provide ex-officio powers to the Attorney General enabling detection and detention of counterfeit goods. In addition, a trademark database for customs was launched in January 2012 to enable customs authorities to check whether goods crossing the border are infringing a trade mark registered in Mexico. The Mexican Institute of Intellectual Property (IMPI) also recently successfully concluded a cooperation project with customs authorities which consisted in sending IP experts at custom points.

**Concerns and areas for improvement and action**

13.72 Notwithstanding the progress made, the level of IPR infringements in Mexico remains very high. Additional measures are rapidly needed to strengthen and render more effective the fight against counterfeiting, in particular by allowing ex-officio action by Mexican customs.

13.73 Furthermore, Mexican legislation on geographical indications is not compliant with TRIPS and should rapidly be brought in line. The matter has already been discussed with Mexican authorities for a number of years without any real progress being made. There are many trade irritants related to the use of EU geographical indications in Mexico.

13.74 Mexico should also take measures to adhere soon to the Madrid Protocol on the international recognition of trade marks.

**EU action**

13.75 An EU-Mexico Sub-Committee on IPR meets every year in order to discuss concerns with the adequate and effective protection and enforcement of IPRs, review the progress achieved and identify areas for further improvement.
Russia

Progress

13.76 Some improvement has taken place in IPR protection and enforcement in 2010, in particular: Russia’s accession to international IPR treaties, changes in Russian IPR legislation (in recent years), and Russian law enforcement officials’ continued engagement in criminal enforcement activities. Russia’s accession to WTO (implying its ratification of the TRIPs agreement) is also an important development.

Concerns and areas for improvement and action

13.77 Piracy and counterfeiting however remain a major concern. Russia is still one of the world’s largest producers and distributors of illegal optical media. To date Russia lacks efficient legal norms regulating copyright protection and effective dispute settlement regarding IPR infringements; Russian legislation also does not provide for clear rules concerning internet service providers’ liability and domestic sales and use of counterfeit trademark goods remain widespread. Respondents also expressed concerns regarding insufficient commitment from the relevant authorities as illustrated for example by: an apparent reluctance by enforcement authorities to take action against large infringers. The lack of uniform methodology for enforcement also hinders these efforts. According to the respondents, authorities and courts also tend to interpret laws and regulations in a narrow way which can create loopholes for infringers.

EU action

13.78 The Commission and the relevant Russian authorities have agreed to engage in a regular IP Dialogue (result-oriented process, including the involvement of relevant stakeholders) to resolve IPR problems. This Dialogue has proven useful and Russian authorities have also engaged in wide-scale cooperation activities concerning IPR enforcement, which is a positive step. Moreover, the Commission, together with the copyright industry, has also organised a number of training events on copyright infringements through the TAIEX scheme, targeting various enforcement agencies, which were well attended by the Russian side. The Commission together with the Russian authorities is planning to launch a series of training events concerning trademark infringements.

Thailand

Progress

13.79 Thailand in general has been doing a lot of work in the area of IPR and in particular the Department of Intellectual Property (DIP) has been particularly cooperative. The Thai government has made stronger IPR protection and enforcement a national priority, reflected by the creation of the National Task Force chaired by the Prime Minister, by setting up an IPR Dialogue with the EU and by putting forward the “Creative Economy initiative”. Thailand also acceded to the Patent Cooperation Treaty in 2009 and prepared various amendments of IP law, for example regarding the authority of Thai Customs to take enforcement actions ex-officio, which unfortunately remain pending.
**Concerns and areas for improvement and action**

13.80 Thailand’s IPR enforcement efforts do however remain uneven and serious violations of IPRs continue. The Thai copyright law is considered not to be in line with technological developments, and actions against digital piracy have not been sufficient. Moreover, as regards IPR examination and registration, Thailand’s patent office lacks resources to keep up with the volume of applications, resulting in a worrying patent backlog. Moreover, companies have raised concerns about the granting of compulsory licenses for medicines in Thailand. A concern is whether such licences will be granted in accordance with Thailand’s TRIPS commitments, including those under Article 31 of the TRIPS Agreement.

**EU action**

13.81 A number of initiatives are intended to address these deficiencies. In particular, an IP Dialogue between the EU and Thailand has been launched in February 2011, under which discussions on topics including geographical indications, backlogs in patent registration, pharmaceutical issues and enforcement issues took place. The EU also carries out technical assistance programs with Thailand; at the moment, work on re-launching the technical assistance program ECAP III is underway. An ASEAN IPR SME Helpdesk is also being set up.

**Ukraine**

**Progress**

13.82 During the last survey respondents noted some improvements regarding IPR protection and enforcement in Ukraine, in particular the development and adoption of an IPR action plan; the increased number of actions by enforcement authorities.

**Concerns and areas for improvement and action**

13.83 Piracy and counterfeiting however remain major concerns. Ukrainian legislation does not include adequate provisions ensuring effective enforcement of IPR rights; they are particularly unfit for enforcement in the digital environment. According to respondents, criminal sanctions are not deterrent, and there is a lack of clear rules concerning the destruction of IPR-infringing goods and of equipment used for their production. Concerns have been expressed whether the Ukrainian government has sufficient political will to improve the situation; legal proceedings are also seen as lengthy and there is a shortage of IPR-trained judges. Customs authorities do not have the possibility to take action against IPR-infringing goods in transit, and the customs procedure for registering IPR-protected goods is costly. Furthermore, stakeholders reported serious problems regarding the functioning of collecting societies in Ukraine, in particular the questionable withdrawal of the accreditation of representative collecting societies and the on-going accreditation process.
**EU action**

13.84 On a positive note, the Ukrainian authorities have engaged in a regular bilateral Dialogue with the Commission. This is a result-oriented process involving all competent enforcement authorities and certain right-holders. In 2008 the Commission initiated negotiations for a deep and comprehensive Free Trade Area (DCFTA) with Ukraine (as part of the Association Agreement); negotiations were concluded and the DCFTA was initialled in July 2012. This DCFTA includes an ambitious IPR chapter aiming at regulatory approximation with the EU acquis and enforcement practices. In addition, a €1.4 m twinning project will start at the end of 2012, with the aim of strengthening the administrative capacity and competencies of the State Intellectual Property Service of Ukraine (SIPSU) as well as other stakeholders (judges, customs, state inspectors). It should also propose effective legal measures against counterfeiting and piracy, and ensure effective implementation of the enforcement legislation and sanctions for IPR infringements.

**USA**

**Progress**

13.85 The protection and enforcement of IP rights in the USA is globally very effective, and the EU and the USA have established in recent years a very good cooperation on IP issues, that provides for the possibility to discuss common IPR enforcement challenges in third countries. These exchanges have been fruitful and efficient. The Commission also notes positively the progress in terms of approximation of the USA patent legislation to the prevailing international system, the so called “first-to-file approach”.

