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European Scrutiny Committee

Sixth Report of Session 2013–14

Documents considered by the Committee on 19 June 2013

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

EC	(in "*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).

Staff

The staff of the Committee are Sarah Davies (Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Leigh Gibson (Clerk Adviser), Peter Harborne (Clerk Adviser), Paul Hardy (Legal Adviser) (Counsel for European Legislation), Joanne Dee (Assistant Legal Adviser) (Assistant Counsel for European Legislation), Hannah Finer (Assistant to the Clerk), Julie Evans (Senior Committee Assistant), Jane Lauder (Committee Assistant), Alex Hunter (Committee Assistant), John Graddon (Committee Assistant), and Paula Saunderson (Office Support Assistant).

Contacts

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

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Regulation of tobacco and related products

The Committee retained the Draft Directive on the regulation of tobacco and related products under scrutiny last week pending further information from the Government. The Minister for Public Health, Anna Soubry, has now confirmed that the Irish Presidency is keen to seek agreement to a compromise text at the Health Council on 21 June. She reports that the Government has secured some changes to the Commission's original proposal. For example, it should be possible for Member States to introduce more stringent domestic tobacco control measures if duly justified on public health grounds, and the dose threshold above which non-tobacco nicotine containing products (NCPs), such as e-cigarettes, would have to be regulated as medicines has been lowered and is broadly in line with Government policy that "all products which are medicinal in function are caught by medicines regulation." However, a number of important issues remain unresolved so the Committee has not granted the Minister's request for a scrutiny waiver; the Directive remains under scrutiny and we have asked for a full report on the outcome of the Council.

EU Special Representatives: Central Asia and the Southern Mediterranean region

The Committee is reporting this week and next week on a series of Council Decisions renewing the mandates of the various EU Special Representatives. The Minister for Europe sets out the activities and budgets for these missions and says that — on the whole — the Special Representatives are working well, and that there is effective co-operation with the UK Government. We commend the Minister and his officials for their ongoing engagement with the organisation of these missions, including pressure for budgetary restraint.

EU Citizenship

These two Commission Reports describe significant developments concerning EU citizenship for the period 2011–13 and propose a number of actions to overcome remaining obstacles to the practical exercise of EU citizenship rights. These seek to enhance opportunities for working, studying or training in another Member State, cut red tape, protect the vulnerable, remove barriers to cross-border shopping, increase awareness of EU citizens' free movement rights and enhance participation in the democratic life of the EU. On the latter, the Commission suggests that three obstacles need to be addressed: the practice in some Member States (including the UK) of disenfranchising overseas voters, the "asymmetry" in the rights conferred on EU citizens who are able to vote and stand as a candidate in local and EP elections but are unable to do so in national elections which directly affect them; and the absence of a "European public space" in which to conduct a more informed democratic debate on European issues. We ask the Minister for a more detailed analysis of the practical and political implications of extending the franchise for national elections which the EU Citizenship Report appears to advocate and retain this document under scrutiny.

Ports

The aim of this Draft Regulation, which is accompanied by a Commission Communication, is to improve access to port services and the financial transparency of ports, by establishing a new regulatory framework. The Minister has concerns about the proposal and has established a working group with ports industry representatives to help co-ordinate analysis of the present text and future amendments and to liaise with other interested parties. We have asked for a more detailed commentary from the Government, based on the consultation and its impact assessment checklist. The document remains under scrutiny.

Civil aviation safety

This draft Commission Regulation would legislate about flight and duty time limitation requirements (FTLs) for the crew of aeroplanes involved in commercial air transport. FTLs are designed to ensure that airline crews do not become fatigued to the extent that it affects their ability to undertake their duties safely. The Commission's proposal will be based on an Opinion published, following a consultation, by the European Aviation Safety Agency (EASA), in October 2012. Given advice from the Civil Aviation Authority, the Government supports the proposals set out in the EASA's Opinion and so it expects that it will be able to support the legislative proposal (unless — which it believes is unlikely — the draft deviates significantly from the Opinion). This issue has already been the subject of an inquiry by the Transport Select Committee, so before considering the document further we are asking that Committee for a formal Opinion.

Other documents reported

We are also reporting on documents relating to:

- Department for Business, Innovation and Skills: **Action Plan for a Maritime Strategy in the Atlantic area**
- Cabinet Office: **International procurement**
- Foreign and Commonwealth Office: **Advocates-General at the Court of Justice of the EU; EU-Syria relations; European Neighbourhood Policy Action Plan between the EU and the Palestinian Authority; EU-Iraq relations; Composition of the European Parliament; restrictive measures against Iran; Member States' application of EU law in 2011; restrictions against the Lukashenko regime in Belarus**
- Department for International Development: **Financing EU external action**
- Justice: **EU Charter of Fundamental Rights**
- Transport: **Intelligent transport systems**

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

(34587) 18068/12 COM(12) 788 + ADDs 1–7	Draft Directive on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products

Legal base	Article 114 TFEU; co-decision; QMV
Department	Health
Basis of consideration	Minister's letter of 17 June 2013
Previous Committee Reports	HC 83–v (2013–14), chapter 5 (12 June 2013) HC 86–xxx (2012–13), chapter 3 (30 January 2013)
Discussion in Council	21 June 2013
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background and previous scrutiny

1.1 The draft Directive would replace the existing regulatory framework for tobacco products, which has been in force for more than a decade, and introduce a number of changes which are intended to take account of scientific, market and international developments, including the entry into force of the World Health Organisation Framework Convention on Tobacco Control in 2005. Our Thirtieth Report of session 2012–13, agreed on 30 January 2013, provides a detailed overview of the draft Directive.

1.2 Whilst broadly welcoming the draft Directive, the Government told us that many of the changes proposed by the Commission would require further detailed examination and highlighted, in particular, research being undertaken by the UK's Medicines and Healthcare products Regulatory Agency (MHRA) on the regulation of non-tobacco nicotine-containing products ("NCPs"), such as e-cigarettes, as well as the Government's consultation on standardised or plain packaging for tobacco products.

1.3 The Parliamentary Under-Secretary of State for Public Health (Anna Soubry) wrote to us on 3 and 11 June setting out in some detail the Government's position on the main elements of the draft Directive and informing us that the Irish Presidency was likely to seek a general approach on a compromise text before the end of June. The details are contained in our Fifth Report, agreed on 12 June 2013.

1.4 We sought further information on four issues:

- whether Article 24 of the draft Directive, which sets out the circumstances in which Member States may maintain or introduce more stringent national provisions than those contained in the draft Directive, would fetter the scope for further domestic action, where justified on public health grounds, to strengthen controls on tobacco and related products;

- whether there was a sufficient internal market or public health justification for the provisions in Articles 12 and 13 of the draft Directive which specify the shape and minimum content of cigarette packets and roll-your-own pouches, as well as the minimum diameter of cigarettes, in light of industry concerns that this could undermine efforts to tackle illicit or counterfeit trade, unduly diminish consumer choice, and damage the creative design sector;
- how the recommendation made by the MHRA to adapt medicines regulation to the safety profile of NCPs could be accommodated within the regulatory framework established by Article 18 of the draft Directive, which confers powers on the Commission to act by means of delegated acts; and
- in light of the research carried out by the MHRA on the regulation of NCPs, what type of health warning would be appropriate for NCPs falling below the proposed dose threshold for regulation as medicines.

The Minister's letter of 17 June 2013

1.5 The Minister (Anna Soubry) confirms that the Irish Presidency intends to seek a general approach on the draft Directive or, if agreement on all elements is not possible, a partial general approach, at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on 21 June. Her letter responds to the questions we raised in our last Report, describes the main elements of the Presidency's compromise text, and sets out her reasons for seeking a scrutiny waiver to enable the Government to support a compromise deal.

1.6 Turning first to the questions raised in our last Report, the Minister says that she considers Article 24 of the Commission's proposal to be unduly restrictive and has actively sought to amend it during negotiations. She continues:

> "I aim for a final text in this proposal which would allow Member States adequate freedom to maintain or take forward certain key domestic public health policies, aiming for a higher level of health protection, where the evidence supports this and it is justified in accordance with the TFEU. Negotiations on this point have been complex, given the Article 114 treaty base of this proposal, the nature of the 2001 Directive and the level of harmonisation sought by other Member States, but are progressing in a positive direction."

1.7 The Minister notes that one of the most contentious elements of the Commission's proposal — the prohibition of "slim" cigarettes with a diameter of less than 7.5 mm in Article 12 — has been removed from the Presidency compromise text. Instead, the Commission would be required to monitor market developments. The Minister adds:

> "On the remaining packaging and product description provisions, we still need to ensure that the UK Government's negotiating position aligns with our on-going domestic policy consideration of tobacco packaging."

1.8 The Minister refers us to the MHRA website which contains links to all the documents underpinning its research into the regulation of NCPs.[1] She says that existing medicines regulation allows a proportionate approach to the marketing of various licensed nicotine replacement therapy products, such as patches and gums, which are available without prescription and sold over the counter in retail outlets. She continues:

> "As non-prescription medicines, they can be advertised to the public, with the requirement that any advertising or promotion must encourage the rational use of the product. The Commission on Human Medicines advised that licensing of such products should focus on safety and quality aspects without the need for clinical trials, given the well-established efficacy of nicotine in managing withdrawal cravings. This approach to licensing of products is allowed for within the existing scope of medicines regulation."

1.9 The Minister expects that a similar approach would apply to licensed NCPs, such as e-cigarettes, under the Commission's proposal. However, she refers to advice from the Commission for Human Medicines which indicates that, even at low doses, nicotine is a potent psychoactive substance that can have physiological effects. Whilst the dose threshold of 2mg in the draft Directive would capture most NCPs marketed in the UK, the Minister emphasises the need to consider what should happen to NCPs below the threshold in order to ensure that "all products that are medicinal by function are caught by medicines regulation."

1.10 As regards any health warning attached to NCPs which fall below the dose threshold for medicines regulation, the Minister cautions against undermining the potential public health benefit of switching tobacco smokers to clean nicotine. She indicates that the Government will need to consider further the precise wording of any warning on products with low levels of nicotine.

1.11 The Minister encloses with her letter a copy of the latest Presidency text which may form the basis for a compromise agreement at the forthcoming EPSCO Council. The text is not available for deposit in Parliament because it is marked *limité* (meaning that its contents may not be disclosed). However, the Minister's letter provides a helpful summary of the main changes likely to be considered by the Council. These are:

- a 5% reduction — from 75% to 70% — in the surface area of combined (picture and text) health warnings on the front and back surfaces of packaging for smoked tobacco products (Article 9);
- the inclusion of transitional arrangements concerning the placement of combined health warnings on packaging for smoked tobacco products if this might affect tax stamps in Member States where their use is mandatory (Article 9);
- flexibility for Member States to apply equally stringent health warning and labelling requirements to all smoked tobacco products, not just to cigarettes and roll-your-own tobacco as initially envisaged by the Commission (Article 10) — the Minister

1 See http://www.mhra.gov.uk/Safetyinformation/Generalsafetyinformationandadvice/Product-specificinformationandadvice/Product-specificinformationandadvice%E2%80%93M%E2%80%93T/NicotineContainingProducts/index.htm

notes that this change was requested by the UK to ensure that it can continue to insist on combined health warnings for all smoked tobacco, including cigars;

- removal of the prohibition on "slim" cigarettes, coupled with a requirement for the Commission to monitor developments in the market for these products (Article 12);

- removal of the reference to "misleading colours" as a prohibited element or feature in the labelling of tobacco products, on the grounds that its meaning is open to misinterpretation (Article 12);

- the introduction of longer transitional periods for the application of provisions on tracking and tracing and on security features for tobacco products as well as flexibility for Member States in which tax stamps are mandatory to adapt them for use as the required security feature (Article 14) — however, the Minister reiterates her preference for these aspects of the draft Directive to be addressed through EU customs and excise legislation and domestic action, as set out in our last Report;

- inclusion of a provision allowing Member States to prohibit cross-border distance-selling of tobacco products (Article 16) — the Minister notes that this option is intended to address the concerns of a large number of Member States who support an EU-wide ban;

- a reduction in the dose threshold for nicotine levels and nicotine concentrations, meaning that more NCPS would have to be regulated as medicinal products (Article 18) — the Minister adds that extending medicines regulation to most NCPs on the market is more in line with the UK's position on regulation of NCPs; and

- greater flexibility for Member States to maintain or introduce domestic public health policies which are intended to achieve a higher level of health protection (Article 24) — the Minister considers that the changes proposed are "moving in the right direction but further work is required."

1.12 The Minister also seeks to address concerns about the scope of delegated and implementing powers conferred on the Commission. She explains:

> "I have sought in negotiations to ensure that these powers are appropriately defined and effectively constrained and have found some support for this approach in negotiations in Council."

1.13 She cites as examples: changes to the delegated power in Article 3(2) of the draft Directive which ensure that the Commission may only reduce (not increase) maximum tar, nicotine and carbon monoxide yields for cigarettes; the removal of the delegated power in Article 8(4)(b) to define the position, format, layout and design of health warnings for smoked tobacco products; and the introduction of implementing instead of delegated powers concerning combined health warnings (Article 9(3)(c)) and the establishment of technical standards on the use of a unique identifier for each unit packet of tobacco products (Article 14(9)(b)). The Minister adds that there remains room for improvement,

and questions the need for the delegated power in Article 14(9)(a) on data storage contracts which form part of the tracking and tracing system.

1.14 The Minister says that she is broadly supportive of the latest Presidency compromise text, adding:

> "Bearing in mind the changes that have been made to the Commission's original proposal, I am disposed to vote favourably on a General Approach to the Directive at EPSCO, should a vote take place (notwithstanding any further changes that may be made between COREPER and EPSCO). The UK's support may well be important in determining the outcome of a vote because there has been opposition from a number of Member States to elements of the proposal.
>
> "I acknowledge that we still need to ensure that our positions on Articles addressing packaging and product description align with our on-going domestic deliberations on these matters, prefer other options to deal with tracking and security features and still seek further changes to the wording of Article 24. We will continue to pursue these objectives in further negotiations in the second half of 2013. However, taken as a whole, I believe that the current proposal is good for public health and that the outstanding issues should not prevent the UK from signalling our support for the proposal at EPSCO. The UK is recognised internationally as a leader on effective tobacco control policy, and an abstention may be damaging to our reputation in this regard. I would, therefore, be most grateful if your Committee would agree to issue a scrutiny waiver, to enable the UK to fully engage in discussions at Council, and to vote on the proposal if required."

Conclusion

1.15 **We thank the Minister for responding to our earlier questions and for sharing with us her assessment of the principal changes likely to be included in the Irish Presidency compromise text to be considered at the EPSCO Council on 21 June. We are disappointed that the Minister, at this late stage in negotiations, is still unable to clarify the Government's position on packaging and product description (Articles 12 and 13). However, we support her efforts to secure changes to Article 24 which would enable Member States to maintain or introduce more stringent domestic tobacco control measures (such as plain packaging) if duly justified on public health grounds. We agree with her that a reduction in the dose threshold for non-tobacco nicotine-containing products (NCPs), as proposed in the Presidency compromise, is more in line with the regulatory approach advocated by the MHRA and should ensure their effective regulation as medicines.**

1.16 **We note the Minister's view that the Presidency compromise text is "good for public health" and her desire to signal UK support, not least because it may be a significant factor in securing a general approach within the Council. As, however, the Minister herself acknowledges, a number of outstanding issues remain and the outcome of the EPSCO Council appears uncertain. The Government has only recently announced its approach to the regulation of the rapidly expanding market for NCPs, including e-cigarettes, and has yet to conclude its internal deliberations on packaging of tobacco products, in light of responses to its public consultation on plain packaging.**

We note also that the Presidency compromise text does not address the Government's concern that tracking and tracing systems for tobacco products should be dealt with in EU customs and excise legislation or through domestic enforcement mechanisms.