**Concerns and areas for improvement and action**

13.86 A number of problems — circumscribed to very specific sectors — that affect EU right-holders do however remain. The importance of the USA market and unfortunate example these cases set for compliance with the TRIPS agreement justify the inclusion of the USA in the list of priority countries, the Commission states.

13.87 Despite the EUs’ efforts over several years to find a solution the continued failure of the USA to comply with the following two Dispute Settlement decisions are of concern:

- the lack of progress in implementing the WTO panel decision on Irish Music (Section 110(5)(B) of the USA Copyright Act was found to be incompatible with the WTO/TRIPs Agreement, and constitutes a blatant violation of copyright); disrespecting WTO dispute settlement decisions on IPR establishes a negative precedent and undermines the credibility of countries such as the EU and USA which share an interest in promoting effective IPR enforcement practices, notably in emerging economies; and

- the USA administration’s decision to refuse the renewal of the Havana Club trademark on the basis of the embargo against Cuba, which, again, is in breach of a WTO dispute settlement decision that found Section 211 of the US Omnibus Appropriations Act of 1998 to infringe the TRIPS Agreement; the USA’s persistent refusal to implement the latter decision sets an unfortunate precedent.
13.88 Moreover, regarding geographical indications, EU right-holders face a number of practical problems and limitations in ensuring the optimal protection of their rights under the US trade mark system.

**EU action**

13.89 The EU regularly raises the problem of the non-compliance by the USA with WTO dispute settlement decisions on “Havana Club” and “Irish Music” at the WTO Dispute Settlement Body. Furthermore, the EU continues in its bilateral contacts with the USA to actively seek a satisfactory solution for the problems of the right-holders affected by the lack of compliance with these decisions.

**Vietnam**

**Progress**

13.90 Since its accession to the WTO in 2006, Vietnam made a significant legislative effort by enacting revised laws on IP and Criminal Code, aside from nearly 40 pieces of legislation and implementing decrees, circulars and ordinances. Vietnam is increasingly taking IPR more seriously and is seeking to complete its IPR legislative framework. The respondents indicated that the legal framework is generally good and adequate. Public awareness and general understanding of IPR are increasing and the government encourages the training of its officials.

**Concerns and areas for improvement and action**

13.91 Regarding IPR protection, the implementation of IPR laws still requires continuous attention. Improvement is also needed regarding awareness of the general public regarding the importance of IPRs. Moreover, insofar as IPR enforcement is concerned, the complexity of the system and the lack of efficient cooperation between enforcement bodies and IPR stakeholders were mentioned as two important issues. Respondents also highlighted insufficient IPR understanding of the enforcement officials, and shortage of resources, resulting in lengthy and burdensome enforcement procedures.

**EU action**

13.92 Negotiations for a FTA between the EU and Vietnam were launched in June 2012. A first round of negotiations took place in October. This FTA will include an IPR chapter and should therefore provide a good venue for addressing key issues. An ASEAN IPR SME Helpdesk is also being set up.

**Conclusions**

13.93 The Commission concludes that this prioritisation is important in helping stakeholders protect their interests, and for the Commission to focus resources and attention on third countries where IPR issues are of most pressing concern. The survey clearly shows that there is much room for improvement in third countries of the protection and enforcement of IP rights, although efforts and improvements from national authorities
are also evident. These positive developments partly result from our cooperation initiatives, including “IP dialogues” with third countries and technical assistance projects. This type of EU engagement should continue.

The Government’s view

13.94 In an Explanatory Memorandum dated 25 March 2013, the Parliamentary Under-Secretary of State for Intellectual Property at the Department of Business, Innovation and Skills (Lord Younger) says the report is a welcome update on the efforts of the Commission to address weaknesses in the IPR regimes of third countries. Focussing on those particular countries where deficiencies in the protection and enforcement of IPRs are deemed to cause the largest injury to EU interests should ensure that resources and efforts are deployed to the best effect. Using mechanisms such as free trade agreements and IPR dialogues the Commission is able to push the messages on IPR protection and enforcement out to third countries, and demonstrate that this issue is of serious concern to the EU.

13.95 A new development in this report is the narrative on EU action with priority countries. This provides a basis for measuring the effectiveness of EU interventions in specific countries in the future. The Government looks forward to future reports including the work of the European Observatory on Counterfeiting and Piracy to build strategies and develop techniques, skills and tools for the enforcement of IPRs with third countries.

13.96 The Minister observes that the list of priority countries remains almost unchanged from the first report, with some countries moving between priority 2 and 3, and Mexico being added to the list. China remains the only country at priority 1. The Canadian IPR system is still of concern to respondents to the survey, in particular the lack of ratification by Canada of major IPR treaties relating to trademarks and copyright, and weaknesses in the protection of some IPRs. The USA remains on the list due to particular circumstances relating to two specific World Trade Organisation (WTO) dispute settlement decisions.

13.97 The list of priority countries identified in this report aligns with those that the UK sees as being of concern. For this reason the UK’s Intellectual Property Office has worked with UKTI and others to produce IP Business Guides for many of these countries. In addition, since 2011 the IPO has appointed four specialist IP attachés in key markets (China, India, Brazil, and South East Asia) to support UK businesses and work closely with Governments and agencies on IP issues. Many of the priority countries are also included in the ‘Special 301’ Report prepared by the US Trade Representative, which makes an annual assessment of the IPR protection and enforcement in trading partners of the USA.

Conclusion

13.98 We have set out the contents of this well-researched four-yearly report because of their importance for the protection of IP rights of UK companies trading with the listed priority countries.

13.99 Though the report usefully highlights what the EU is doing to combat IPR infringements in priority countries, we consider that these efforts are, perforce, destined to be weak in the absence of a strengthened multilateral framework for IPR.
13.100 This weakness is illustrated by the startling fact that 73% of suspect goods detained at the EU’s borders come from China, where the EU has been politically and financially engaged to stop counterfeiting since 2004.

13.101 This is indeed a concern when 30% of respondents to the Commission’s preliminary consultation declared that the infringement of their IP rights resulted in risks to consumer health or safety.

13.102 The report has no formal consequences for the UK and so we clear it from scrutiny.

14 Animal tests for cosmetics

| (34802) 7762/13 COM(13) 135 + ADDs 1–2 | Commission Communication on the animal testing and marketing ban and on the state of play in relation to alternative methods in the field of cosmetics |

Legal base

Document originated: 11 March 2013
Deposited in Parliament: 3 April 2013
Department: Business, Innovation and Skills
Basis of consideration: EM of 11 April 2013
Previous Committee Report: None, but see footnote
Discussion in Council: No date set
Committee’s assessment: Politically important
Committee’s decision: Cleared

Background

14.1 The conditions applying to animal tests for cosmetics are laid down in Council Directive 76/768/EEC, which was amended in 2003 to introduce a complete ban as from 2004 on the use of animals to test finished cosmetic products, with a corresponding ban from 2009 on their use for most testing of cosmetic ingredients. In addition, a marketing ban on both cosmetics and their ingredients which have been tested on animals has applied since 11 March 2009, except those involving the most complex health effects to be tested for safety, which is due to come into force in 2013.

14.2 The Commission has reported regularly on the implementation of the Directive, the most recent occasion being in September 2011, when it noted that alternative tests were
available for the majority of those subject to the 2009 ban (although in three instances, where only partial replacement measures were available, the industry had had to rely on existing data since the ban came into force). In the case of the remaining tests subject to the 2013 deadline — repeat dose toxicity, reproductive toxicity, and toxicokinetics — it said that alternatives were still not available, and that expert advice considered this would still be the case when the ban was due to come into effect. It was therefore evaluating the situation, and looking at the available options before deciding whether to put forward a proposal to maintain or postpone the 2013 deadline.

The current document

14.3 The Commission has now sought in this Communication to present a progress report as required under the Regulation, and to address the outstanding issues relating to the 2013 marketing ban. It says that, although considerable progress has been made in recent years, full replacement methods for tests which will become subject to the ban are still not available, and that it has therefore carried out an impact assessment as to the best way forward, addressing three options — maintaining the ban as planned, postponing it, or introducing provisions allowing manufacturers to apply for derogations (for example, for innovative ingredients with a significant added value to consumer health, well-being and/or the environment). It concludes that the most appropriate approach would be to let the ban take its course, bearing in mind that:

- there have so far been no major adverse effects for manufacturers arising from the absence of alternative methods for those tests subject to the 2009 ban;
- both the European Parliament and the Council have made a very clear political choice that a ban is necessary on animal welfare grounds, even if a complete set of replacement tests was not available, and the fact that animal welfare has now been enshrined in Article 13 of the TFEU as a European value to be taken into account in EU policies;
- any dilution of the 2013 marketing ban could erode determination to develop alternative test methods, both within the EU and more widely;
- an approach based on case-by-case derogations would principally benefit those larger manufacturers capable of gathering the necessary evidence, and present controversial decisions for the Commission in determining what constitutes a significant benefit in areas where objective criteria are difficult to establish;
- maintaining the ban provides an opportunity for the EU to set an example of responsible innovation in this area with a positive impact beyond Europe.

14.4 The Commission therefore concludes that the 2013 marketing ban should be imposed as envisaged on all cosmetic products placed on the EU market which have been the subject of animal testing, including those which are imported. However, it notes that the majority of cosmetics ingredients are used in other consumer and industrial products (such as pharmaceuticals and detergents) where animal testing may be necessary, and it suggests that the data from such tests could be relied upon without triggering the ban. The Commission also stresses the continuing need to support research and development into
methods of assessing human safety without the use of animal testing, and says that it has made significant funding available for this. It also highlights the importance of international cooperation, and states that its aim is to put this issue on the agenda for the relevant multi and bilateral meetings in the cosmetics field in 2013, and to develop synergies with the industry and animal welfare organisations.

**The Government’s view**

14.5 In her Explanatory Memorandum of 11 April 2013, the Minister for Employment Relations and Consumer Affairs at the Department for Business, Innovation and Skills (Jo Swinson) says that the imposition of the marketing ban in the EU as from 11 March 2013 was the final step in the process of phasing out animal testing in order to demonstrate the safety of cosmetics or their ingredients for EU regulatory purposes, and that the Government supports the ban, its position being that the use of animals in tests should be reduced and replaced by non-animal tests.

14.6 She adds that the Government considers the Commission’s interpretation of how the ban will be imposed to be appropriate and legally supportable, and that it will ensure that no new animal tests are performed for EU cosmetic regulatory purposes. She adds that the UK will work with the Commission and other Member States through the market surveillance co-operation mechanism to ensure a level playing field, but notes that the impact of the ban on the cosmetics industry will be lessened to some degree by the interpretation that tests which have been motivated by other regulatory requirements will not trigger the marketing ban, that such data where relevant can be relied on in cosmetic safety assessments, and that historic animal test data can also be used where available (although she cautions that only the European Court of Justice can provide a definitive interpretation of the relevant provisions). She also suggests that it is extremely important for the competitiveness of the EU cosmetics industry that work continues to build on research into new non-animal test methods, and she says that the Government supports the Commission’s proposal to continue to develop international co-operation on alternative test methods and to raise the issue on the EU’s trade and international co-operation agenda.

**Conclusion**

14.7 As use of animal tests for cosmetics is of some public interest, we think it right to draw this Communication to the attention of the House. However, as the Government supports the conclusion that the complete ban on the marketing of cosmetics which have been subject to such tests, including those for which replacement tests are not available, should come into force this year as planned, we do not think the document raises any issues which require further consideration. We are therefore clearing it.
15 Restrictive measures against Somalia


(b) (34886) Council Regulation amending Regulation (EU) No.356/2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia

(c) (34887) Council Regulation amending Regulation (EC) No.147/2003 concerning restrictive measures in respect of Somalia

Legal base
(a) Article 29 TEU; unanimity
(b) and (c) Article 215 TFEU; QMV

Department
Foreign and Commonwealth Office

Basis of consideration
EMs and Minister’s letters of 25 April and 1 May 2013

Previous Committee Report
None; but see (33139) — and (33140) —: HC 428—xxxvii (2010–12), chapter 18 (12 October 2011)

Discussion in Council
25 April and 8 May 2013

Committee’s assessment
Politically important

Committee’s decision
Cleared

Background

15.1 The first EU restrictive measures, imposed by Common Position 2002/960/CFSP — an arms embargo — have subsequently been integrated with measures imposed following the adoption of various UN Security Council Resolutions (UNSCRs).

15.2 These have been targeted at those who seek to prevent or block a peaceful political process, those who threaten by force the Transitional Federal Institutions (TFIs) or the African Union Mission in Somalia (AMISON), violate the longstanding arms embargo, or obstruct humanitarian assistance. The terrorist organisation Al Shabaab was “listed” along with various individuals. States and regional organizations cooperating with the Transitional Federal Government were enabled to enter Somali territorial waters for the purpose of repressing acts of piracy and armed robbery at sea; Member States were obliged to search cargo going to or from Somalia where they had reasonable grounds to suspect that vessels were carrying embargoed goods; and all goods brought into or leaving the customs territory of the Union to and from Somalia were made subject to a requirement
for pre-arrival or pre-departure information to be submitted to the competent authorities of the Member States concerned.50

**UNSCR 2093 (2013)**

15.3 According to the UN Department of Public Information, on 6 March, in response to calls for a change in support to Somalia, and in line with notable progress there, the Security Council,

“decided to maintain deployment of the African Union Mission until 28 February 2014, reshape the United Nations presence there, and partially lift its 20-year weapons ban for one year to boost the Government’s capacity to protect areas recovered from the militant group Al-Shabaab and stave off fresh attempts by such groups to destabilize the country.”