1.17 **We therefore conclude that it would be premature to grant a scrutiny waiver at this stage, given the importance of the issues that remain unresolved. We ask the Minister to provide us with a full report on the outcome of the Council and, if a general or partial general approach is agreed, to set out clearly the changes made to the Commission's original proposal and any legal, policy or financial implications for the UK which have not already been addressed in the information provided to us. We also ask her to provide progress reports on any further discussions within the Council as well as a summary of the key changes she expects the European Parliament to seek, and the Government's position on them, before trilogue discussions begin, at which point we may wish to recommend the draft Directive for debate. Meanwhile, the proposal remains under scrutiny.**

2 Ports

(a) (34955) 10154/13 COM(13) 296 + ADDs 1–5	Draft Regulation establishing a framework on the market access to port services and the financial transparency of ports
(b) (34972) 10160/13 COM(13) 295	Commission Communication: *Ports: An engine for growth*

Legal base	(a) Article 100(2) TFEU; co-decision; QMV (b) —
Documents originated	(a) 23 May 2013 (b) 23 May 2013
Deposited in Parliament	(a) 30 May 2013 (b) 5 June 2013
Department	Transport
Basis of consideration	EM of 13 June 2013
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	(a) Not cleared; further information requested (b) Cleared

Background

2.1 Transport is a competence shared between the EU and Member States.

2.2 Two sets of proposals by the Commission related to access to ports and transparency of port charges were both rejected by the European Parliament, in 2003[2] and 2006.[3]

The documents

2.3 With this draft Regulation, document (a), the Commission seeks to establish a regulatory framework aimed at improving the efficiency and competitiveness of all EU ports and to contribute towards their ability to cope with increased demand in the transport and logistics sector. This is seen by the Commission as a significant factor in contributing to an EU-wide sustainable transport strategy by improving market access to port services and regulating port charges. It wishes to ensure that EU ports can become competitive in the context of the Trans-European Transport Network (TEN-T) strategy up to 2030 and beyond and seeks to achieve this by:

- strengthening market access for port services, specifically identifying as key aspects pilotage, towage, mooring, dredging, bunkering and waste disposal;
- ensuring financial transparency, including for port charges; and
- improving port coordination and consultation.

2.4 The draft Regulation would apply to 'core' and 'comprehensive' ports within the TEN-T, as defined in the draft Regulation on EU guidelines for development of the TEN-T.[4] The comprehensive network is defined in that draft Regulation as consisting of all existing and planned infrastructure meeting the requirements of the guidelines and is to be in place by 31 December 2050 at the latest, whereas the core network overlays the comprehensive network and consists of its strategically most important parts and is to be implemented as a priority by 31 December 2030. The proposal is now close to its final form, although there is some remaining uncertainty as to the precise network coverage. Nevertheless, based on the current available information, some 47 UK ports would be in scope of the Commission's present proposal.

2.5 The proposed Regulation would provide for:

- establishing the principle of freedom to provide specified types of port services, subject to certain requirements (for example, that the provider was suitably qualified and that its equipment met safety standards);

2 (22185) 6375/01: see HC 152–vii (2001–02), chapter 7 (21 November 2001), HC 152–xxviii (2001–02), chapter 2 (8 May 2002) and HC 152–xxxii (2001–2), chapter 14 (12 June 2002); (22187) 6390/01: see HC 152–vii (2001–02), chapter 7 (21 November 2001) and HC 152–xxviii (2001–02), chapter 2 (8 May 2002); (23326) 6593/02: see HC 152–xxviii (2001–02), chapter 2 (8 May 2002) and HC 152–xxxii (2001–02), chapter 14 (12 June 2002).

3 (26039) 13681/04: see HC 38–i (2004–05), chapter 9 (1 December 2004), HC 34–ix (2005–06), chapter 4 (9 November 2005) and HC 34–xx (2005–06), chapter 6 (1 March 2006).

4 (33275) 15629/11 + ADDs 1–35: see HC 428–xliii (2010–12), chapter 2 (7 December 2011) and *HC Debs*, 19 January 2012, cols 909–938.

- the number of competing providers could be limited (there are parallels with legislation on airport ground-handling) and where a limit is applied, there would have to be a transparent selection process for contracts;
- Member States imposing public service obligations and, in these circumstances, being allowed to keep port services in-house and so not be obliged to tender them;
- requiring transparency of payments by public authorities and certain other specific accounting requirements;
- requirements relating to charges for port services (including cargo-handling) and infrastructure, including a power for the Commission to adopt delegated acts in relation to the basis for and principles of port charges;
- requirements relating to consultation by ports of port-users and other stakeholders; and
- creation or specification of a new 'independent supervisory body' that would be required to investigate and rule on complaints of alleged breaches of the Regulation's requirements.

2.6 Some of the more contentious dock labour issues in the two earlier proposals are omitted. Instead those issues are left to 'social dialogue' (facilitated discussions between employers' representatives and unions).

2.7 The draft Regulation is accompanied by the Commission's impact assessment, which indicates that by adopting its preferred policy option (regulated market access, price supervision of monopolies, confinement of in-house operators, port user committee, separation of accounts and autonomy in setting transparent infrastructure charges) there would be a potential to save €1 billion (£854 million) per year in port costs, to lead to increased port activity and to create more than 2,000 jobs within the whole of the EU.

2.8 In addition to the draft Regulation the Commission has published a Communication, document (b), which sets out eight key action points aimed at modernising the movement of goods throughout the EU by focussing on initiatives to improve efficiencies and competitiveness within the port sector. The action points are grouped under six headings:

— Connect ports to the trans-European network

— Modernise port services

— Attract investment to ports

— Promote the Social Dialogue

— Raise the environmental profile of ports

— Encourage innovation.

2.9 As well as areas of activity identified within the draft Regulation the Commission:

- suggests, through its "Blue Belt" initiative,[5] further actions to reduce administrative burdens for goods carried by vessels sailing between EU ports and the simplification of customs procedures by the development of multimodal electronic communication and data exchange ("e-maritime" and "e-Freight");
- identifies actions to look at the health and safety, training and qualification regimes in EU ports; and
- hopes to encourage more consistent infrastructure charging through the exchange of best practice in areas such as, for example, port reception facilities.

The Government's view

2.10 The Parliamentary Under-Secretary of State, Department for Transport (Stephen Hammond), first comments, in relation to the draft Regulation, that:

- the Commission says that Articles 58, 90 and 100 TFEU extend to ports the objectives of a genuine single market in the context of a Common Transport Policy;
- it argues that Member States alone cannot ensure a level playing field within the single market and that nor can Member States improve the performance of ports located on the same trans-European corridor, but which are situated in another Member State;
- nevertheless, the Government believes that problems specific to individual countries are generally best addressed at national level; and
- it will therefore continue to monitor the situation during negotiations as to whether the proposals serve a genuine single market purpose for which, in principle, the Government accepts that EU level measures are appropriate.

2.11 The Minister tells us that the Government is considering its detailed position on the proposal and has established a working group with ports industry representatives to help coordinate analysis of the present text and future amendments and to liaise with other interested parties.

2.12 He then gives us an initial assessment, saying that:

- the Commission proposal takes as its starting point an assumption that there is a large degree of variability in efficiency and competitiveness across the EU ports sector and that this imbalance could hamper the ability of ports to meet increased transport and logistics demand in the future, as envisaged in its 2030 horizon;
- the UK has a successful market-oriented ports sector, predominantly in the private sector, which is commercially independent — it is, by some margin, the most liberalized and least taxpayer-dependent ports sector in the EU, where a subsidised public-sector landlord model predominates;

5 See http://www.emsa.europa.eu/operations/safeseanet/items/id/684.html?cid=113.

- the perceived problems of failings in competition and transparency that the Commission is trying to address, generally do not apply to UK ports — as a result, the proposed solutions to those problems carry strong risks of causing collateral damage to an industry which is vital for the nation's economic recovery and long term growth;

- the Government does not believe the proposal would effectively address unfair competition between EU ports and, in particular, the question of unnecessary, wasteful and anti-competitive subsidies;

- the Commission has, to date, shown no inclination to take effective action against subsidies to ports through application of state aid rules — successive UK Governments have pressed for rigorous guidance on state aids to ports so as to reduce the burden on taxpayers across the EU and create a fairer competitive environment;

- there now seems, however, little likelihood of this being produced unless there is a substantial change of approach under the next Commission — the Government does not think the current Commission is likely to produce it because it is instead looking at more generic guidance on infrastructure;

- the Government does not believe either that the draft Regulation would solve the issue of restrictive dock labour practices which has been remitted to 'social dialogue' and again will ultimately have to be faced by each Member State which has problems in this area — as indeed the UK successfully did many years ago through the abolition of the Dock Labour Scheme and through other liberalisation measures; and

- the Government is doubtful as to whether the proposal would succeed in opening up EU ports to UK business, unless there is a genuine desire by port managements and the commercial incentive to do so.

2.13 The Minister also tells us that:

- a consultation will take place during 2013–14, including with the Devolved Administrations, as part of the Government's wider and ongoing engagement with stakeholders and the industry sector on the provisions in the draft Regulation;

- the Government is actively seeking views in order to inform an initial UK-based impact assessment to identify the potential costs and benefits of the proposal

- provisionally it would not expect the Regulation as drafted to produce any savings for UK industry, but would expect that there would be material compliance costs for industry and Government; and

- the Government will provide an impact assessment checklist in due course which will summarise the potential costs and benefits, given the limited information currently available.

2.14 On the Communication, document (b), the Minister says that:

- a number of the Commission's eight actions have already been addressed through the draft Regulation (modernisation of port services, supervision and transparency of pricing, funding and quality, simplification of port administration and more efficient port infrastructure charges) and others may result in Commission legislative proposals at a later date;
- the Government will provide Explanatory Memoranda when these are published — there is not sufficient detail to be able to give a clear view now on the precise effects of any future legislative proposals;
- other initiatives may lead to non-regulatory proposals or be developed by the Commission as 'soft' policy options to improve particular aspects of the ports sector;
- two of the actions relate to TEN-T and the Connecting Europe Facility[6] and where there are requirements that have a read-across to TEN-T these should respect the exemptions and flexibilities under this legislation; and
- although deeper analysis is not possible until the Commission has further developed its own strategies, the Government is ready to contribute towards any EU-wide examination that would better inform the Commission opinion on the potential impacts and implications for the ports sector.

Conclusion

2.15 **Clearly there is a considerable question mark over the utility of this draft Regulation. The Government also hints at subsidiarity concerns by arguing that country-specific issues are best addressed at national level but does not substantiate these concerns. If the Government is to raise a concern under the "subsidiarity" heading, it must provide an analysis of why a proposal is inconsistent with subsidiarity. This is particularly so in the face of a proposal which would appear to have a strong "Single Transport Market" purpose, as argued by the Commission in the Recitals to the proposal, the explanatory memorandum and impact assessment.**

2.16 **Before considering it further we will therefore await a more detailed commentary from the Minister, based on the Government's consultation and its impact assessment checklist. Meanwhile the document remains under scrutiny, but we advise the Government now that we will be recommending the proposal for debate in due course.**

2.17 **As for the Commission Communication, whilst noting that proposals warranting closer examination may follow from it, we clear it.**

6 (33302) 16176/11 + ADDs 1–2: see HC 428–xliii (2010–12), chapter 2 (7 December 2011) and *HC Debs*, 19 January 2012, cols 909–938.

3 Intelligent transport systems

(a) (34958) 10083/13 C(13) 2549	Commission Delegated Regulation (EU) No. .../.. of 15.5.2013 supplementing ITS Directive 2010/40/EU with regard to the provision of information services for safe and secure parking places for trucks and commercial vehicles
(b) (34959) 10084/13 C(13) 2550	Commission Delegated Regulation (EU) No. .../.. of 15.5.2013 supplementing Directive 2010/40/EU with regard to data and procedures for the provision, where possible, of road safety-related minimum universal traffic information free of charge to users
+ ADD 1	Commission Staff Working Document: *Cost-Benefit Analysis*

Legal base	Articles 3(c) and 6(1) of Directive 2010/40/EU; —
Documents originated	15 May 2013
Deposited in Parliament	31 May 2013
Department	Transport
Basis of consideration	Two EMs of 12 June 2013
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	(a) Not cleared; further information requested (b) Cleared

Background

3.1 Deployment of Intelligent Transport Systems (ITS), that is, electronic information services, has enabled a significant growth in the availability of real-time traffic information. Accurate and widely available road safety-related traffic information can inform road users of potentially dangerous hazards on the road ahead, with the potential for improving road safety. Directive 2010/40/EU, the ITS Directive, sets out the framework for deployment of ITS in road transport. The Directive provides for the Commission to adopt in Delegated Acts the specifications necessary to ensure the compatibility, interoperability and continuity for the deployment and operational use of ITS for the Directive's priority actions, which are:

- provision of EU-wide multimodal travel information services;
- provision of EU-wide real-time traffic information services;
- data and procedures for the provision, where possible, of road safety related minimum universal traffic information free of charge to users;

- harmonised provision for an interoperable EU-wide eCall;[7]
- provision of information services for safe and secure parking places for trucks and commercial vehicles; and
- provision of reservation services for safe and secure parking places for trucks and commercial vehicles.

The documents

3.2 The Commission has published the Delegated Regulation, document (a), supplementing the ITS Directive with regard to provision of information services for safe and secure parking places for trucks and commercial vehicles on the Trans-European Transport Network (TEN-T) network. The Commission aims to define harmonised and standard rules for EU-wide implementation of information services, with the objective of optimising, through binding functional specifications for the provision of these information services, the use of parking places as well as to enhance road safety and security of truck drivers.

3.3 The Commission believes that:

- a lack of ITS-based information about the availability and quality of parking spaces leads to their being under-utilised, with a detrimental effect on road safety and security; and
- access to reliable information about parking places will allow truck drivers to make the right choices when deciding to stop and park their vehicles and comply with legislation restricting driving hours.

3.4 The Regulation contains the following provisions:

- Member States to designate areas where traffic and security conditions require the deployment of information services on safe and secure parking areas;
- Member States to define priority zones where dynamic information (that is, live information) about the availability of spaces at parking areas will be collected and provided;
- data to be collected and made available by parking operators and information service providers — the data comprises static data, containing the name and location of each park, the number of parking spaces and the charges therefore and a description of the security provided, and dynamic data stating the number of free places available;
- the static data to be accessible through a national or international access point;

7 eCall, planned to be fully operative by 2015, is intended to bring rapid assistance to motorists involved in a collision anywhere in the EU, through in-vehicle automatic calls to the 112 emergency number.

- for dynamic data, Member States (or national authorities) to be responsible for setting up and managing a central national or international point of access to each truck parking operator and or service provider in their territory;
- public and private parking operators and or service providers to periodically send their static collected data to the national or international access point through appropriate electronic means, no less than once a year;
- dynamic data to be updated every 15 minutes;
- information service providers collecting information at a specific location to display at least the next two safe and secure parking places along a corridor within approximately 100 kilometres and the availability of parking places in a priority zone in at least the next two parking areas within approximately 100 kilometres;
- Member States to designate a national body to assess whether these requirements are fulfilled by service providers, parking operators and road operators;
- the national bodies to conduct random inspections to ensure that the information supplied by service providers and parking operators is correct;
- Member States to make annual reports to the Commission; and
- specifications will apply to existing services from one month after the Regulation has been published in the Official Journal and after two years for new services [this is an error, which the Commission is correcting — the provision should read two years for existing services and one month for new ones].

3.5 The Commission has published the Delegated Regulation, document (b), supplementing the ITS Directive with regard to data and procedures for the provision, where possible, of road safety-related minimum universal traffic information free of charge to users. The purpose is to ensure compatibility, interoperability and continuity across Member States in the deployment and operational use of road safety related data and procedures.