15.4 On the arms embargo, originally imposed in 1992, the Security Council decided that it would not apply to arms or equipment sold or supplied solely for the development of the Somali Government’s security forces, but it kept its restrictions in place on heavy weapons, such as surface-to-air missiles.

15.5 In a related provision, the Government would be required to notify the Security Council’s sanctions committee at least five days in advance of any such deliveries and provide details of the transactions. Alternately, UN Member States delivering assistance may make the notification after informing the Government of its intentions in that regard. The Resolution stresses the importance of such notifications containing all relevant information, including the type and quantity of weapons and the proposed date of delivery.

15.6 The Council agreed with the Secretary-General that the United Nations Political Office in Somalia (UNPOS) had fulfilled its mandate and should now be dissolved and replaced by a new expanded special political mission as soon as possible. UNPOS would be integrated within the framework of the new mission, which would operate alongside the African Union Mission in Somalia (AMISOM).

15.7 In the Human Rights and Civilian Protection section of the Resolution, the Security Council condemns all attacks against civilians in Somalia and calls for the immediate cessation of all acts of violence, including sexual and gender-based violence, or abuses committed against civilians, including women and children. It strongly condemns reports of grave violations against children, urging the Somali Government, as a matter of priority, to implement the action plan signed on 6 August 2012 to eliminate the killing and maiming of children, and the 3 July 2012 action plan to end the recruitment and use of child soldiers.51

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50 See (33139) — and (33140) —: HC 428–xxxvii (2010–12), chapter 18 (12 October 2011) for full background.

The draft Council Decision

15.8 This draft Council Decision implements the changes made to the UN arms embargo on Somalia by UNSCR 2093. It seeks to:

- suspend the arms embargo for the Security Forces of the Federal Government of Somalia for a period of 12 months, with the exception of certain heavy weaponry which will remain embargoed, and with reporting and notification requirements set out for the Government, and in some cases Member States;

- broaden the existing exemption to the arms embargo for UNPOS (UN Political Office for Somalia) to include all UN personnel, and remove the requirement to notify the UN Somalia Sanctions Committee in this case;

- broaden the existing exemption to the arms embargo for AMISOM (African Union Mission to Somalia) to include AMISOM’s strategic partners; and

- update the designation criteria for imposing UN restrictive measures on individuals.

The Government’s view on the draft Decision

15.9 In his Explanatory Memorandum of 25 April 2013, the Minister for Europe (Mr David Lidington), explains key aspects of the draft Decision as follows (his comments are in italics beneath each one):

**Suspension of the UN Arms Embargo for the Federal Government of Somalia**

“...The Council Decision will implement the suspension of the arms embargo for the Security Forces of the Federal Government of Somalia until 6 March 2014, as imposed by UN Security Council Resolution 2093 on 6 March 2013. This means that during this period Member States can supply the Federal Government of Somalia with military equipment, excepting certain heavy weaponry, and provide its Security Forces with technical and other assistance without first obtaining the approval of the Sanctions Committee through a negative objection procedure, as was previously the case.

“...The Decision, implementing the UNSCR, includes an annex of heavy and sophisticated weaponry which is not included in the suspension of the embargo.

“...These goods will remain subject to the embargo, and can only be obtained by the Federal Government of Somalia using the exemption process, whereby Member States must seek the prior approval of the Sanctions Committee before delivering such goods to Somalia.

“...In order for the Sanctions Committee to maintain oversight of military equipment and assistance being delivered to the Government Security Forces under the suspension, paragraph 38 of UNSCR 2093 puts an obligation on the Federal Government to notify the Committee of any goods or assistance being provided to it at least five days in advance. These notifications must include details of the items or
assistance being delivered, and the date and place of delivery to enable the Somalia and Eritrea Monitoring Group (SEMG) to monitor the flow of arms on the ground. The UNSCR also permits the delivering state to notify the Sanctions Committee instead of the Federal Government, where the latter has been informed of the former’s intention to do so, in order to meet this Chapter VII obligation. To reflect this, the Council Decision states that goods or assistance being delivered to the Federal Government under the partial lift must have been notified to the Sanctions Committee as per paragraph 38 of the UNSCR, and sets out the obligations of Member States in relation to notifying.”

“The UN Security Council agreed to the partial suspension of the arms embargo following a request made by the Federal Government of Somalia. HMG believes that states have a right to defend themselves and build their security forces, which is urgently needed in Somalia. The Somali President has prioritised security and the time-limited suspension will enable the international community to provide equipment, advice and assistance solely for the development of the Federal Government of Somalia’s security forces. This is in line with the objectives of the Somalia Conference in London on 7 May 2013, which will help ensure support is provided to build the capacity of the Somali security forces.

“Significant progress has been made over the last year in Somalia, and Al Shabaab no longer hold any large towns, however they retain the ability to conduct attacks and security gains are fragile. The UK worked hard to ensure robust safeguards were included in the suspension, in order to minimise its potentially negative impact on the overall security situation in the country. Safeguards include maintaining the embargo on heavy and sophisticated weaponry, enabling the Sanctions Committee to maintain oversight of goods provided to the Federal Government through notifications, and requesting that the Federal Government reports to the Committee on the composition and control of its forces, and the infrastructure in place for the safe storage of weapons. We therefore consider the time-limited suspension of the embargo to strike the right balance between sending a positive signal of support to President Hassan Sheikh, whilst ensuring that sufficient safeguards are in place to enable the international community to maintain oversight of weapons flows into Somalia.”

**Broadening of the existing exemption to the arms embargo for UNPOS to include all UN personnel**

“The Decision broadens the scope of an existing exemption to the arms embargo for UNPOS, to include its successor missions and all UN personnel, and removes the requirement to notify the Sanctions Committee in this case. The exemption was broadened to reflect the Security Council decision, also in UNSCR 2093, to dissolve UNPOS. Security Council negotiations are ongoing to mandate a new UN mission. The requirement to obtain the approval of the Sanctions Committee for the provision of military equipment to UN personnel was removed because it was judged that the recipients would use the items responsibly and that the risk of diversion was low.”
“The UK supports broadening the scope of the existing exemption to the arms embargo for UNPOS, to include its successor mission and all UN personnel, and the removal of the requirement to notify the Sanctions Committee in this case.”

**Broadening of the existing exemption to the arms embargo for AMISOM to include its strategic partners**

“The Decision broadens the scope of an existing exemption to the arms embargo for AMISOM, to enable Member States to also supply equipment and training to strategic partners of AMISOM, such as Ethiopia, whose forces are working to support wider stability in Somalia. This had not been covered adequately in previous UNSCRs due to Somali sensitivities. The decision to ensure such forces are covered by UNSCR 2093 followed full consultation with the Federal Government of Somalia on this issue.”

“The UK supports broadening the scope of the existing exemption to the arms embargo for AMISOM, to include its strategic partners. This development now provides the flexibility to enable Member States to supply equipment and training to partners of AMISOM such as Ethiopia, whose forces are providing valuable support to peace and security in Somalia.”

**Updating of the designation criteria for imposing UN restrictive measures on individuals**

“The designation criteria was [sic] updated to remove a reference to the Djibouti Agreement of 18 August 2008, which related to the process leading up to the transition to the new Government, but is now not relevant to the situation in the country. References to breaching the arms embargo were also updated to reflect the partial suspension for the Federal Government of Somalia.”

15.10 The Minister also notes that the draft Decision was agreed at the RELEX working group on 22 April, and was adopted on 25 April by written procedure.

**The Minister’s letter of 25 April 2013**

15.11 The Minister says that, though adopted on 6 March, despite active lobbying by UK officials, the draft of the Council Decision implementing the changes made by UNSCR 2093 was not prepared by RELEX (the relevant Council working group) until Monday 22 April “due to the volume of urgent business to be addressed during this period” and the fact that the Somalia Council Decision was not considered by others to be urgent, because it implements UN, rather than EU autonomous measures. However, the Minister says, to avoid such unnecessary delays in the future, the UK is working with the EEAS to ensure that UN resolutions can be more swiftly implemented, and drafts made available with sufficient time for scrutiny.

15.12 The Minister also notes that, due to the already substantial time lapse:

“it was decided by the EEAS to adopt the text by written procedure as soon as possible after it was finalised. The date of adoption was set by the EEAS to be
Thursday 25 April, which was unfortunately too late for us to submit the draft to be considered by the Committee in advance.”

15.13 The Minister then explains that, until the changes made by UNSCR 2093 in relation to the arms embargo are implemented in the EU, Member States are required by existing EU obligations to obtain the approval of the UN Sanctions Committee before providing military equipment and assistance to the Federal Government and to the UN Political Office (UNPOS); but that, following the recent UNSCR however, these obligations in practice can no longer be complied with. The Minister then says:

“This means that the UK, along with other EU countries, cannot license the export of military equipment or the provision of assistance until the adoption of the amending Council Decision and Regulation. In addition, the existing Decision and Regulation do not permit Member States to provide military equipment or assistance to Ethiopia, a strategic partner working with the African Union Mission (AMISOM) or to UN staff working outside of the Political Office, but will do so once they have been brought into line with UNSCR 2093.

“There has been a time lapse of more than six weeks since the UNSCR was adopted, during which EU Member States have been unable to provide any military support to the recipients mentioned above, therefore this Decision was adopted at the first possible opportunity. A draft of the Regulation implementing the assistance related aspects of the Council Decision will now be drawn up, as the final stage in implementing these new measures. I will be in touch further with the committees.”

15.14 The Minister concludes by saying that, notwithstanding the seriousness with which he takes his responsibility to keep the Committee informed on issues concerning sanctions, the need for the override of scrutiny on this occasion was “regrettably unavoidable”.

The draft Council Regulations

15.15 The draft Council Regulation amending Regulation (EC) No.147/2003 implements the changes made to the UN arms embargo on Somalia by UNSCR 2093 that fall within EU competence. It thus covers the provision of financing, financial assistance, technical advice, assistance or training related to military activities intended solely for the development of the Security Forces of the Federal Government of Somalia, for a period of 12 months, except in relation to certain heavy weaponry listed in the annex, and only when a notification has been made to the UN Somalia Sanctions Committee at least five days in advance; and broadens this arrangement to include all UN personnel, AMISOM (African Union Mission to Somalia) and AMISOM’s strategic partners.

15.16 The draft Council Regulation amending Regulation (EU) No.356/2010 also flows from Council Decision amending Decision 2010/231/CFSP, and implements the changes made to the designation criteria for natural and legal persons by UNSCR 2093 that fall within EU competence.
The Government’s view on the draft Regulations

15.17 The substance of the Minister’s Explanatory Memorandum of 1 May 2013 is essentially the same as his Explanatory Memorandum on the draft Council Decision.

The Minister’s letter of 1 May 2013

15.18 The Minister’s letter adds that: due to the over-six-week time lapse between the adoption of the UN Resolution and the Council Decision, it was decided by the EEAS to adopt the Regulations by written procedure as soon as possible after it was finalised; the date of adoption is now set to be Wednesday 8 May; and this is unfortunately too late for him to submit the draft to be considered in advance by the Committee.

Conclusion

15.19 We are reporting these changes to the House because of the continuing interest in developments in Somalia.

15.20 We are concerned by the extent to which the timing of this exercise appears to have been driven by the EEAS, rather than the Council. The Minister does not say whether there was anything exceptional about “the volume of urgent business to be addressed during this period”, or whether “the others” who did not consider this Council Decision to be urgent were the EEAS or other Member States. It is also difficult to draw comfort from assurances that, to avoid such unnecessary delays in the future, the Minister is working with the EEAS to ensure that texts are produced in a timely fashion. We have heard this on several previous occasions over what is now a considerable period of time. As it is, though the Council’s business is eventually done, in the field of restrictive measures it is at the expense of proper, prior parliamentary scrutiny. We shall pursue these matters further with the Minister in the context of our ongoing Inquiry into the scrutiny of European business.

15.21 For now, we clear these documents.
16 Preparation of the 2013 EU Budget

(a) 
(34348) 15222/12 COM(12) 624
Amending letter No. 1 to the draft general budget 2013: Statement of expenditure by Section: Section III: Commission

(b) 
(34360) 15272/12 COM(12) 632
Draft amending budget No. 6 to the general budget 2012: General statement of revenue: Statement of expenditure by Section: Section III: Commission

(c) 
(34456) — COM(12) 716
Draft General Budget of the European Union for the financial year 2013: General Introduction

Legal base  Article 314 TFEU; co-decision; QMV
Department  HM Treasury
Basis of consideration  Minister’s letter of 25 April 2013
Previous Committee Report  HC 86–xxv (2012–13), chapter 9 (19 December 2012)
Discussion in Council  6–7 December 2012
Committee’s assessment  Politically important
Committee’s decision  Cleared

Background

16.1 The Draft Budget (DB) sets out the Commission’s proposals for EU expenditure in the following year. It is the first stage in the annual process of establishing the EU’s budget and provides the basis for negotiations between the two arms of the Budgetary Authority (the Council and the European Parliament). If conciliation between the two arms fails, the Commission is required to produce a new DB for a further round of negotiation. The Commission’s original DB for 2013 fell at conciliation in November 2012 and was replaced by a revised DB, document (c).