3.6 This Delegated Regulation applies to the Trans-European Road Network (TERN) only, which in the UK is managed by the relevant national road operators, with the exception of the A299 (for which Kent County Council is the responsible highway authority). The requirements of this Regulation should not apply to urban nodes, where the networks interface with the local road network.

3.7 To achieve compatibility, interoperability and continuity, the Delegated Regulation specifies:

- the minimum requirements for road safety-related universal traffic information in eight service areas — temporary slippery road, animal, people, obstacles or debris on the road, unprotected accident area, short-term road works, reduced visibility, wrong-way driver, unmanaged blockage of a road and exceptional weather conditions;

- the information content on road safety-related events which must be communicated to the road user via a suitable delivery channel;
- that Member States are to be responsible for identifying sections of the TERN where safety conditions require the provision of the information services — this information should be provided in electronic format;
- the detection of events or conditions and collection of data;
- that public and/or private operators and/or service providers ensure that suitable provisions be in place to allow exchange and re-use of data for the provision of information services, either through a single point of access or national access points set up and managed by the Member States — the national access points could take the form of a repository, registry, web portal or similar;
- that Member States should designate a national body to assess whether all these requirements are fulfilled by public and private road operators and service providers and broadcasters dedicated to traffic information — the national bodies should conduct random inspections to ensure that the information supplied is correct and Member States should make annual reports to the Commission; and
- that Member States should be able to specify road safety-related traffic information already provided on their territory and should therefore be able to continue using existing methods as long as they meet the requirements of this legislation — where this is not the case the Commission has indicated that it will provide a two year transition period for existing systems to comply with the relevant parts of the Delegated Regulation.

3.8 The Delegated Regulation:

- does not define a quality criteria for measurement and monitoring at this stage and hence the Commission has requested Member States to report back on their experience for all types of road safety-related events or conditions, road networks and/or operating environments; and
- recognises that there may be costs involved in providing this service to end users, such as the cost of telecom fees, radio licence, or the purchase of equipment, such as nomadic devices in vehicles, enabling reception of the information.

3.9 Both Regulations will come into effect if neither the Council nor the European Parliament object, by 15 July — that two month period for their consideration may be extended for a further two months by either institution.

The Government's view

3.10 In his Explanatory Memorandum on the Delegated Regulation concerning parking information for commercial vehicles, document (a), the Parliamentary Under-Secretary of State, Department for Transport (Stephen Hammond), says first that the Government agrees that action at EU level is appropriate to ensure common standards for specifications across the EU, so that lorry drivers receive sufficient information about secure parking

wherever ITS is deployed, and that it believes therefore the proposal meets subsidiarity requirements.

3.11 On the implications of the measure the Minister comments that:

- the specifications will apply only to lorry parks on the TEN-T network and only those where ITS is deployed;
- there are approximately 100 lorry parks along the TEN-T network in England, but the Government does not know how many have deployed ITS;
- the Government has doubts about the efficacy of these proposals;
- many HGV drivers know before their journey commences where they are going to park overnight;
- a survey conducted for the Department for Transport in 2010–11 found that 41% of those HGVs parked overnight within five kilometres of the Strategic Road Network were located in lay-bys or industrial estates;
- many of these drivers will have chosen to park there because their employer will not pay for overnight parking;
- in these circumstances, specifications for the use of ITS are unlikely to make much difference;
- some drivers do obtain electronic information about the availability of parking facilities, either by accessing the internet or by telephoning an organisation that maintains a list of lorry parks;
- in these circumstances the provision of standardised information through a single point of access could be of use, particularly for drivers operating outside their own country;
- the Government considers that it would be wrong to impose the specifications on all lorry parks, since it may not suit all their business models — some lorry parks are small and have a turnover based largely on serving meals rather than overnight parking fees;
- the Government therefore welcomes the limited application of these proposals, that is with them affecting only lorry parks on the TEN-T network where ITS is deployed and the requirement for dynamic data affecting only lorry parks in 'priority zones' to be determined by individual Member States;
- there may be some costs to businesses from complying with the Regulation; and
- the costs to the Government are likely to be small.

3.12 In relation to the timetable for the proposal the Minister says that one Member State has advised that it feels that Article 3 of the Delegated Regulation does not make sufficiently clear that dynamic data will only be required at priority zones and that it will be

asking the Commission to delay adoption of the Regulation for two months while this is amended.

3.13 In his Explanatory Memorandum on the Delegated Regulation concerning provision of road safety information, document (b), the Minister first comments that the Government considers that it has due regard to the principle of subsidiarity, as action at the EU is justified to accelerate the deployment of ITS in a more consistent and harmonised way.

3.14 On the implications of the measure the Minister says that:

- the UK is a world leader in ITS and the Government recognises the ITS Directive as an important opportunity to share skills and experience with fellow Member States, especially given the considerable investment the UK has already made in the development and deployment of ITS;
- as a result of this deployment, in broad terms, the UK can already demonstrate that its traffic information services are compliant with this Delegated Regulation;
- a significant part of the implementation of the Delegated Regulation is left to national decision;
- the Government will coordinate discussions with the national road authorities (and Kent County Council) to make assessments of the TERN road network in the UK, so as to determine the sections of road where traffic and safety conditions require the provision of road safety related traffic information;
- in most cases, these authorities already provide a high level of service to road users by meeting or exceeding the minimum service level requirements;
- the Government has been successful in removing some of the onerous operational targets as part of its engagement at expert group meetings;
- provision of a published electronic road map to indicate the service and a register of service providers will also need to give consideration to the interaction between data collection by the national road operators and the private sector;
- the Department for Transport's Open Data Strategy sets out the benefits offered by effectively harnessing the power of transport data and creating a dynamic market for transport data and applications;
- there is already a successful UK commercial market for services feeding traffic journey time, congestion and road safety data purchased by vehicle makers and providers of in-vehicle navigation systems to alert drivers to disruption and propose alternative routes;
- the "lifetime licence" provided to the manufacturer by this service provider is paid for by the manufacturer and included in the sale price of the car or as an after-market device;

- the Government was instrumental in determining that "free of charge to users" should mean free at the point of use — the Delegated Regulation recognises that the costs of these services can be met by the user, which protects these existing commercial operations;
- whilst the Delegated Regulation specifies the traffic information in terms of content and format, it is technology-neutral so as to maximise user reach through a variety of delivery channels available on the market now and in the future;
- this is particularly important in the UK where the Government works closely with industry, incentivising and removing potential barriers so that the private sector can innovate and progress rapidly to deploy ITS where it best delivers improved traffic management and road safety;
- the Government will continue to work closely with the private sector to ensure that the implementation of the Delegated Regulation provides a framework which will encourage more traffic and information services direct to users in vehicles;
- the UK national road authorities are already compliant with the minimum specifications established in this Delegated Regulation so there are no financial implications for them resulting from these proposals;
- the Highways Agency and the other national road operators, already provide road safety traffic information, coded under the European standard DATEX II, so there should be no further cost implications; and
- there is the potential for some additional costs for the private sector, but this risk is low given the coverage of service by the national road providers.

Conclusion

3.15 **We note that the Government has doubts about the efficacy of the Delegated Regulation concerning parking information for commercial vehicles, document (a). Given those doubts we should like to know whether the Government intends to persuade the Council to seek amendment of the proposal or even to reject it. Meanwhile this document remains under scrutiny.**

3.16 **As for the Delegated Regulation concerning provision of road safety information, document (b), we note its apparent utility and clear it from scrutiny.**

4 Civil aviation safety

(35041) — —	Draft Regulation amending Regulation (EU) No. 965/2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No. 216/2008 of the European Parliament and of the Council

Legal base	Article 100(2) TFEU; co-decision; QMV
Document originated	—
Deposited in Parliament	—
Department	Transport
Basis of consideration	EM of 13 June 2013
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Not cleared; Opinion of the Transport Committee requested under Standing Order No. 143(11)

Background

4.1 Regulation (EC) No 216/2008 concerned civil aviation safety, partly in the context of the Chicago Convention (the 1944 Convention on International Civil Aviation and its annexes). It established the European Aviation Safety Agency (EASA) to assist the Commission in the development and implementation of legislative and non-legislative safety measures.

The proposal

4.2 In his Explanatory Memorandum the Minister of State, Department for Transport (Mr Simon Burns), alerts us to the probability that the Commission will issue shortly a legislative proposal setting flight and duty time limitation (FTL) requirements for the crew of aeroplanes involved in commercial air transport. The limits are a safety measure designed to protect crew from levels of fatigue which would affect their ability to carry out their duties safely. Separate legislation already sets limits on working time for social reasons.

4.3 The Commission's proposal will be based on an Opinion published by the EASA in October 2012[8] and will take the form of an amendment to Commission Regulation 965/2012 which established safety standards for air operations. The EASA first consulted on draft FTL requirements in December 2010 and a second round of consultation was undertaken in January 2012, on the basis of comment received. It received an extensive response to the consultations.

8 See http://www.easa.europa.eu/agency-measures/docs/opinions/2012/04/EN%20to%20Opinion%2004–2012.pdf.

4.4 The EASA published an updated impact assessment with its Opinion, which concluded that the proposed Regulation would introduce significant safety improvements over the current EU legislation, have a limited economic impact on EU operators, provide a positive social impact and a positive impact on regulatory harmonisation and coordination at EU level.[9]

4.5 FTLs are designed to ensure that airline crews do not become fatigued to the extent that it affects their ability to undertake their duties safely. Fatigue is cumulative and can be affected by a number of considerations including:

- duty start and finish time;
- length of duty periods;
- amount of rest between duties;
- cumulative (for example, weekly, monthly) duty time;
- time zone crossings; and
- acclimatisation to local time zone.

4.6 The Commission proposal will contain detailed limits to address these issues. The Minister notes that:

- these limits need to provide sufficient flexibility to take account of different types of operations (for example, short haul, multi-sector, long haul), unforeseen delays and so on;
- the proposals will also place an obligation on airlines to manage crew duties to ensure that they are not affected by unsafe levels of fatigue;
- the overall effectiveness of any FTL scheme depends on how the whole package of measures interacts to prevent fatigue; and
- any set of FTL rules therefore needs to be considered as a whole package, rather than a set of individual isolated requirements.

4.7 It is expected that the Commission will issue its legislative proposal in late June and that it will be subject to a vote for its adoption at the meeting of the EASA Committee scheduled for 10–12 July.

The Government's view

4.8 The Minister says that:

- FTL requirements have already been established at EU level in Annex III to Council Regulation (EEC) No 3922/91;

9 See http://www.easa.europa.eu/agency-measures/docs/opinions/2012/04/Appendix%201%20to%20Opinion%2004–2012%20(RIA).pdf.

- these, however, were not comprehensive and Member States were allowed to maintain existing FTL provisions if these were more stringent;
- as a result the Civil Aviation Authority (CAA) has continued to apply its existing FTL guidance;
- the proposals set out in the EASA Opinion are comprehensive;
- Regulation (EC) No 216/2008, which revokes Annex III to Council Regulation (EEC) No 3922/91 once the Commission Regulation comes into force, does not give scope for Member States to maintain separate requirements.

4.9 The Minister continues that:

- the CAA has been closely involved in discussions on the EASA proposals and has welcomed the content of the Opinion;
- in its view, the package of proposals set out in the Opinion contains a number of welcome provisions that will deliver a significant improvement in safety across the EU as a whole;
- in particular, they establish outcome based rules for airlines, which will require active management of fatigue rather than reliance on compliance with set limits;
- the CAA considers that, as a whole, the package provides a similar level of safety to the rules set by other leading aviation regulators, such as the US Federal Aviation Administration, and will not lead to any diminution in safety in the UK;
- it is satisfied that there is no scientific evidence to suggest that any of the limits established in the Opinion are unsafe; and
- the Government has discussed this matter in detail with the CAA on a number of occasions and is satisfied that its assessment is correct.

4.10 The Minister then tells us that:

- organisations representing pilots have focused on reviewing each specific limit proposed by the EASA, rather than concentrating on the overall effect of the proposals;
- as some limits are slightly less restrictive than current CAA guidance, they have campaigned against the EASA's proposals;
- they are pushing for the UK to maintain its current FTL regime if the EASA proposal is adopted;
- this is not possible as Regulation (EC) No 216/2008 does not give scope for Member States to maintain separate standards;
- it would also be unnecessary as the measures set out in the EASA Opinion are comprehensive and provide an adequate level of safety; and

- it would also be opposed by UK airlines, which want a level playing field for competition in the EU single aviation market.

4.11 On the financial implications the Minister says that:

- the proposals will have some one-off financial implications for airlines which will need to adjust their procedures and systems to reflect the new requirements;
- some of the requirements may add to airlines' costs while others should help reduce costs — overall there should be no significant increase in airlines' operating costs; and
- UK airlines will benefit from being able to compete on equal terms with other EU airlines.

4.12 The Minister says that:

- given the advice from the CAA, the UK's independent aviation safety regulator, the Government supports the proposals set out in the EASA's Opinion; and
- it expects, therefore, that it will be able to support a legislative proposal from the Commission unless, which it believes is unlikely, it deviates significantly from the Opinion.

Conclusion

4.13 **We are grateful to the Minister for drawing this likely proposal to our attention. We note, however, that this matter has been the subject of a Transport Committee report[10] and a Westminster Hall debate.[11] So before considering the proposal again we should welcome an Opinion, in terms of Standing Order No. 143(11), on it from the Transport Committee. Meanwhile the proposal remains under scrutiny.**

10 First Report from the Transport Committee, 2012–13, *Flight time limitations*, HC 164 and Fifth Special Report from the Transport Committee, 2012–13, *Flight time limitations: Government Response to the Committee's First Report of Session 2012–13*, HC 558.

11 *HC Deb*, 22 November 2012, cols. 231WH-248WH.

5 EU citizenship

(a) (34935) 9590/13 COM(13) 269	Commission Report: *EU Citizenship Report 2013 — EU citizens: your rights, your future*
(b) (34932) 9592/13 COM(13) 270	Commission Report under Article 25 TFEU: *On progress towards effective EU citizenship 2011–2013*

Legal base	(a) and (b) —
Document originated	(a) and (b) 8 May 2013
Deposited in Parliament	(a) and (b) 17 May 2013
Department	Work and Pensions
Basis of consideration	EM of 1 June 2013
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	(a) Not cleared; further information requested (b) Cleared

Background

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

- the right to live and work in another Member State, without discrimination on grounds of nationality (although this right is subject to the limitations and conditions set out in the EU Treaties and secondary legislation);
- the right, if resident in another Member State, to vote and to stand as a candidate in local and European Parliament elections;
- the right to diplomatic and consular protection if living or travelling outside the EU;
- the right to petition the European Parliament or to apply to the European Ombudsman; and
- the right to participate in a citizens' initiative inviting the Commission to propose draft legislation for consideration by the European Parliament and Council.[12]

12 See Articles 18, 20 and 24 TFEU. The provision for citizens' initiatives was introduced by the Lisbon Treaty.

5.2 Document (a) — the EU Citizenship Report 2013 — is the successor to the Commission's first EU Citizenship Report, published in 2010, which set out to illustrate some of the practical obstacles encountered by EU citizens seeking to exercise the rights conferred by EU law and to propose a set of 25 concrete actions to overcome them.[13] Document (b) — also a Commission Report — fulfils the obligation in Article 25 of the Treaty on the Functioning of the European Union (TFEU) to report every three years on the application of EU Treaty provisions on citizenship. It describes significant developments concerning EU citizenship for the period 2011–13. Both Reports highlight the designation of 2013 as the European Year of Citizens and its importance in giving impetus to EU citizenship. According to the Commission:

> "At a time when the EU is taking major steps towards a deep and genuine Economic and Monetary Union, of which democratic legitimacy is a cornerstone, with a Political Union on the horizon, it is all the more important to focus on the things the EU is doing to make citizens' lives easier, to help them understand their rights and involve them in a debate on the Europe they want to live in and build for future generations."[14]

Document (a) — the EU Citizenship Report 2013

5.3 Notwithstanding progress made in implementing the 25 actions set out in the EU Citizenship Report 2010 (summarised in an Annex to the 2013 Report), the Commission considers that obstacles to the full enjoyment of EU citizenship rights remain. It proposes 12 new actions to tackle the remaining obstacles, each of which will be subject to the appropriate decision-making procedures under the EU Treaties and the resources available under the EU's Multiannual Financial Framework for 2014–20. The 2013 Citizenship Report draws on the outcome of a public consultation on EU citizenship launched by the Commission in May 2012, Eurobarometer surveys in 2013 on EU citizenship and electoral rights, and "citizens' dialogues" organised by the Commission as part of the European Year of Citizens.

Removing obstacles for workers, students and trainees

5.4 The Commission notes that there is relatively little labour migration within the EU, notwithstanding its potential to address imbalances in the labour market and to enhance opportunities for personal and professional development. Existing EU rules on the coordination of social security systems include provision for EU citizens to receive unemployment benefit from their home country for a period of three months while seeking employment in another EU Member State. Member States may extend this period for a further three months, up to a maximum of six months, but not all have chosen to do so.[15] The Commission suggests that current restrictions on the export of unemployment benefits to those genuinely seeking employment in another Member State may operate as a deterrent to mobility. It also highlights the absence of an EU-wide quality framework for

13 See (32139) 15936/10; HC 428–xiii (2010–12), chapter 1 (19 January 2011).

14 See p.1 of the EU Citizenship Report 2013.

15 See Regulation (EC) No. 883/2004 on the coordination of social security systems (OJ No. L 166, 30.04.2004) and implementing Regulation (EC) No. 987/2009 (OJ No. L 284, 30.10.2009).

traineeships which would give young people greater confidence to develop their skills and obtain work experience in another Member State. It proposes:

- a revision of existing EU social security rules to make it easier for EU citizens to seek employment in another Member State — possible changes include extending beyond three months the period in which job seekers are entitled to receive unemployment benefit from their home State (Action 1); and
- developing a quality framework for traineeships and reforming the EURES network of public employment services (Jobcentre Plus in the UK) to improve the coordination of labour mobility (for example, through better job matching services), as well as piloting a new initiative on the exchange of information on traineeships and apprenticeships (Action 2).[16]

Cutting red tape in Member States

5.5 According to the Commission, although most EU citizens are aware of their right to live and work in another Member State, many have either experienced, or anticipate that they will encounter, obstacles in exercising free movement rights. These obstacles include: a reluctance (especially on the part of private entities, such as banks or airlines) to accept documents issued in another Member State as proof of identity or registration certificates issued to EU foreign nationals by local authorities as proof of residence; difficulties for EU citizens who live, work or own property in another Member State in determining where to pay their taxes or how to seek advice on cross-border taxation issues; and administrative burdens and costs for EU citizens taking their car to another Member State because of the absence of minimum standards for the safety and roadworthiness of cars.

5.6 The Commission proposes three actions:

- considering the feasibility of introducing optional common format documents establishing proof of identity or residence for EU citizens and family members living in another Member State which could also be used as travel documents for journeys within the EU — this action would only apply to Member States which issue ID or registration documents (Action 3);
- promoting best practice to resolve cross-border taxation problems (such as the creation of specialised contact points within national tax administrations and closer cooperation between them) and ensuring that national tax laws affecting mobile citizens comply with EU law (Action 4); and
- building on an existing initiative to set minimum standards for the control and safety of cars[17] by establishing a "vehicle information platform" to facilitate the recognition of national roadworthiness certificates (Action 5).

16 For further information on these initiatives, see Commission Communications, *Moving Youth into Employment* (34532) 17575/12 and *Towards a Quality Framework on Traineeships* (34533) 17578/12; HC 86–xxxi (2012–13), chapter 4 (6 February 2013).

17 See (34131) 12786/12; HC 86–xv (2012–13), chapter 1 (17 October 2012) ; HC 86–xvi (2012– 13), chapter 10 (24 October 2012); and HC 83–iv (2013–14), chapter 7 (5 June 2013).

Protecting the vulnerable

5.7 The Commission highlights two categories of vulnerable citizens: those with disabilities, and those involved in criminal proceedings in another Member State. On the former, it estimates that there are around 80 million people with disabilities in the EU but disability cards issued at national level which establish entitlements to certain services, such as transport or cultural activities, are often not recognised in other Member States, making it harder to travel abroad. As regards the latter, the Commission suggests that uncertainty as to the right to criminal legal aid or the adequacy of safeguards to ensure a fair trial may be compounded in the case of particularly vulnerable suspects or defendants by virtue of their age or mental or physical condition. It proposes two actions:

- developing an EU disability card to ensure equal access in all Member States to certain benefits, principally in areas such as transport, tourism, culture and leisure (Action 6); and
- proposing a package of legal instruments to strengthen the procedural rights of citizens suspected or accused of a criminal offence in another EU Member State with a view to ensuring adequate access to legal aid and assistance and guaranteeing the presumption of innocence (Action 7).

Removing barriers to cross-border shopping

5.8 As the number of consumers purchasing goods and services from sellers based in another Member State increases, so too does the risk of cross-border disputes. Although the introduction of a European small claims procedure in 2009 has made it easier to obtain redress for claims under €2,000, the Commission suggests that raising the claims threshold to €25,000 and simplifying procedures would strengthen consumer confidence in cross-border shopping. It also highlights difficulties in accessing important product information when shopping online, particularly when purchasing digital products. The Commission therefore proposes two actions:

- revising the existing European small claims procedure to make it easier for consumers to obtain redress for purchases made in another EU Member State (Action 8); and
- developing a model for the online display of key information on digital products in order to facilitate comparisons of price, functionality, interoperability, etc and launching a campaign to raise awareness of EU consumer rights and strengthen confidence in the digital online market (Action 9).

Increasing awareness of EU citizens' free movement rights

5.9 The Commission suggests that "front desk" staff in local administrations lack sufficient awareness of the rights associated with EU citizenship and EU citizens often do not know who to turn to for advice or to resolve problems arising when they exercise their free movement rights. The Commission says it will:

- develop an e-training tool for local administrations and support (via town twinning schemes) the exchange of best practice with a view to raising awareness of EU citizens' rights and facilitating their practical application (Action 10); and
- provide guidance on its Europa website to direct EU citizens to the most appropriate sources of information and advice (Action 11).

Participating in the democratic life of the EU

5.10 The Commission underlines the importance of encouraging participation in the democratic life of the EU by exercising voting rights or standing as a candidate in European Parliament and local elections, making use of citizens' initiatives, and engaging in broader public debates on the EU. It suggests that there are three obstacles to more effective participation which need to be addressed. First, it questions whether EU citizens should lose the right to vote in national elections in their Member State of origin by virtue of the fact that they have spent a certain period of time in another Member State. The Commission refers to increasing social and cultural interpenetration within the EU, as well as socio-economic and technological realities which make it easier to move to another Member State whilst retaining close ties with the Member State of origin, and adds:

> "Residing in another EU country no longer requires a definitive severing of ties with the country of origin, as may have been the case in the past. EU citizens should now be able to decide for themselves if they want to continue to participate in the political life of their country of nationality or invest in the political life of their host society."[18]

5.11 Second, the Commission highlights an "asymmetry" in the rights conferred on EU citizens. Although they are entitled to stand as a candidate and vote in local elections, they are:

> "deprived of an effective voice as regards the decisions of the national legislature which directly affect them."[19]

5.12 The Commission continues:

> "Empowering EU citizens residing in another EU country to determine for themselves, depending on the ties they maintain with their Member State of nationality or have formed with their Member State of residence, in which of these two countries they wish to exercise their key political rights, would give a new impetus to their inclusion and participation in the democratic life of the Union."[20]

5.13 Finally, the Commission alludes to a widespread sense (expressed in Eurobarometer surveys) that EU citizens are not sufficiently informed about European affairs, adding:

> "Providing citizens with information about European issues from a European point of view, but also from a range of national perspectives from other Member States,

18 See pp.21–22 of the EU Citizenship Report 2013.

19 See p.22 of the EU Citizenship Report 2013.

20 See p.24 of the EU Citizenship Report 2013.

> could increase the European public space and contribute to a more informed democratic debate."[21]

5.14 The Commission says that it will:

- publish a Handbook on Europe Day in May 2014 setting out in clear and simple language the rights associated with EU citizenship;
- explore ways to enable EU citizens to participate in national and (where regions have legislative responsibilities) regional elections in their country of residence or to maintain the right to vote in their Member State of origin if they have moved to another Member State; and
- consider ways of developing a "European public space" with a view to ending the current fragmentation of public opinion along national borders (Action 12).

Document (b) — progress towards effective EU Citizenship 2011–13

5.15 This second Commission Report reviews recent case law in the Court of Justice concerning EU citizenship; action taken by the Commission to secure the correct application of EU rules on free movement, including electoral rights and consular protection; the number of petitions received by the European Parliament and complaints registered with the European Ombudsman; and citizens' initiative requests received by the Commission. The Report includes useful data on the number of EU citizens living in another Member State for more than a year (up from around 11.7 million at the beginning of 2009 to 13.6 million in 2012). It also describes action taken by the Commission to prevent discrimination on grounds of nationality by, for example, challenging nationality restrictions on access to the notary profession in several Member States and proposing a draft Directive to prevent nationality-based discrimination against EU migrant workers.[22]

The Government's view

5.16 The Minister for Employment (Mr Mark Hoban) notes that document (b) — the Commission's Report on progress towards effective EU citizenship — contains no new proposals and is uncontroversial. By contrast, document (a) — the EU Citizenship Report 2013 — foreshadows a number of possible legislative initiatives, each of which would be deposited for scrutiny with Explanatory Memoranda setting out the Government's position. Whilst he says that the issues addressed in the Report are not a Government priority, the Government nevertheless "supports in principle" the right of individuals not to be discriminated against on nationality grounds, to move within the EU, to vote in EU elections and to petition the European Parliament. He continues:

> "The Report flags certain actions which the Commission intends to take on its own initiative (e.g. publication of a handbook on EU Citizen's rights), as well as urging future actions which Member States could take in order to promote European

21 See pp.24–25 of the EU Citizenship Report 2013.

22 See (34896) 9124/13; HC 83–v (2013–14), chapter 3 (12 June 2013).

Citizenship. Where future binding actions are mentioned the Government will examine them on a case by case basis."[23]

5.17 Turning to each of the actions proposed by the Commission, the Minister says that the Government:

- will carefully assess whether a Commission proposal to extend the period during which unemployment benefit may be exported to a recipient seeking work in another Member State would be in the UK's national interest, bearing in mind that other Member States would be responsible for paying unemployment benefit for a longer period to their own nationals who are seeking work in the UK (Action 1);

- opposes the Commission's current proposal to establish an EU-wide quality framework for traineeships, since it would apply a single framework to a wide range of different initiatives and target groups, but will seek improvements; supports modernisation of the EURES network to make it more responsive to the economic realities of the labour market and to meeting migration needs through recruitment from within the EEA and Switzerland, but will be vigilant in ensuring that there is no extension of EU competence; and is open to a pilot initiative on the exchange of information on traineeships and apprenticeships, provided its scope is limited to workers aged 18 or over (Action 2);

- supports improvements to the security features of identity and residence documents but opposes their use as travel documents (Action 3);

- is willing to cooperate with the Commission and other Member States in addressing cross-border taxation issues, such as double taxation, and notes that there is no suggestion of further harmonisation or any element of coercion (Action 4);

- supports the idea of sharing information on roadworthiness certificates in principle, but will examine any proposal in terms of proportionality, cost and added value (Action 5);

- notes that participation in an EU disability card would be optional for Member States and would not facilitate access to welfare systems, and adds that the Government will consider its position once the outcome of a pilot initiative testing its feasibility, cost and added value is available (Action 6);

- will determine UK participation in any legislative initiative on criminal procedural rights in accordance with the criteria set out in the Coalition Agreement on EU justice and home affairs (Title V) opt-ins with a view to maximising national security, protecting Britain's civil liberties and preserving the integrity of the criminal justice system (Action 7);

- will consider with interest amendments to the current EU Small Claims Procedure, particularly as the Government advocated a higher claims threshold when the Regulation was negotiated (Action 8);

23 See para 25 of the Minister's Explanatory Memorandum.

- will monitor the proposed EU-wide awareness campaign on consumer rights to ensure it does not cut across national strategies and consumer information campaigns (Action 9);

- questions the relevance of the e-training tool proposed for local administrations in the UK on the grounds that immigration and registration procedures are handled by national rather than local government, and notes that information on free movement rights is readily available to local authorities and the wider public on the Home Office website (Action 10);

- has no comment on the Commission's proposal to redesign its Europa website (Action 11); and

- will review any proposals seeking to increase citizen participation in the democratic life of the EU as they arise — whilst keen to encourage all those who are eligible to register to vote to do so, the Government is not minded to change domestic law imposing a 15 year time limit on overseas voting rights, although the issue remains under consideration (Action 12).

5.18 Finally, if Council Conclusions are proposed, the Government will seek to ensure that they do not bind Member States to implementing any of the specific actions described in the EU Citizenship Report 2013.

Conclusion

5.19 **The Commission's Report on progress towards effective EU citizenship — document (b) — provides a retrospective overview of significant developments concerning EU citizenship during the period 2011–13 and proposes no new policy initiatives. We are therefore content to clear it from scrutiny.**

5.20 **By contrast, the EU Citizenship Report 2013 — document (a) — foreshadows a number of new initiatives, some legislative, during 2013 and 2014 whilst also illustrating how the rights associated with EU citizenship cut across numerous policy areas. For that reason alone, we think that it merits a Report to the House. We appreciate that it would be unreasonable to expect the Government, at this stage, to provide a detailed assessment of the legal, policy and financial implications for the UK of each of the twelve specific actions proposed by the Commission, given that they are expressed in such general terms and that each one will be deposited for scrutiny as specific proposals are put forward for consideration. We would, however, welcome a fuller assessment of the measures proposed in Action 12 on enhancing participation in the democratic life of the EU. Whilst the Minister indicates that the Government is not currently minded to abolish the 15-year time limit on the eligibility of British citizens resident abroad to register as overseas electors and vote in UK Parliamentary elections, he does not tell us whether the Government would be open to extending the franchise for national Parliamentary elections to EU nationals resident in the UK. We therefore ask him to provide a more detailed analysis of the practical and political implications of extending the franchise for national elections which the Report appears to advocate. We also ask him to confirm whether the Council intends to agree Conclusions on the EU Citizenship Report 2013 and, if so, to explain what safeguards the Government**

intends to seek to ensure that it is not tied into any of the actions proposed. Meanwhile, the Report remains under scrutiny.

6 The EU Charter of Fundamental Rights

(34916) 9297/13 + ADDs 1–10 COM(13) 271	Commission Report 2012 on the application of the EU Charter of Fundamental Rights

Legal base	—
Documents originated	8 May 2013
Deposited in Parliament	15 May 2013
Department	Justice
Basis of consideration	EM of 29 May 2013
Previous Committee Report	None; but see (33837) 8905/12: HC 86–v (2012–13) chapter 3 (20 June 2012); (32648) 8453/11: HC 428–xxxiii (2010–12) chapter 14 (13 July 2011) and (32118) 15319/10: HC 428–xii (2010–12), chapter 3 (12 January 2011)
Discussion in Council	14 May 2013
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested

Background and previous scrutiny

6.1 The EU Charter of Fundamental Rights ("the Charter") was made legally binding by the Lisbon Treaty. The Charter applies to all actions taken by EU institutions. It also applies to Member States when they implement, or derogate from, EU law. The Charter encompasses the rights established by the case law of the Court of Justice, the European Convention on Human Rights (ECHR) and the rights and principles founded in the constitutional traditions of Member States. The Charter also includes less traditional rights, or "third generation rights", such as data protection and the right to transparent administration.