16.2 During the course of negotiation of a DB the Commission presents Amending Letters to update forecasts and estimates in the DB. During the course of a financial year the Commission presents to the Budgetary Authority Draft Amending Budgets (DABs) proposing increases or reductions for revenue and expenditure in the current Budget.

16.3 Amending Letter No. 1 to the Draft General Budget for 2013, document (a), proposed minor downward revisions to the Commission’s forecasts for spending needs in 2013 on Common Agricultural Policy and Fisheries. Draft Amending Budget 6 to the 2012 Budget (DAB 6/2012), document (b), covers:

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• an update in the forecast of revenue for 2012;
• a request to increase the level of payment appropriations in 2012 by around €9 billion (£7 billion); and
• a request to reduce the level of commitment appropriations in 2012 by €133 million (£108 million).

16.4 Both these documents were relevant to the new DB, which took account of the Amending Letter and assumed that DAB 6/2012 would be agreed in full.

16.5 When we were told in December 2012 that the 2013 Budget had been agreed on the basis of the revised DB the full details were not yet available. So we asked to have those details with tables, in euro and sterling, showing by budget Heading the commitment and payment appropriations for the 2012 Budget, for the Commission’s original Draft Budget for 2013 for its revised Draft Budget for 2013 and for the adopted Budget for 2013, together with percentage changes. Meanwhile the documents remained under scrutiny.53

The Minister’s letter

16.6 The Financial Secretary to the Treasury (Greg Clark), reminding us that the adopted Budget, with an increase of 2.9% over 2012, had been agreed, with the UK, Sweden, the Netherlands and Austria voting against, and that DAB 6/2012, reduced to €6 billion (£4.67 billion) had been agreed, with the UK, Sweden, the Netherlands and Denmark voting against, is now able to send us the final figures set out in the tables we requested, which we annex to this chapter.

Conclusion

16.7 We are grateful to the Minister for this information and now clear the documents.

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53 See headnote.
### Table I: 2012 EU Budget by heading

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<td>135.8</td>
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This table is based on the impact of amending budgets as set out in *Report on budgetary and financial management, Financial Year 2012.*
Table II: 2013 Draft EU Budget proposal, revised Budget proposal and final Council and EP approved Budget

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<td>Of which market related expenditure and direct aids</td>
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<td>4. THE EU AS A GLOBAL PLAYER</td>
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<td>Percentage change with 2012 agreed Budget</td>
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<td>6.7%</td>
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</table>
17 European Defence Agency

Draft Budget for 2013

Legal base
Department
Basis of consideration
Previous Committee Report
Discussed in Council
Committee’s assessment
Committee’s decision

Background

17.1 The European Defence Agency was established under 2004/551/CFSP on 12 July 2004, “to support the Council and the Member States in their effort to improve European defence capabilities in the field of crisis management and to sustain the European Security and Defence Policy as it stands now and develops in the future”.  

Structure

17.2 The EDA is an Agency of the European Union. The High Representative of the Union for Foreign Affairs and Security Policy (HR; Baroness Ashton) is Head of the Agency and chairs its decision-making body, the Steering Board, which is composed of Defence Ministers of the 26 participating Member States (all EU Member States, except Denmark) and the European Commission. In addition, the Steering Board meets regularly at sub-ministerial levels, such as National Armaments Directors or Capability Directors.

17.3 The Steering Board acts under the Council’s Authority and within the framework of guidelines issued by the Council and meets twice yearly — in May and November.

17.4 Unanimity is required for decisions on role, goals and targets; QMV for internal operations.

Way of working

17.5 The Agency originally described itself as facing outwards; its main “shareholders” as being the Member States participating in the Agency; key stakeholders as including the Council and the Commission as well as third parties such as OCCAR (fr. Organisation

Conjointe de Coopération en matière d’ARMement), LoI (Letter of Intent) and NATO; and as having a special relationship with Norway (through an “Administrative Arrangement”).

17.6 The Committee was fully engaged in the development of the EDA, culminating in a debate in June 2004 in European Committee B. There, the then Secretary of State stated that its principal purpose would be to improve Member States’ military capabilities.

17.7 The then Government agreed that it would deposit the Agency reports to the Council referred to in Article 4 of the EDA Joint Action Plan — its May report on activities during the previous and current year and its November report on current year activity and “draft elements” of the work programme and budgets for the following year — and the Council’s annual guidelines to the Agency that set the framework for its work programme. Also, initiated by the then Secretary of State (Dr John Reid), the relevant MOD Minister writes before and after EDA Steering Board meetings (not only to this Committee but also to the Defence Select Committee). The House has thus been kept well-informed of developments.

17.8 With the entry into force of the Lisbon Treaty on 1 December 2009 the European Defence Agency and its tasks became enshrined in the treaties. Article 42 (3) TEU stipulates that the Agency

“shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.”

17.9 The Agency’s website notes that:

“The EDA has a particular status in the single institutional framework of the EU. It is the only Union agency having its foundation in the Treaties — this is otherwise only the case for the Institutions — and the Agency has an intergovernmental ministerial governance structure in which all participating Member States’ Ministries of Defence are being represented.”

Previous consideration

17.10 In our most recent Report on EDA activity, we considered the Head of Agency’s report on current year activity and the Council Guidelines for 2013 (i.e., the main elements of the 2013 work programme).

56 The Organisation Conjointe de Coopération en matière d’ARmement was established by an Administrative Arrangement on 12th November 1996 by the Defence Ministers of France, Germany, Italy and the UK. Its aim is to provide more effective and efficient arrangements for the management of certain existing and future collaborative armament programmes. The four founding Nations went on to sign a Treaty, the “OCCAR Convention”, which came into force on the 28th January 2001. Belgium and Spain joined OCCAR in 2003 and 2005 respectively. The Netherlands, Luxembourg and Turkey are also participating in a programme, without being members of the organisation. For further information on OCCAR, see http://www.occar-ea.org/.