6.2 In its 2010 Strategy on the Effective Implementation of the Charter of Fundamental Rights[24] the Commission committed to reporting annually on the application of the Charter and that document was debated in European Committee.[25] We have also reported

24 COM (2010) 573 final.

25 www.publications.parliament.uk/pa/cm201011/cmgeneral/euro/110314/110314s01.htm.

on the two previous annual Commission reports.[26] We cleared the first with a Report to the House but recommended the second for debate on the Floor of the House which took place in July 2012.

6.3 The current document is the Commission's third annual report on the application of the Charter, covering 2012, and is accompanied by two Staff Working Documents. The first provides detail on the application of key areas of specific rights set out in the Charter — dignity; freedoms; equality; solidarity; citizenship and justice. The second is a report on the implementation of the Strategy for Equality between Women and Men (2010–2015).

The current document

6.4 In this third annual report, the Commission sets out the purpose and scope of the report, pointing out an innovation — an analysis of the case law of national courts on the Charter — and explaining:

> "This annual report is the basis for the necessary dialogue between all the EU institutions and Member States on the implementation of the Charter. It therefore forms part of the process of political dialogue and scrutiny to ensure that the Charter remains a reference point, to integrate fundamental rights into all EU legal acts and when Member States apply EU law. It also presents how a fundamental rights culture is being developed in the EU by setting new legislation, where the EU has competence to act, and through the jurisprudence of the Court of Justice of the European Union ('the Court')."[27]

Scope of the Charter

6.5 The Commission highlights the fact that the Charter is primarily directed towards the EU institutions and sets out the steps taken by them to implement the Charter effectively, principally by ensuring that EU legislation respects fundamental rights.

Areas of specific EU legislation implementing Charter rights

6.6 The report identifies areas where the EU has developed specific legislation to give effect to the rights and principles in the Charter, including reform of the EU data protection rules, work on the gender balance of corporate boards of listed European companies and the rights of accused people and of victims of crime. It also references the work of the EU Agency for Fundamental Rights but notes that, in accordance with the wishes of the Council, this excludes the areas of police co-operation and judicial co-operation in criminal law matters. These in turn were excluded from the Multiannual Framework for the Agency and caused delay in its adoption, says the Commission.

26 See headnote.

27 p.2 of the Commission report, see headnote.

Fundamental rights culture in EU external action

6.7 The Commission provides examples of the application of a fundamental rights culture to the EU external actions, in particular the Strategic Framework on Human Rights and Democracy adopted by the Council in 2012.[28] This, the Commission says, is "designed to improve the effectiveness and consistency of EU human rights policy as a whole in the next years". It notes that one of the first actions under the new EU Strategic Framework and Action Plan was the appointment by the Council of Mr Stavros Lambrinidis as EU Special Representative (EUSR) for Human Rights.

6.8 It also notes the ECJ's decision in the Fulmen and Mahloudian case. This related to a CFSP Council Decision to freeze the assets of a company and its majority shareholder. The ECJ annulled the Decision for lack of evidence and held that the grounds for restrictive measures must be communicated both to the entity and individual concerned in accordance with the principle of effective judicial protection (Article 47 of the Charter).[29]

6.9 The rejection of the draft Anti-Counterfeiting Trade Agreement (ACTA) by the European Parliament is another example of the operation of fundamental rights in the context of EU external action, says the Commission. ACTA is aimed at improving global standards for the enforcement of intellectual property rights to more effectively combat trade in counterfeit and pirated goods. But the European Parliament refused to give its consent to ACTA, referring in particular to the need for an appropriate balance in agreement between freedom of expression and information and the right to property as set out in the Charter.

ECJ judgments on EU institutions' compliance with Charter

6.10 The report sets out the judgments of the ECJ concerned with compliance by EU institutions with the Charter in both the EU's legislative and non-legislative work. Examples given include the annulment of a Council implementing Decision because the exercise of delegated legislative powers in the context of the surveillance of external sea borders of the EU affected personal freedoms and fundamental rights requiring political choices only appropriate to be taken by the EU legislature.[30] The ECJ also annulled several notices of open recruitment competitions for EU institution civil servants as not complying with the principle of non-discrimination as they had only been published in three official languages.[31] The principle of good administration by the EU institutions (Article 41 of the Charter) also features in an ECJ decision where a decision of the Commission to reject an offer in the context of an invitation to tender for public service procurement was annulled because the Commission did not provide sufficient justification for its decision.[32]

6.11 The Commission also explains how ECJ rulings have triggered modifications to EU legislation during its negotiation, citing the new "Dublin Regulation" on the condition for

28 Strategic Framework and Action plan on Human Rights and Democracy Council Document no. 11417/12 EXT 1 of 28.06.2012.

29 ECJ, Case T-439/10 and T-440/10, *Fulmen and F. Mahloudian v Council*, 21.03.2012.

30 ECJ, Case C-355/10, *European Parliament v. Council of EU*, 5.09.2012.

31 ECJ, Grand Chamber, Case C-566/10 P, *Italian Republic v Commission*, 27.11.2012.

32 ECJ, Case T-183/10, *Sviluppo Globale GEIE v Commission*, 10.10.2012.

the transfer of asylum seekers in the EU[33] and its proposal on the publication of the beneficiaries of EU agricultural funds.[34]

Implementation of the Charter in Member States

6.12 In looking at Member States' application of the Charter, the Commission first prefaces its analysis with some fundamental statements about the status and role of the Charter in relation to national systems of fundamental rights. It states:

> "Within the EU, the protection of fundamental rights is ensured by a two-layered system: the national system based on Member States' constitutions and international legal obligations, such as the European Convention on Human Rights (ECHR); and the EU system based on the Charter, which comes into operation only in relation to actions by EU institutions, or when Member States implement EU law. The Charter complements existing systems for the protection of fundamental rights, it does not replace them."[35]

6.13 It also outlines the fundamental principle, supported by the ECJ in the Vinkov case,[36] that the provisions of the Charter are addressed to the Member States only when they are implementing EU law and neither the Charter nor the Treaty creates any new competence for the EU in the field of fundamental rights. It confirms that where the national legislation at stake does not constitute a measure implementing EU law or is not connected in any other way with EU law, the jurisdiction of the ECJ is not established.

6.14 However, the report then examines the implementation of the Charter in Member States, looking in particular at the following three areas.

Preliminary Rulings

6.15 The report examines the increasing number of requests for a preliminary ruling from national jurisdictions received by the ECJ. It says:

> "For example, in the field of asylum the [ECJ] upheld that whenever an application for asylum is lodged at the border or in the territory of a Member State, that Member State is obliged to grant the minimum conditions for reception of asylum seekers laid down in EU law regardless of whether a Member State is responsible for examining the application for asylum under EU law.[37] In particular, the need to uphold fundamental principles of human dignity (Article 1) and the right to asylum (Article

33 Proposal for a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, COM (2008) 820 final. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0820:FIN:EN:PDF.

34 Amendment to the Commission proposal COM (2011) 628 final/2 for a Regulation on the financing, management and monitoring of the common agricultural policy, COM (2012) 551 final. Available at: http://ec.europa.eu/agriculture/funding/regulation/amendment-com-2012–551_en.pdf.

35 p.6 of the Commission report, see headnote.

36 ECJ, Case C-27/11, *Vinkov*, 07 June2012.

37 ECJ, Case C-179/11 *Cimade and Groupe d'information et de soutien des immigrés (GISTI) v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, 27.09.2012.

18) means that, the obligation under EU law[38] to provide an asylum seeker with housing, food, clothes and a daily expenses allowance, and the subsequent financial onus, are to be borne by the requesting Member State until the asylum seeker is transferred to the Member State responsible for examining their application".[39]

Action taken by the Commission against Member States

6.16 The report discusses action taken by the Commission to ensure that Member States, where appropriate, respect the rights and principles reaffirmed in the Charter, as in the case of Hungary, France and Malta.

6.17 It reports that for the first time, in 2012, the Commission took a first set of infringement proceedings against a Member State, Hungary, in relation to a national law passed by Hungary which, the Commission argued, threatened the independence of the Hungarian data protection authority; not only required by the Data Protection Directive but also by Article 16 TFEU and Article 8 of the Charter. A second set of infringement proceedings against Hungary related to the imposition of a mandatory retirement age for judges, which the Commission successfully contested on the grounds that it infringed Directive 2000/78/EC on equal treatment in employment together with the principle of non-discrimination on grounds of age recognised by Article 21 of the Charter.[40] Additionally, the Commission engaged in dialogue with Hungary over proposed media legislation and the impact on media freedoms guaranteed by the Charter. Finally, the fundamental rights of citizens and business to an effective remedy by an independent court (Article 47 of the Charter) were the subject of further discussions in relation to the powers of the Hungarian President of the National Judicial Office to reallocate cases from one court to another and to transfer a judge against his or her will.

6.18 The Commission also discusses its management of the situation in August 2012 of the French dismantling of Roma settlements and the repatriation of Roma people. This has since been resolved as France modified its law to comply with the procedural requirements of the Citizens' Free Movement Directive, 2004/38/EC. The Commission does not explicitly mention the Charter rights that it considered were engaged by French action.[41]

6.19 Finally, the Commission also commenced infringement proceedings against Malta for failing to implement properly EU free movement of persons rules and, in particular, the question of same-sex spouses or registered partners joining EU citizens in Malta to reside with them. The question has been resolved by Malta modifying its laws to comply with free movement rules and the principle of non-discrimination under the Charter.

38 Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, OJ No. L 31, 6.2.2003, pp.18–25.

39 p.7 of the Commission report, see headnote.

40 ECJ, Case C 286/12, *European Commission v. Hungary*, 6.11.2012.

41 A 2012 European Parliament Resolution on the expulsion of the Roma from France cites Articles 8, 19, 21, 24, 45, 47, 51 of the Charter of Fundamental Rights of the European Union as having been engaged. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B7–2010–0503+0+DOC+XML+V0//EN.

Development of national case law on Charter

6.20 The report outlines how national courts are referring to the Charter in their judgments, mainly in the context of immigration and asylum law, with the most frequently cited rights being respect for private and family life; freedom of expression and information; right to property; right to asylum; prohibition of collective expulsion and non-refoulement; rights of the child, right to good administration and the right to an effective remedy and to a fair trial. Much of the discussion is based on data gathered by the Association of Councils of States and of Supreme Administrative Courts (ACA).[42]

6.21 Of particular interest are the two assessments made by the Commission on the basis of that data about how the Charter is being applied in some national legal systems. Firstly that:

> "the analysis of court rulings referring to the Charter further suggests that national judges use the Charter to support their reasoning, including when there is not necessarily a link with EU law."[43]

6.22 The second assessment made by the Commission is that:

> "There is also some evidence of an incorporation of the Charter in the national systems of fundamental rights protection. The Austrian Constitutional Court handed down a landmark decision regarding the application of the Charter in the frame of domestic judicial review of constitutionality.[44] It recognised the very special role of the Charter within the EU legal system, and its different nature compared to the body of rights and principles which the Court of Justice of the EU has been developing throughout the years. It took the view that the Charter is enforceable in the proceedings brought before it for the judicial review of national legislation, and therefore individuals can rely upon the rights and the principles recognised in the Charter when challenging the lawfulness of domestic legislation. The Austrian Constitutional Court identified strong similarities between the role played by the Charter in the EU legal system and that played by the ECHR under the Austrian Constitution, according to which the ECHR has force of constitutional law."[45]

Progress of EU accession to the ECHR

6.23 The report includes a progress update on EU accession to the ECHR. It simply notes that negotiations on the Accession Agreement have been on-going since June 2012 in the Council of Europe "47+1" group while at the same time parallel work has been undertaken on the EU internal rules intended to govern the participation of the EU and Member States in proceedings before the Strasbourg court.

42 http://www.aca-europe.eu/en/colloquiums/colloq_en_23.html.

43 p.9 of the Commission's Report, see headnote.

44 Austrian Constitutional Court, Cases U466/11 and U1836/11, 14.03.2012.

45 p.9 of the Commission report, see headnote.

Commission's conclusions

6.24 The Commission considers that the take-up of the Charter by national law just after just three years in force as EU primary law, is "a positive sign". It continues:

> "The increasing reference to the Charter gives a first indication of an effective, decentralised application of the Charter within the national constitutional orders. This is an important step on the road to a more coherent system for the protection of fundamental rights which guarantees equal levels of rights and protection in all Member States whenever EU law is being implemented." [46]

6.25 Nevertheless, the Commission also says that it is itself "committed to lead by example in ensuring that all EU acts comply with the Charter" and "remains determined to take decisive steps to give concrete effect to the Charter when it has the competence to do so." Likewise, it is committed to intervening "where necessary" when Member States implement EU law in order to ensure the effective implementation of the Charter."[47]

6.26 It concludes the report by saying that it will "keep the development of fundamental rights protection in the EU, including the evolving case-law on the application of the Charter both at Union and at national level, under close review and calls upon the European Parliament and the Council of Ministers to discuss the present report in detail."[48]

The Government's view

6.27 The Lord Chancellor and Secretary of State for Justice (Chris Grayling) says that the Government:

- sees the report as a useful retrospective analysis of the Charter's application in practice which does not contain any new proposals;
- has already conveyed its views to the Committee on any Commission Communications, measures or proposals referred to in the report as part of the normal EU parliamentary scrutiny process and so does not comment on those further;
- agrees that the EU should respect individuals' rights in the same way as its Member States and welcomes a regular review of how effectively the Charter ensures that EU legislation does not breach those rights;
- is reassured by the confirmation that the Charter only applies to Member States when implementing EU law;
- notes the confirmation by the ECJ of the view, shared by the UK, that the Charter's role is merely to clarify and make more accessible rights and principles that were already recognised in EU law before the Lisbon Treaty;

46 p.10 of the Commission report, see headnote.

47 All quotations in this para can be found at p.10 of the Commission's report, see headnote.

48 p.10 of the Commission's report, see headnote.

- highlights the delay in adopting a new multi-annual framework for the Agency for Fundamental Rights which is based on Article 352 TFEU and for which approval by Act of Parliament under the European Union Act 2011 (the European Union (Approvals) Act 2013)[49] was obtained when Royal Assent was given on 28 February 2013. The Minister adds: "given the importance of human rights, Parliament undertook thorough scrutiny of the proposal" through the progress of that Act;

- welcomes progress made on equality between women and men (in particular, the reference to the report on the progress being made across the EU to appoint more women to the boards of listed companies); and

- has pinpointed an inaccurate reference on page 9 of the Commission Staff Working Document to the adoption of new rules regarding the surveillance of the external EU's sea borders (EUROSUR), in the context of operational cooperation coordinated by FRONTEX. The Minister informs us that the intention was clearly to make reference to a proposal adopted by the Commission to establish new rules on maritime border surveillance in the context of operational cooperation coordinated by FRONTEX, including on the high seas. There should have been no specific reference to EUROSUR.

6.28 Finally, the Minister says that Draft Council Conclusions in response to the report were discussed at the Council working group on 14 May 2013.