57 For full background on the EDA and its activities, see http://www.eda.europa.eu.

58 Stg Co Deb, European Standing Committee B, 22 June 2004, cols. 4–24.

The Head of the Agency’s report described progress on the main output areas, and provided an overview of Agency activities, which included the update of the Capability Development Plan; the Agency’s defence Research and Technology activities; European Armaments Co-operation Strategy; Industry and Market issues; and interaction with key stakeholders. The Council’s Guidelines commented on the Agency’s recent progress and made recommendations about the focus and direction of work. For 2013, this was to include the continuation of work on the Pooling and Sharing and co-operation on defence capabilities, particularly with respect to the Capability Development Plan, further efforts on Cyber Defence, further work exploring synergies with other EU policies in close cooperation with Member States, further contribution to the enhancement of the European Defence Technological and Industrial Base, work on standardisation and certification and the need to continue to pursue good co-ordination and mutual reinforcement with NATO and Letter of Intent nations. All of this is described in greater detail in that Report.

In previous years, scrutiny of these documents had been delayed until well after adoption due to the fact that public versions could not be provided to the Committee until they had been de-classified by the EDA and released by the Council Transparency Service — the result being, for example, that the 2011 equivalents were not cleared by the Committee until 27 June 2012, a “PUBLIC” version having been released only on 27 May 2012. As the Minister for International Security Strategy at the Ministry of Defence (Dr Andrew Murrison) noted in his Explanatory Memorandum of 10 December 2012:

“Following representations from the Chair of the ESC, this issue was brought to the attention of Baroness Ashton in her role as EU High Representative for Foreign Affairs and Security Policy, who in reply undertook to address the situation and ensure that PUBLIC versions of documents for scrutiny were released without delay. As a result, this 2012 document was released on 12 November 2012 and made PUBLIC on the 29 November 2012.”

Our assessment

We thanked the Minister and his predecessor for having achieved a huge improvement in the scrutiny process. It was a pity, however, that it was two cheers rather than three, since we still awaited the third document concerning the 2013 budget. We understood that, although the total had been agreed, and the document concerned was to be adopted at the same 20 December Foreign Affairs Council meeting, the Minister was unable to deposit it for prior scrutiny (and therefore intended to override scrutiny) because there remained the possibility that, before then, an attempt might still be made by one or other participating Member State to reopen the detail, within that agreed total.

We suggested that, were this to be the case in 2013, a document on the budget should nonetheless be deposited along with the other two: this would enable it to be cleared on the basis of an agreed total (were the detail to be subsequently changed, a revised version could then be deposited and cleared without further ado).  

EDA Budget for 2013

17.15 As our previous Report and others cited therein note, a recurrent feature of the Agency’s history thus far has been a failure by the participating Member States to reach agreement on the level of growth in the financial framework, with the UK favouring annual budgets rather than a three year framework and others continuing to hanker after a more expansive approach. The UK approach has been pragmatic — broad, active engagement, participation in some projects but not all, maintaining budgetary discipline and encouraging the Agency to focus on where the Agency could best add value.

17.16 In his letter of 29 November 2012, the Minister said:

“EDA 2013 Budget. The UK was not prepared to accept an increase in the EDA budget. Therefore, the subject was not discussed at the Steering Board but taken later in the morning at the Foreign Affairs Council (Defence Ministers formation) where the UK successfully secured a budget freeze for 2013. I made the point that in the current financial climate, when we are making cuts to the UK Defence (and other) budgets, we must seek to continuously drive efficiency and scrutinise every pound spent on defence. For this reason, I could not accept an increase in the budget. In accordance with procedure, our position in refusing to agree a budget increase for the third year running resulted in the budget being held at 2010 levels.”

17.17 In his Explanatory Memorandum of 18 April 2013, the Minister now says:

“It was decided to postpone by one year the decision to adopt a three year financial framework for the Agency. Instead a one-year budget was agreed for 2012. The Council agreed to a budget freeze for the EDA for 2013 at €30.5m.”

The Government’s view

17.18 The Minister says that there are no new policy implications arising from this document and that, as with past budget negotiations, only a one-year budget was agreed for 2013.

17.19 The Minister confirms that the budget for 2013 is €30.5 million (zero nominal growth), the same as for 2010, 2011 & 2012. By way of further background, the Minister says that the EDA proposed a zero real growth that would take into account inflation, which all other Member States agreed with, but which the Government considered unreasonable in light of the financial challenges on defence spending that were being faced by many of the participating Member States.

17.20 He explains that the EDA’s current proposal is that the functional budget (running costs) should be set at €23.08 million whilst the remaining €7.44 million would be left for the operational budget (e.g., project preparations, feasibility studies).

17.21 Looking ahead, the Minister says that, although the adoption of a three-year financial framework has never been achieved for the Agency, participating Member States will, he says, continue to work towards agreeing a three-year work programme and budget for the period 2014–16.
Conclusion

17.22 The 2012 exchange of letters between the Minister’s predecessor and the EU High Representative (HR) is reproduced at the Annex of our previous Report.61 The HR’s bottom line was that, until then, there had appeared to be no reason to make these documents public ex officio, not least because, from an EU perspective, there is nothing to prevent a national administration from giving Limité documents to its parliament as long as they are not published: but that in future the GSC (General Secretariat of the Council) would “accommodate the UK’s need with regard to public access to documents.”

17.23 The perspective of parliamentary scrutiny is, of course, somewhat different: that the documents concerned are in the public domain. Nevertheless, for no apparent reason, this final part of the triptych has remained “off limits” until 20 March — some three months after having been adopted by the Council. The Minister does not explain why publication was “further delayed” until then.

17.24 However, rather than pursue an explanation, we ask the Minister to ensure that, come December 2013, when he deposits the next three such EDA reports, he ensures that all can be scrutinised on the basis of public documents, after agreement by the November “defence ministers” Foreign Affairs Council and prior to formal adoption at the December FAC.

17.25 In the meantime, we now clear this document.

17.26 We also, as is customary, draw it to the attention of the Defence Committee.

61 Ibid.
18 The EU Justice Scoreboard

The EU Justice Scoreboard is a Communication from the Commission setting out comparative data on the performance of the Member States’ civil and administrative justice systems against various indicators. The Commission’s motivation for producing the document is that national justice systems play a key role in restoring confidence and a return to growth, and that an efficient and independent justice system contributes to trust, stability. The Commission highlighted the importance of improving the “quality, independence and efficiency” of national justice systems in the Annual Growth Survey 2013.

The majority of the data included in the Scoreboard originated in material collected by the Council of Europe’s European Commission on Efficiency of Justice (CEPEJ). These data are largely numerical and were originally intended to form part of the CEPEJ’s evaluation report published in September 2012. Other data, concerning the independence of the justice system originates from the World Economic Forum and the World Justice Project.

The data presented by the Scoreboard cover: time needed to resolve particular types of cases and the rate of resolution; availability of monitoring of courts’ activities; use of information technologies to reduce the length of proceedings and facilitate access to justice; alternative dispute resolution to help the workload of courts; training of judges; resources; and perception of independence, both of judges and of the civil justice system.