Conclusion

6.29 **We recognise that this Commission report on the application of the EU Charter of Fundamental Rights has no immediate policy, legal or financial implications for the UK. We are nonetheless disappointed at the somewhat cursory nature of the Government's Explanatory Memorandum on it and note that the EM does not comment on the section of the report concerning how the Charter is being implemented in Member States. In our view the questions of how the Charter is being applied by national courts and the Commission's approach to taking enforcement action against Member States to ensure respect for the Charter when implementing EU law are of legal significance.**

6.30 **In particular, we draw to the Secretary of State's attention the Commission's analysis of national court rulings referring to the Charter (page 9 of the report) and its mention of national judges not only using "the Charter to support their reasoning, including when there is not necessarily a link with EU law" but also of there being "some evidence of an incorporation of the Charter in the national systems of fundamental rights protection".**

6.31 **We would therefore be grateful if the Minister could assess the development of national case law on the application of the Charter within Member States, including the application of ECJ rulings as a result of preliminary references by national courts as referred to in the Commission's report. We would be particularly interested to know**

49 http://www.legislation.gov.uk/ukpga/2013/9/enacted.

whether he thinks this will have any impact on the application of the Charter within the UK.

6.32 **Finally, in our conclusions on the Commission's last annual report we questioned whether a formal, transparent, objective framework for the reports had been agreed. We considered that such a framework would prevent the Commission from taking an overly self-selective approach to the content of the annual reports. We ask the Minister to update us on progress on this issue.**

6.33 **In the meantime, this document remains under scrutiny.**

7 International procurement

(a) (34799) 7915/13 COM(13) 143	Draft Council Decision on the conclusion of the Protocol Amending the Agreement on Government Procurement
+ ADD 1	Annex to the Draft Council Decision on the conclusion of the Protocol Amending the Agreement on Government Procurement
(b) (34792) 7919/13 COM(13) 142	Draft Council Decision establishing the position to be taken by the European Union within the Committee on Government Procurement with respect to decisions implementing certain provisions of the Protocol Amending the Agreement on Government Procurement
+ ADD 1	Annex to the Draft Council Decision establishing the position to be taken on Government Procurement with respect to decisions implementing certain provisions of the Protocol Amending the Agreement on Government Procurement

Legal base	(a) Articles 207(4), 218(6)(a)(v) and 218(7) TFEU; QMV; consent (b) Articles 207(4) and 218(9) TFEU; QMV; —
Document originated	(a) and (b) 22 March 2013
Deposited in Parliament	(a) 27 March 2013 (b) 28 March 20113
Department	Cabinet Office
Basis of consideration	EM of 9 May 2013
Previous Committee Report	None
Discussion in Council	June 2013
Committee's assessment	Legally and politically important
Committee's decision	Cleared

The documents

7.1 The Agreement on Government Procurement (GPA), document (a), is an international agreement under the WTO whose signatories agree to mutually open up their public and "utilities" procurement markets.

7.2 The GPA covers the rules and procedures by which the Parties will conduct their relevant procurements, plus the different market sectors which will be subject to the GPA, and the bodies and organisations within each country which will be subject to the GPA (the "coverage"). Whilst the main text of the GPA (covering the procedural rules) is common to all parties, the coverage (by market sector and procuring bodies) is unique for each signatory, and is agreed through a series of bilateral agreements between GPA parties.

7.3 There are currently 42 countries under the GPA, including the 27 EU Member States; other major signatories include Japan, Canada, South Korea, Taiwan, Hong Kong and the USA. The European Commission negotiates on behalf of the EU as a whole; individual EU Member States are not separately represented. All the EU Member States have substantially the same coverage with respect to each of the other GPA parties.

7.4 For the UK and other EU Member States implementation and adherence to the European procurement Directives encompasses the requirements of the GPA; there is no separate GPA implementation required in national law. The financial "thresholds" at which the EU rules begin to apply are the same as for the GPA; and Part B services which are currently not subject to the full EU public procurement regime are also outside the scope of the GPA.

7.5 The current GPA agreement was negotiated in 1994 and came into force in 1996, and has undergone a prolonged renegotiation. Revisions to the text of the Agreement were largely agreed as long ago as 2006. However this was subject to agreement on revised coverage, and as coverage is agreed through a series of bilateral agreements this process has been protracted. In December 2011 GPA parties reached agreement at Ministerial level on the outcome of the coverage negotiations and in March 2012 the GPA parties adopted the outcome of those negotiations.

7.6 The Protocol will come into force when two thirds of the GPA parties confirm their acceptance. Upon adoption of the Protocol, the GPA Committee (representatives of the parties) will confirm adoption of the Decisions.

7.7 Under the current GPA the EU coverage is already more extensive than that offered by many of the other parties. Significantly, the EU already includes "sub-central" bodies (i.e. local authorities and wider public sector bodies) within scope. Therefore improved coverage from other GPA parties under this Protocol, whose markets have hitherto been less open than in the EU, will be of benefit to EU businesses which wish to bid in those countries.

7.8 The Commission draws attention to a number of improvements in the new Protocol compared with the current provisions:

- a restructured text which is simpler, more user-friendly and more similar to the EU procurement directives;
- centralised databases of procurement opportunities (the EU already has Tenders Electronic Daily);
- clearer rules on supplier selection (similar to EU rules);
- provisions for electronic procurement, including e-auctions;
- simpler and more flexible statistical reporting;
- transitional measures to encourage developing and least developed countries to join the GPA;
- a clearer system for modifying coverage;

- simpler rules for modifying and updating the lists of contracting bodies in a country subject to the GPA rules.

7.9 The coverage has also been improved. It includes:

- the addition of more than 200 contracting entities. All parties that have a "sub-central" tier now include some sub-central bodies within the GPA;
- reduced derogations/exclusions for various goods; inclusion of new non-sensitive defence procurements;
- increased coverage of services and construction (works);
- removal of some discriminatory "buy-national" and "offset" provisions;
- lower thresholds from some parties; and
- the Commission calculates that the updated agreement will lead to an additional €30 billion of opportunities for EU economic operators.

7.10 The decisions implementing certain provisions of the Protocol, document (b), are set out in a number of Annexes to the draft Council Decision. These set out a number of future "work programmes" to be undertaken by the GPA parties and secretariat:

- Annex A — notification of technical changes to national procurement laws and bodies covered by the GPA;
- Annex B — review of public-private partnerships, common classification of goods and services, and standardised notices;
- Annex C — encouraging SMEs to participate in government procurement;
- Annex D — a review of statistical data-gathering and reporting requirement;
- Annex E — identification of good practice in sustainable procurement (consistent with value for money and open trade);
- Annex F — Increasing transparency, and reducing exclusions and restrictions in GPA parties' coverage;
- Annex G — ensuring high safety standards in procurement whilst avoiding obstacles to international trade.

7.11 The GPA does not preclude cross-border public procurement where either or both parties are not from a GPA signatory (for example under bilateral free trade agreements between the EU and non-GPA countries).

The Government's view

7.12 In an Explanatory Memorandum dated 9 May 2013, the Minister for Political and Constitutional Change at the Cabinet Office (Miss Chloe Smith) says the Government agrees with the aims of the GPA in principle, and has consistently supported and

encouraged the Commission and the other GPA parties to achieve the new Protocol. This stems from the UK's policy of supporting fair and open markets, value for money, probity and transparency in public procurement, support for growth in the global economy, and in guarding against protectionism in the current economic climate. The new GPA Protocol should provide a further opening of markets and new opportunities for UK firms, and is a positive step forward in the global trade agenda. Closer alignment of the GPA procurement-process rules with the EU procurement Directives should encourage consistent application of the rules. Case-specific provisions for least developed countries will help promote development and good procurement practice across GPA countries and potential accession countries. So the Government welcomes the new Protocol and wishes to see this Council proposal agreed as soon as practicable.

7.13 The existing EU procurement rules are consistent with the existing GPA agreement, and as noted above the new Protocol further aligns the GPA text with EU public procurement law. The new Protocol agreement will therefore not impose or require change in practice or procedures by UK public bodies, or utilities; compliance by public authorities and utilities with the existing EU procurement rules will continue to ensure compliance with the applicable GPA rules. UK economic operators which wish to bid for contracts awarded under GPA rules should find the procedures and requirements generally consistent with the procedures when they bid for public or utilities contracts in the UK. The new Protocol should also be consistent with the updated procurement rules under negotiation in Brussels.

7.14 The Government has not to date undertaken a detailed analysis of the changes in coverage offered by the other GPA parties to EU economic operators or vice versa. However, the EU already offers extensive "coverage" under the GPA, and in any case the UK does not routinely, or as policy, exclude bidders, even from countries not party to the GPA. Overall, other GPA parties have moved further to extend their coverage than has the EU. So there will be greater new opportunities for EU and UK businesses to compete in procurements in other GPA countries. The Government is not aware of specific information to counter the Commission's claimed additional opportunities of €30 billion for EU businesses.

7.15 The work programme covered in the implementing decisions appears to be generally consistent with existing EU procurement rules and with existing UK policies and practice. For example: work to simplify data gathering requirements; improved transparency; encouraging SMEs whilst maintaining fair and open markets; identification of best practice in sustainable procurement; and further reductions in exclusions and restrictions. These changes are also moving in the same direction as the improvements and simplification expected from the new modernised procurement rules under negotiation. The Government intends continued close engagement with the Commission to ensure that the EU pushes for continued improvement to the GPA and convergence by other GPA parties towards existing EU and UK good practice.

7.16 The UK would like to see the thresholds in the EU rules raised as these have not been adjusted for inflation for many years, which leads to the detailed rules applying to more contracts than originally intended. But the EU thresholds must remain consistent with the current GPA threshold, or the EU would be in breach of its GPA obligations.

7.17 The UK has sought an early review of the GPA thresholds as part of the new work programme, following which the EU thresholds could be reviewed and raised. There was no explicit mention of such a review in the GPA Decision Annexes, but the Commission has achieved an agreement to include a review in the "statistics" element of the programme.

Conclusion

7.18 **We thank the Minister for his Explanatory Memorandum.**

7.19 **We note, however, that under "European Parliament Procedure" the Minister has written "[t]hese proposals are subject to the ordinary legislative procedure" (and so would include the first, second, and third reading procedures set out in Article 294 TFEU). They are not: the conclusion of the Protocol requires the European Parliament's consent; the adoption of the implementing decisions in the Committee on Government Procurement requires neither consent from nor consultation with the European Parliament. This is a significant mistake in that, were the ordinary legislative procedure to apply, these Council Decisions would be draft legislative acts and subject to the relevant provisions of Protocol 1 on national parliaments and Protocol 2 on subsidiarity and proportionality. It also shows a misunderstanding of how international negotiations such as these are concluded under Article 218 TFEU, which is concerning. We ask the Minister to ensure that the misunderstanding is corrected for the future.**

7.20 **On the substance, we share the Government's support for the adoption of this long-awaited Protocol and the work programmes to be adopted in the Committee on Government Procurement. We think the increased coverage of the GPA is particularly welcome for UK business.**

7.21 **We now clear the documents from scrutiny.**

8 Action Plan for a Maritime Strategy in the Atlantic area

(34937) 9627/13 COM(13) 279	Commission Communication: *Action Plan for a Maritime Strategy in the Atlantic area*

Legal base	—
Document originated	13 May 2013
Deposited in Parliament	23 May 2013
Department	Business, Innovation and Skills
Basis of consideration	EM of 6 June 2013
Previous Committee Report	None, but see footnotes
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background

8.1 In November 2011, a Commission Communication[50] set out a maritime strategy for the Atlantic area with the aim of creating sustainable jobs and growth for those living on the coasts, territorial and jurisdictional waters of the five EU Member States[51] with Atlantic coastlines, whilst recognising the EU's responsibilities for stewardship of the waters in question. In particular, that Communication identified a number of inter-related themes, including the pursuit of socially inclusive growth, and it has now sought in this document to build on that aspect of the earlier strategy by setting out an Action Plan for delivering smart, sustainable and inclusive growth.

The current document

8.2 The Commission notes that the timing of this Plan sits well with the development of the Common Strategic Framework for the European Structural and Investment Funds, and that the objectives of the Framework have broad relevance to the Atlantic Strategy, notably in supporting a shift towards a low-carbon economy; increasing the capacity for research and innovation through education and training and bringing industry closer to research; and enhancing the competitiveness of Small and Medium Enterprises (SMEs) in areas such as tourism, fishing and aquaculture. It also suggests that successful implementation of the Plan needs to be underpinned by targeted investment, increased research capacity and higher skills.

50 (33436) 17387/11: see HC 428–I (2010–12), chapter 15 (8 February 2012).

51 France, Ireland, Portugal, Spain and the UK.

The Action Plan

8.3 The Commission describes the Action Plan as a non-exhaustive indicative set of actions, which recognises that much has already been done by the Member States in question, and therefore seeks to identify areas where there is scope for additional collective work, with the following priorities.

Promoting entrepreneurship and innovation

8.4 The Commission says that the specific objectives should include:

- sharing knowledge between higher education organisations, companies and research centres, and so increasing the capacity of the Atlantic area to innovate through research and technology;
- enhancement of competitiveness and innovation capacities in the maritime economy of the area by improving skills in traditional industries and in emerging sectors, and putting in place educational and training measures; and
- fostering adaptation and diversification of economic activities by promoting the potential of the area through such means as reforming the Common Fisheries Policy and revitalising EU aquaculture.

Protecting, securing and developing the potential of the Atlantic marine and coastal environment

8.5 The Commission says that the specific objectives here include:

- improving maritime safety and the security of seafarers, coastal populations, property and ecosystems by evaluating and extending as necessary existing warning, reporting and response mechanisms to marine threats, including invasive species, natural disasters, marine accidents and spills of hazardous substances;
- exploring and protecting marine waters and coastal zones by developing a European Atlantic ocean observing and prediction capability; contributing to the development of tools to address global climate change issues; supporting efforts to achieve "good environmental status" for Atlantic waters by 2020; assessing the social and economic value of Atlantic ecosystems and biodiversity; and contributing to Member States' maritime spatial planning and integrated coastal management processes; and
- the sustainable management of marine resources by developing better understanding of the feasibility, economic viability and environmental impact of mining for minerals, laying the foundations for a European marine biotechnology industry, and considering ways of accelerating the deployment of sustainable offshore renewable energy.

Improving accessibility and connectivity

8.6 The Commission says that this should include promoting cooperation between ports by facilitating infrastructure upgrades, enabling ports to diversify into new business activities, and analysing and promoting port networks and short-sea shipping routes between European ports.

Creating a socially inclusive and sustainable model of regional development

8.7 The Commission says that the priorities should include:

- fostering better knowledge of social challenges in the Atlantic area by exchanging best practice on enhancing the health, social inclusion and well-being of coastal populations, and developing appropriate indicators; and
- preserving and promoting the Atlantic's cultural heritage by combating seasonality and improving prospects for SMEs by the diversification of maritime and coastal tourism projects and the development of niche markets.

Implementation

Funding channels

8.8 The Atlantic Strategy does not have its own designated budget, and the Commission has identified a number of funding sources to support the actions within it, including the European Structural and Investment Funds, several of the funds managed by the Commission (including Horizon 2020, LIFE+, COSME), and the directly managed elements of the European Maritime and Fisheries Fund. The Commission also notes that the private sector is a further important source of funding, and it calls on Member States to approach it to explore complementary involvement and finance. Also, the European Investment Bank has been in discussion with the Commission, and has indicated that it stands ready to mobilise its financing tools and expertise in support of suitable projects.

Intelligent cooperation and support

8.9 The Commission highlights that an important element of the Action Plan is not just the funding of projects but intelligent cooperation, adding that much can be advanced through collaboration at national and regional level, and citing Horizon 2020 and the European Structural and Investment Funds as vehicles for supporting this and the sharing of best practice. It also considers that having the right implementation mechanism and assessment process is key to achieving progress, and it has suggested that an assistance mechanism should be established by the end of 2013, which should be light, tightly-focused and draw on good practices which have been successful in other sea-basin strategies. In addition, the Commission says that it may organise Atlantic stakeholder conferences.

Taking stock of progress

8.10 The Commission says that it wants to ensure that progress is monitored, which it suggests should not create any new reporting requirements. It also says that it will prepare a mid-term review of the implementation of the Atlantic Plan before the end of 2017.

International dimension

8.11 The Commission argues in favour of internationalising the Atlantic Strategy, believing that over time the Action Plan could create a solid foundation for cooperation with other Atlantic nations. In particular, it suggests that a transatlantic research alliance with the United States and Canada would deepen common understanding of the Atlantic ecosystem, and its potential to support the blue economy, with a declaration launching this work having been signed at an Irish Presidency event in May 2013.

The Government's view

8.12 In his Explanatory Memorandum of 6 June 2013, the Minister for Business and Enterprise (Mr Michael Fallon) says that the Government considers the Action Plan could provide a helpful contribution to the overarching priority of creating growth and jobs, and notes that it covers a wide range of actions, not all of which will be directly relevant to the UK. In particular, he points out that the Action Plan clearly states that "in the context of budgetary restraint and the need for authorities in the Atlantic area to consider a range of development priorities it should be stressed that the process of implementing the Action Plan remains voluntary", so that the UK will not be obliged to implement all of the proposals contained within it.

8.13 The Minister adds that the Government supports the need for a strategic approach to research and innovation and the importance of removing technology bottlenecks as part of making investment more attractive in general, and that Horizon 2020 will provide funding specifically targeted at areas covered by the Communication;[52] welcomes the setting up of an implementation mechanism, where it will engage with the Commission to ensure that this meets the stated objective of being light, tightly-focused and drawing on good practices which have been successful in other sea-basin strategies; and considers that the internationalisation of the Action Plan needs to avoid duplication of work being carried out in other fora. He therefore welcomes the references in the Action Plan to the work of the United Nations Convention of the Law of the Sea, the International Maritime Organisation and the International Seabed Authority, and notes that, as many research links already exist between Europe, the US and Canada, any activity should build on this.

8.14 As regards specific areas, the Minister says that the Government:

- agrees that increasing the capacity of the Atlantic area to innovate through research and technology can have benefits in terms of growth and jobs, and will seek to ensure that this adds real value: it also supports of more and easier mutual recognition of qualifications as long as there are appropriate safeguards in place;

52 Notably Food Security, Sustainable Agriculture and Forestry, Marine and Maritime and Inland Water Research and the Bioeconomy Societal Challenge.

- supports a responsive skills system, underpinned by good quality labour market information and professional careers advice, enabling individuals and employers to make effective choices, and, in particular, it wants to see employers in schools inspiring young people into rewarding careers;

- shares the Commission's view that aquaculture provides significant potential for growth and jobs, and welcomes the Strategic Guidelines for its sustainable development adopted recently by the Commission, with the proviso that such growth must be market-driven, sustainable and must not come at a cost to the environment: it also agrees that effective implementation of the principles of the Common Fisheries Policy should be promoted, with enhanced efforts towards long-term sustainable and responsible fisheries;

- recognizes the scope for greater cooperation between Member States on maritime safety to ensure the most effective use of resources, but is mindful that this needs to be dealt with on an international basis, and that any initiatives should not detract from the International Maritime Organization as the primary forum for maritime regulation;

- is broadly supportive of a sharing of maritime surveillance information, where appropriate, but believes that it is too early to determine whether this should be based on regional sea-basins or a pan-European approach;

- fully recognises the benefits of cooperation and of sharing information and data, and the importance of building on existing initiatives and avoiding duplication;

- believes that an assessment of the carbon footprint of the Atlantic area blue economy could prove useful in the context of climate change, as could partnerships to monitor its impact on marine activities and coastal communities, provided there is no duplication with existing activity, and the coverage is limited to the five EU Atlantic Member States;

- believes that regional coordination is a vital part of the implementation of the EU Marine Strategy Framework Directive in achieving good environmental status in European marine waters by 2020, and will aim to build on this approach;

- recognises fully the benefits of effective marine spatial planning in ensuring sustainable development, and in providing transparency and confidence for investments leading to the efficient and integrated use of marine resources, with cross border consultation being an important part of this process: and it has made clear that the draft Directive recently published by Commission will need to complement measures already in place;

- recognises the potential for biotechnology to stimulate long-term growth and jobs in the blue economy, while safeguarding the marine environment, and will continue working with industry and others to support the translation of science into sustainable and commercially viable opportunities;

- supports cooperation between the five Atlantic states in bringing forward the development of offshore renewable energy if this does not duplicate existing

activities and is geographically feasible for the UK, adding that it is not clear whether the proposed regional Smart Specialisation Strategies for offshore renewables would add value;

- believes that ports and the shipping industry have demonstrated their ability to meet evolving demands and to handle new commodities, largely without need for public funding, adding that, whilst it recognizes that public funding can play a legitimate role so long as it complies with State Aid rules, any initiatives should avoid distortion of the market, which is best placed to take the necessary decisions; and

- agrees that tourism can be a valuable contributor to economic growth, and highlights the crucial importance of coastal destinations and attractions in increasing the value of the domestic tourism market.

Conclusion

8.15 **This Action Plan identifies a number of areas which the Commission believes would help to achieve sustainable and inclusive growth in the Atlantic area, and, as the UK is one of the Member States directly involved, we are drawing it to the attention of the House. However, the document is essentially a blueprint for considering further measures in a range of different areas, and, as the Government has noted, there would be no obligation on the UK to implement all of these. In view of this, the document does not seem to us to give rise to any issues requiring immediate consideration, and we are therefore clearing it.**

9 Financing EU external action: 11th European Development Fund

(34961) 10212/13 COM(13) 306	Commission Communication: *Provisional application of the Internal Agreement on the financing of EU aid for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement*

Legal base	—
Department	International Development
Basis of consideration	EM of 13 June 2013
Previous Committee Reports	None; but see (33530) 18431/11 and (33533) 18480/11: HC 83–iii (2013–14), chapter 20 (21 May 2013) and HC 83–i (2013–14), chapter 8 (8 May 2013); also see HC 428–xlviii (2010–12), chapter 12 (25 January 2012), HC 86–v (2012–13), chapter 6 (20 June 2012) and HC 86–xxxiv (2012–13), chapter 2 (6 March 2013); also see (33244) 15560/11 + ADDs 1–2: HC 428–xli (2010–12), chapter 6 (9 November 2011)
Discussion in Council	24 June Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared

Background

9.1 The European Development Fund (EDF) is the main instrument for delivering EU assistance for development cooperation under the Cotonou Agreement with African, Caribbean and Pacific (ACP) States and for financing EU cooperation with the Overseas Countries and Territories (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.

Commission Communication 18431/11

9.2 Commission Communication, *Preparation of the multiannual financial framework regarding the financing of EU cooperation for African, Caribbean and Pacific States and Overseas Countries and Territories for the 2014–20 period (11th European Development Fund)*, included a draft EDF11 Internal Agreement. The proposed overall figure for EDF11 was set at €34,275.6 million. The UK's share would be 14.33%. The Commission are to present proposals for the Implementing and Financial Regulations at a later stage.

Council Decision 18480/11

9.3 This 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 2014–20 of the ACP-EU Partnership Agreement, is based around the proposed Internal Agreement, and embodied the position to be taken by the EU in discussion at the EU/ACP Council of Ministers; once agreed with the ACP, it forms a new annex to the Cotonou Agreement (and thus forms part of the EU's External Action: Heading 4 of the EU budget).

9.4 The Communication and Council Decision are part of a total package covering Heading 4 of the EU budget, on External Action, involving a range of other financial instruments (pre-accession finance, European Neighbourhood Partnership, etc.).

9.5 As noted in our most recent Report on these documents, the EDF element was de-coupled from the rest of the process and adopted 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.

9.6 Annex 1c of the Council Decision[53] sets out a total of €32.218.4 million under the 11th European Development Fund (EDF) and the main components thereof. It says that funds shall be made available from the entry into force of the multiannual financial framework.

9.7 We cleared the Commission Communication and Council Decision on 21 May 2013.[54]

The Commission Communication

9.8 In her Explanatory Memorandum of 13 June 2013, the Parliamentary Under-Secretary of State at the Department for International Development (Lynne Featherstone) explains that this Commission Communication proposes the provisional application of a number of articles of the EDF11 Internal Agreement. She notes that, although the Internal Agreement will be signed by Member States this month, it will only enter into force once all 27 Member States have ratified it, which is expected to take 18 months or more.

9.9 The Communication accordingly proposes a Decision to allow for the provisional application of relevant Internal Agreement articles, so as to ensure all appropriate decision making procedures and modalities for the implementation and programming of EDF11 are put in place whilst Member States ratify the agreement — thereby minimising any delay to the disbursement of funds once full ratification has been completed. The articles to be provisionally applied include establishing the Investment Facility Committee at the European Investment Bank (EIB), the adoption of an Implementing Regulation and a Financial Regulation and allowing for the adjustment of contribution keys on the accession of Croatia to the EU.

9.10 With regard to the *Legal and Procedural* aspects, the Minister says:

53 See the Annex to this chapter of our Report.

54 See headnote: (33530) 18431/11 and (33533) 18480/11: HC 83–iii (2013–14), chapter 20 (21 May 2013) and HC 83–i (2013–14), chapter 8 (8 May 2013).

"The legal basis for the Decision annexed to the Communication consists of Member States' inherent national competence. In entering into this decision the 27 MS are acting outside of the scope of the EU Treaties because they are entering into it as MS meeting within the Council (but not acting as the Council).

"Voting procedure: Consensus (because Member States are acting independently of the EU)."

The Government's view

9.11 The Minister says that she is satisfied with the EDF11 Internal Agreement and ready to sign it at the 24 June Foreign Affairs Council. She notes that the Decision on provisional application introduces no additional commitments on Member States and does not allow any EDF11 funds to be committed until ratification is completed by all Member States. The same approach was, she says, followed for the transition from EDF9 to EDF10.

9.12 The Minister supports the proposed approach, so as to ensure that any delays in disbursing EDF11 funds are minimised. Based on the DFID's Multilateral Aid Review, the Minister considers the EDF to be a good instrument for aid delivery with a clear focus on poverty reduction, and therefore sees it as important to ensure that EDF11 funds are available to be disbursed as soon as possible after 1 January 2014.

9.13 Finally, the Minister notes that, although the Commission cannot disburse EDF11 funds until all Member States have ratified the agreement, she expects that, in order to ensure some continuity and on-going predictability of aid flows to beneficiary countries, balances from EDF8 and EDF9 and de-committed funds from EDF10 will be made available during the period before EDF11 enters into force.

Conclusion

9.14 **The proposal is, as the Minister notes, identical to that followed with EDF 10, and continues to be appropriate for the reasons she adduces.**

9.15 **As with all of the process thus far, we are drawing this latest stage to the attention of the International Development Committee.**

9.16 **We now clear the document.**

Annex 1c of the Council Decision 18480/11

"ANNEX 1c

"Multiannual 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 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."

10 Member States' application of EU law in 2011

(34581) 18034/12 COM(12) 714	Commission Report: *29th Annual Report on monitoring the application of EU Law (2011)*
+ ADDs 1–2	Commission Staff Working Document*: situation per sector and situation per Member State*

Legal base	—
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 15 March 2013
Previous Committee Report	HC 86–xxxii (2012–13), chapter 3 (13 February 2013)
Discussion in Council	None foreseen
Committee's assessment	Legally important
Committee's decision	Cleared

Previous scrutiny

10.1 The Commission publishes an annual report on the extent to which Member States comply with EU law.

10.2 When we previously considered this document we listed for the first time the key infringements by each Member State for the insight they gave into areas where they are the least willing to comply with EU law. These included extending social rights to families of EU citizens under the Free Movement Directive (common); opening up gas markets, ports and airports to open competition; non-implementation of the defence procurement Directive; working time restrictions; and procurement. In relation to the UK, we asked the Government to explain in further detail:

- why it had the eighth highest number of infringement cases against in 2011 (albeit its performance was the best in its "reference group") and whether the Government thought it necessary to take steps to address this;
- why the number of infringement cases against the UK for late-transposition went from 35 in 2010 to 57 in 2011, and whether the Government thought it necessary to take steps to address this; and
- why a review of the UK's approach to Commission infringement proceedings was considered necessary, and what the outcome was.

The Minister's letter of 15 March 2013

10.3 In terms of number of infringements, the Minister for Europe says that larger Member States have higher numbers of infringement proceedings as a general rule, which is demonstrated by the report. Compared to similarly sized Member States, the UK, like

Germany, had the lowest number with 76 open infringements, France and Poland 95, Spain 99, and Italy 135.

10.4 In contrast, the number of infringement procedures for late transposition of Directives (non-notification cases) in 2011 in the UK exceeded that of most of the States in its reference group. The Minister requested further information from Whitehall Departments to provide reasons for this number. The following reasons were identified for the number of infractions including:

- in several cases, Departments had chosen to implement legislation as a package, or needed to carry out particularly extensive consultation before bringing forward the necessary implementing legislation; and
- in some cases there were also delays in receiving necessary EU level clarification on implementation, either where the Government had requested this or where the Commission had committed to providing it.

10.5 Information from Departments also highlighted reasons why the number of infringement cases against the UK for late transposition increased between 2010 and 2011. These are as follows:

- Departments experienced a spike in the number of Directives needing to be implemented in the relevant period, which added to the already significant implementation burden;
- some Departments cited the (then) new Government's guiding principles for EU legislation for transposition as one of the contributing factors in delaying transposition (since this process was unforeseen at the time when the deadline for transposition was agreed as part of the negotiation of the Directive). This led to delays because of the time taken "to embed the rigorous new better regulation processes"; and
- an unusually large number of transport-related Directives had transposition dates during 2010 and 2011, which caused resourcing issues in the relevant Departments.

10.6 Nearly all of the non-notification cases have now either been closed by the Commission or are pending closure, the Minister confirms.

10.7 The Commission's report also refers to a number of other cases. These were cases which the UK contested on the basis that it took a different view from the Commission about the correct interpretation of a particular Directive or Regulation. In several cases these interpretative differences concerned provisions which would have imposed significant regulatory burdens on UK businesses and increased costs for UK taxpayers.

10.8 The Minister explains that, where there are disagreements with the Commission about the correct interpretation of a Directive or the UK's implementation of it, discussions with the Commission provide the Government with an opportunity to persuade the Commission of its point of view. Of course, in some cases these discussions led the Government to conclude that the Commission's position was correct and it has therefore agreed to amend its legislation to reflect the relevant Directive.

10.9 Sometimes, though, there will remain a difference of views between the UK and the Commission and in these circumstances the Commission may seek to refer the case to the ECJ to resolve the matter. In the period covered by the Commission's report five such cases were referred to the ECJ. In all of these the Government considers that it has respectable legal arguments on which to continue to contest the infraction proceedings, and that doing so is in the UK's interests.

10.10 The Committee also asked why a review of the UK's approach to Commission infringement proceedings was considered necessary. In response, the Minister says that, whilst the UK must of course fully implement EU law obligations, the Government considers that in line with its guiding principles it is important to take a robust approach so that it does not impose unnecessary regulatory burdens by going beyond what EU law requires. Furthermore, as Directives allow Member States discretion as to how they are transposed there will also be times when it is appropriate and right for the Government to defend the approach it takes to transposition even where the European Commission disagrees with how a Directive should be implemented.

10.11 One area in which the Government does recognise that there will almost never be a sound legal basis on which to defend infraction proceedings is in non-notification cases. The number of these cases has decreased in 2012. The Government will continue to keep its infractions strategy under review to ensure that the statistics for non-notification cases continue to improve.