The Commission states that the findings of the Scoreboard will be taken into account in preparing country-specific analysis in the context of the 2013 European Semester. The European Semester is an EU-level framework for the reporting and surveillance of Member States’ economic and employment reforms, under Articles 121 and 148 TFEU. As part of the European Semester, the Commission may propose draft country-specific
recommendations to Member States. These recommendations are subject to endorsement by the European Council and are strictly non-binding.

18.5 The Commission’s principal conclusions are that:

i) there are important disparities in the length of proceedings: at least one third of Member States have a length of proceedings at least two times higher than the majority of Member States;

ii) some Member States have difficulties in resolving non-criminal cases, litigious civil and commercial cases, and administrative cases;

iii) some Member States have a high number of pending cases (combining lengthy first instance proceedings together with low clearance rates);

iv) a large majority of Member States have a well-developed system for the registration and management of cases;

v) there are large disparities between Member States in the development of ICT systems for information exchange between courts and parties;

vi) policies on compulsory training of judges are very diverse; and

vii) there is a low level of perception of judicial independence by business-end users of the justice system in certain Member States.

18.6 The Commission observes that there is significant variation in the availability of data and that some Member States do not collect data in a way that allows for objective comparison and evaluation; it therefore proposes to examine ways to improve data collection and encourages Member States to co-operate with the CEPEJ. Looking further ahead, the Commission proposes an “open dialogue” with the Member States, the European Parliament and other stakeholders on the objectives of this Scoreboard, and it also proposes to organise a high-level conference, “Assises de la Justice,” in November this year, to promote a “true European area of justice” that would meet citizens’ expectations and contribute to sustainable growth.

The Government’s view

18.7 In an Explanatory Memorandum dated 23 April 2013, the Secretary of State for Justice (Chris Grayling) says the Government does not believe that the Commission has any role in the detailed monitoring or assessment of the justice systems of Member States to secure the stated objective. Whilst the rule of law and independent and effective justice systems are important for growth, the Government is clear that this initiative by the Commission is neither an appropriate nor a proportionate way of securing this. It is unclear what the Commission intends to achieve through this initiative beyond making country-specific recommendations regarding justice systems in relation to matters for which there is no power under the Treaty to legislate.

18.8 The principal source of the data presented in the communication is the CEPEJ, which has been established for over a decade and provides a platform for peer evaluation of the
operation of justice systems through regular evaluation reports, which are much more comprehensive in nature than the Scoreboard. It also offers practical assistance to States that request it. The Government will continue to provide data for the CEPEJ evaluations, but will not be participating actively in, or engaging with, the Commission’s Justice Scoreboard initiative.

**Conclusion**

18.9 We report the Minister’s views about whether the Commission has competence to establish an EU Justice Scoreboard (we think a contrary argument could equally be made) and the usefulness of the endeavour to the wider House.

18.10 In doing so we have no questions to ask and clear the document from scrutiny.
19 Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House

Department for Business, Innovation and Skills

8383/13 COM(13) 186

8859/13 COM(13) 227

— COM(13) —

Department of Energy and Climate Change

(34816) Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the future of Carbon Capture and Storage in Europe.
8101/13 COM(13) 180

Department for Environment, Food and Rural Affairs

(34827) Draft Council Decision on the conclusion of the Protocol between the European Union and the Republic of Côte d’Ivoire setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the two Parties currently in force.
8171/13 COM(13) 188

(34828) Draft Council Regulation on the allocation of the fishing opportunities under the Protocol agreed between the European Union and the Republic of Côte d’Ivoire setting out fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the two parties currently in force.
8172/13 COM(13) 189

8173/13 COM(13) 190


**Department for International Development**

Commission Staff Working Document: *Boosting food and nutrition security through EU action: implementing our commitments*.

**Department for Transport**

Draft Regulation on multiannual funding for the action of the European Maritime Safety Agency in the field of response to pollution caused by ships and to marine pollution caused by oil and gas installations.

Draft Council Decision on the position to be adopted, at the International Maritime Organization (IMO) with regard to the adoption of certain Codes and related amendments to Conventions.

Draft Council Decision on the position to be adopted at the 65th session of the Marine Environment Protection Committee of amendments to forms A and B of the International Oil Pollution Prevention Certificates and amendments to the Condition Assessment Scheme and at the 92nd session of the Maritime Safety Committee of amendments to the International Safety Management Code and amendments to SOLAS chapter III and the High-speed Craft Codes 1994 and 2000 concerning enclosed space entry and rescue drills.

**Foreign and Commonwealth Office**

Joint Staff Working Document on advancing the principle of complementarity — *Toolkit for bridging the gap between international and national justice*.

Commission Report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the European Union Strategy for the Danube Region.
HM Revenue and Customs

Draft Council Decision on the position to be adopted, in the context of the EU-Switzerland Joint Committee, on the definition of the grounds for exemption from transmitting data pursuant to the first subparagraph of Article 3(3) of Annex 1 to the Agreement between the European Community and the Swiss Confederation on the simplification of inspections and formalities in respect of the carriage of goods and on customs security measures.

HM Treasury


Draft amending budget No. 3 to the general budget 2013: *General statement of revenue*.

Home Office

Commission Communication: *Second Report on the implementation of the EU Internal Security Strategy in Action*.
Formal minutes

Wednesday 8 May 2013

Members present:

Mr William Cash, in the Chair

Mr James Clappison  
Michael Connarty  
Nia Griffith  
Chris Heaton-Harris

Mr James Clappison  
Michael Connarty  
Nia Griffith  
Chris Heaton-Harris

Chris Kelly

Jacob Rees-Mogg

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 5.8 read and agreed to.

Paragraph 5.9 read, amended and agreed to.

Paragraphs 6.1 to 6.10 read and agreed to.

Paragraph 6.11 read, amended and agreed to.

Paragraphs 7.1 to 7.8 read and agreed to.

Paragraph 7.9 read, amended and agreed to.

Paragraphs 8.1 to 8.20 read and agreed to.

Paragraph 8.21 read, amended and agreed to.

Paragraphs 8.22 to 11.12 read and agreed to.

Paragraph 11.13 read, amended and agreed to.

Paragraphs 12.1 to 19 read and agreed to.

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

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

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[Adjourned till Wednesday 15 May 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)
Stephen Phillips MP (Conservative, Sleaford and North Hykeham)
Jacob Rees-Mogg MP (Conservative, North East Somerset)
Mrs Linda Riordan MP (Labour/Cooperative, Halifax)
Henry Smith MP (Conservative, Crawley)
Ian Swales MP (Liberal Democrat, Redcar)

The following member was also a member of the committee during the parliament:
Sandra Osborne MP (Labour, Ayr, Carrick and Cumnock)