Conclusion

10.12 **We thank the Minister for his helpful letter.**

10.13 **We welcome the cautious approach to implementation it outlines. A similar approach is reflected in the Government's Guiding Principles for EU Legislation, the final version of which[55] we attach as an annex to this Report for wider readership within the House. We also fully recognise that some differences of opinion between the Government and the Commission on the scope of implementing obligations within a Directive will inevitably lead to litigation before the ECJ.**

10.14 **We note the reasons for the number of non-notification cases and the Government's endeavours to reduce it. The Commission's 2012 and 2013 reports will show how successful it has been.**

10.15 **We have no further questions to ask and clear the Commission's report from scrutiny.**

55 23 April 2013.

Annex

Guiding Principles for EU Legislation[56]

These are the guiding principles underlying the Government's approach to EU measures, aimed at maximising the UK's influence in Brussels and ending the gold-plating of EU legislation in the UK.

General Principles

1. The Government's approach is to look at the cumulative impact of new EU measures.

2. Wherever possible, the Government will argue for alternatives to regulation at European level, drawing on behavioural science insights.

3.The Government will engage with the European Commission before it has adopted proposals to increase UK influence on the drafting of legislative proposals.

4. The Government will build alliances with other Member States and relevant MEPs and other EU-level stakeholders to increase the UK's effectiveness in negotiation.

Ministers must ensure that:

a) they are well sighted on all EU measures relevant to their department, from the initial Commission proposal through to transposition and implementation; and

b) their department assesses from the outset the impact on the UK of the proposed legislation and effectively project manages the process from negotiation to transposition.

5. When transposing EU law, the Government will:

a) ensure that (save in exceptional circumstances) the UK does not go beyond the minimum requirements of the measure which is being transposed;

b) wherever possible, seek to implement EU policy and legal obligations through the use of alternatives to regulation;

c) endeavour to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts;

d) always use copy out for transposition where it is available, except where doing so would adversely affect UK interests e.g. by putting UK businesses at a competitive disadvantage compared with their European counterparts. If departments do not use copy out, they will need to explain to the RRC[57] the reasons for their choice;

56 BIS/13/774, 23 April 2013 (https://www.gov.uk/government/publications/guiding-principles-for-eu-legislation).

57 The Reducing Regulation sub-Committee (of the Cabinet).

e) ensure the necessary implementing measures come into force on (rather than before) the transposition deadline specified in a directive, unless there are compelling reasons for earlier implementation; and

f) include a statutory duty for Ministerial review every five years.

Operating Principles

1. Twice a year, Ministers will report to the Foreign Secretary on their department's early influencing priorities and engagement strategies, showing how they are seeking both to influence the Commission's policy agenda and ensure that important future EU measures (legislative and non-legislative) are justified, that the policy objectives of a regulatory proposal cannot be achieved through non-regulatory means and proposals are drafted to maximise benefits and minimise risks to the UK. The European Affairs Committee, following consultation with the RRC, can then, in turn, agree cross-government early influencing priorities for joined-up lobbying.

2. Departments will endeavour to seek clearance for their proposed UK negotiating position promptly. Departments should analyse the order of magnitude of likely impacts of different negotiating options to help Ministers make evidence-based decisions. The analysis should be proportionate to the proposal and time available and be presented succinctly.

3. The government will work with EU partners to hold the EU institutions to account on the commitments they have made on consultation, impact assessment, the "think small first" principle and reviews in order to improve the quality of EU regulation.

4. Before starting transposition, departments must satisfy the RRC that they have identified the aims of the EU law and the relevant policies of the UK government, and how the two will be brought into harmony so that transposition neither has unintended consequences in the UK nor risks infraction.

5. The legal text for UK transposition should only be finalised once the policy framework has been agreed by the RRC.

6. The Regulatory Policy Committee must clear impact assessments for all transposition proposals.

7. The European Affairs Committee should be kept informed.

8. When reviewing departments' approach to transposing and implementing EU law, the RRC will expect departments to apply the following principles:

a) within two weeks of publication in the Official Journal the RRC to have been notified and provided with a pro forma including an outline project plan to the obligations coming into force;

b) proposed implementation applies the Guiding Principles and meets the standards in the Government's guide to European policy-making;

c) proposed implementation complements domestic legislative objectives; and

d) proposed implementation delivers the outcomes required by the directive, but does so in a way that (save in exceptional circumstances) avoids going beyond the minimum requirements; thereby minimising the cost to business. This should be supported by evidence.

11 EU-Iraq relations

(a) (34616) 10209/12 —	Draft Council Decision on the conclusion of a Partnership and Cooperation Agreement between the European Union and its Member States, and the Republic of Iraq
(b) (32177) 16179/10 COM(10)638	Draft Council Decision on the conclusion of a Partnership and Cooperation Agreement between the European Union and its Member States, and the Republic of Iraq

Legal base	Articles 79(3), 91, 100, 192(1), 194(4), 207, 209 and Article 218(5) TFEU; QMV
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 28 January 2013
Previous Committee Report	HC 86–xxii (2012–13), chapter 7 (5 December 2012)
Discussion in Council	December 2012
Committee's assessment	Legally important
Committee's decision	Cleared

Previous scrutiny

11.1 In March 2006 the Council authorised the Commission to negotiate a Trade and Cooperation Agreement with Iraq. Negotiations were launched in November 2006 and the final agreed text concluded in November 2009 in Brussels. The text was then amended in light of the Lisbon Treaty. In February 2009 in Baghdad, both Iraq and the EU agreed to amend the status of the draft Agreement, from a "Trade and Cooperation Agreement" to a "Partnership and Cooperation Agreement" (PCA). A more detailed background to the PCA is set out in our earlier Report.[58]

58 See headnote.

11.2 The PCA was signed in Brussels in May 2011. Member States have to ratify it before the Council Decision on conclusion is adopted. There is not a fixed timetable for the ratification process; it takes on average between 18 months and two years.

11.3 When we last reported we noted that the legal base for the draft Council Decision on conclusion of the PCA was to be updated to include one Title V legal base — Article 79(3) TFEU on readmission agreements. We kept the draft Decision under scrutiny and asked the Minister to deposit a revised draft, and to ensure that his accompanying Explanatory Memorandum:

— identified the provisions of the PCA which, in his view, created specific obligations for the EU and justified the citation of a Title V legal base;

— set out the relevant legal bases in Part 3, Title V TFEU which the Government believed should be cited; and

— if they were not cited, explained what further action the UK intends to take to protect its Title V opt-in.

The Government's view

11.4 In his Explanatory Memorandum of 28 January 2013, the Minister for Europe (Mr David Lidington), says that the opt-in Protocol (No. 21 to the EU Treaties) provides that in cases where justice and home affairs (JHA) obligations are being entered into by the EU, the UK and Ireland can choose whether or not to opt in and therefore to participate in those measures as part of the EU. If the UK chooses not to opt into such provisions and an agreement is mixed, so if it is between a third country (in this case Iraq) and the EU *and its Member States*, it is open to the UK to sign up to these elements of the PCA in its own right. This position is made clear in the preamble to the PCA noting the UK, Ireland and Denmark's participation and by a recital to the Council Decision.

11.5 The Minister confirms that the revised Council Decision on conclusion contains a Title V legal base —Article 79(3) TFEU— which engages the opt-in Protocol, and that the UK has signed up to this Article in its own right rather than as part of an EU obligation.

11.6 He says it is the UK's position that Articles 25 (Mode IV arrangements), 103 (judicial cooperation), and 105(5) (cooperation on migration and asylum, including reference to a future readmissions agreement) also fall under Part 3, Title V TFEU. However, no Title V legal bases other than 79(3) TFEU need be cited in the Council Decision on conclusion. It is the UK's practice not to press for a legal base on Mode IV. On judicial co-operation, Article 103 is aspirational rather than imposing concrete obligations. Furthermore, the judicial cooperation provisions concern cooperation between EU Member States and Iraq rather than intra-EU judicial cooperation, so this would fall under Member States' competence.

Conclusion

11.7 **As the Minister is aware, for reasons of legal certainty and transparency we have consistently taken the view that the citation of a Title V legal base in an EU**

international agreement is essential to engage the UK's Title V opt-in. We think that a unilateral assessment of whether a provision of an EU international agreement falls within Title V, and as a consequence the absence of a Title V legal base, will inevitably lead to legal uncertainty.

11.8 **We note the Minister's opinion that Articles 25 (Mode IV arrangements), 103 (judicial cooperation), and 105(5) (cooperation on migration and asylum, including reference to a future readmissions agreement) also fall under Part 3 of Title V, despite the absence of relevant legal bases. We have made our views plain on the application of Title V to this and other PCAs and, noting the issue is currently subject to litigation before the ECJ in relation to an EEA agreement, we are content to draw a line under our opposing views on this document.**

11.9 **We have no further questions to ask and clear both documents from scrutiny.**

12 European Neighbourhood Policy Action Plan between the EU and the Palestinian Authority

(34640) 17814/12 COM(12) 748	Draft Council Decision on the Union position within the Joint Committee established by the Euro-Mediterranean Interim Association Agreement on Trade and Co-operation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit of the Palestinian Authority (PA) of the West Bank and the Gaza Strip, of the other part, with regard to the adoption of a Recommendation on the implementation of the EU-PA ENP Action Plan

Legal base	—
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 22 March 2013
Previous Committee Report	HC 86–xxxv (2012–13), chapter 20 (13 March 2013)
Discussion in Council	Discussed in March 2013
Committee's assessment	Legally and politically important
Committee's decision	Previously cleared

Previous scrutiny

12.1 The background to this document is set out in our Report of 13 March of this year. In its conclusion we observed that the cover note to the Council Decision adopting the EU position within the EU-Palestine Joint Committee contained a declaration, which stated that the basis for the Decision is not Article 218(9) TFEU because the Action Plan is political and so not intended to have legal effects. We were, however, left puzzled about how this declaration sat with the provision in primary EU law that "a [non-CFSP] decision

shall be binding in its entirety" (Article 288 TFEU). We asked for the Minister's views on this, and for confirmation of the voting procedure used to adopt the Decision. Though a purely procedural question, it seemed to have important repercussions for the Government, and also for Parliamentary scrutiny of Action Plans, which would not be depositable if adopted by Council Conclusions.

The Minister's letter

12.2 In a letter dated 22 March the Minister for Europe writes as follows:

> "We have argued consistently that a Council decision is not the right means to adopt a text of a political nature. As the Committee will be aware, the Government's view remains that the Council decision for the EU-Palestine Action Plan is not a legally binding decision pursuant to Article 288 TFEU. There is no substantive legal base cited on the face of the Council decision. As the I/A cover note for the decision acknowledges, the text of the Action Plan is of a political nature having no legally binding effects for the Parties; and the position to be approved by the Council is not based on Article 218(9) TFEU. On the basis of the I/A cover note, it is clear that this act of the Council is not a decision as provided for in Article 288 TFEU but rather a *sui generis* Council decision that creates political rather than legal commitments. The Council decision and the cover note were agreed by consensus on 18 March.
>
> "I note the Committee's concerns in relation to the Parliamentary scrutiny of Action Plans if they are adopted by Council Conclusions. The I/A cover note for the Council decision notes that the Council will revert to the issue of the appropriate Council procedure for the adoption of future Action Plans and I will keep the Committee informed as to the outcome of these discussions and their implications for the Parliamentary Scrutiny process."

Conclusion

12.3 **We thank the Minister for his letter. We take note of the argument he makes, which we consider novel because the Treaties do not provide for non-legally binding Council Decisions such as this.**

12.4 **We would be grateful to be kept informed of developments in agreeing the procedure to be adopted for Action Plans, not least because of its consequences for Parliamentary scrutiny. As we have said before, our view is that European Neighbourhood Policy Action Plans, in whatever form they are to be adopted, should be depositable documents; it may be that our Standing Orders will have to be amended to include them specifically if they are not to be adopted by Council Decisions in the future.**

13 Advocates-General at the Court of Justice of the EU

(34724) 7013/13 —	Draft Council Decision increasing the number of Advocates-General of the Court of Justice of the European Union

Legal base	Article 252(1) TFEU; unanimity; —
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 10 June
Previous Committee Reports	HC 83–iv (2013–14), chapter 12 (5 June 2013); HC 86–xxxvii (2012–13), chapter 3 (26 March 2013)
Discussion in Council	June 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Previous scrutiny

13.1 We last reported on this draft Council Decision on 5 June 2013.

13.2 A debate on the floor of the House took place on 11 June to approve the Government's intention to support the adoption of the draft Council Decision, a statutory requirement by virtue of section 10(1)(c) of the EU Act 2011. The Government's motion was duly approved.

The Minister's letter of 10 June

13.3 Before the debate took place, the Minister for Europe wrote in response to questions raised in the Committee's last Report. The Committee asked: for a further explanation of the Government's view that the costs for the additional Advocates-General can be met from within the Court's existing budget; for an assessment of the likelihood of this being achieved; and for the Government's views on the appointment process for Advocates-General.

13.4 The Government is aware of Advocate-General Sharpston's evidence to the House of Lords on the issue of funding the additional Advocates-General. It remains the Government's view that the costs for the three additional Advocates-General can and should be met from within the existing budget of the Court. By the Government's calculations, the total costs for the additional Advocates-General and their support staff are 1.1% of the Court's overall budget. The additional Advocates-General are the latest in a package of reforms aimed at improving the Court's efficiency and effectiveness, and an aspect of this is improving the Court's financial efficiency by ensuring that any reforms do not result in an increase to costs for Member States.

13.5 The Committee also asked the Minister for an assessment of the likelihood of the Court meeting the additional cost:

> "On this point I can be very clear: the decision is not for the Court. The Court can request additional funds, but funding is for co-decision by the Council and the European Parliament While Members of the Committee will appreciate that I cannot comment on other Member States' negotiating positions within the Council, I can reassure them that the UK is one of a blocking minority of budget-disciplined, net-contributor Member States. This group routinely votes against increases to the EU budget. We expect that this likeminded group will retain their budget disciplinary stance with regards to any request to increase the budget, including this request regarding the new Advocates-General. We will continue to work together with likeminded Member States on this and the broader EU administrative budget, and we anticipate support for our negotiating position. The minute statement which I am prepared to table is not intended to secure budget neutrality on its own. It is intended to signal the beginning of our negotiating position for next year and to guard against the possible charge that we have already, by implication, agreed to an increase in the budget by approving the additional Advocates-General."

13.6 The Committee's final questions were regarding the appointment process for Advocates-General. This followed on from evidence which Mr Lasok QC gave to the House of Lords regarding the Article 255 Panel. The Government believes that the Panel plays a key role in making the judicial appointments process more transparent and in helping to ensure that chosen candidates are of a high quality. The UK was a key supporter of the Article 255 Panel at its inception and worked to add this rigour to the judicial selections process. The Panel is functioning well and is effective in its role of assessing the suitability of nominees to perform the duties of judges and Advocates General at the Court. To date, the Panel has delivered 43 opinions, of which five were unfavourable: all of which have been followed by the governments of Member States.

13.7 In terms of the specific appointees for the additional Advocates-General: the Government does not yet know who the candidates will be. Under the proposed Council Decision, the Polish Advocate-General would be appointed first, and if the 1 July 2013 date cannot be adhered to, is to be appointed at some point later this year, but the other two will not be appointed until October 2015. The Minister says it would not be appropriate for him to give an opinion on the calibre of the candidates. That is the very purpose of the Article 255 Panel and it is a role which it does very well.

Conclusion

13.8 **We thank the Minister for this letter, which clarifies his letter of 22 May. We are particularly gratified to know that the Minister considers there will be a blocking minority in the Council opposing an increase in the EU budget, including to accommodate the cost of three new Advocates-General, so that the costs will come from the Court's already generous budget.**

13.9 **As the House has approved the Government's intention to give political agreement to this proposal, and as such agreement is expected before the end of this month, we now clear it from scrutiny.**

14 The composition of the European Parliament

(34936) EUCO110/13 —	Draft European Council Decision establishing the composition of the European Parliament

Legal base	Article 14(2) TEU; unanimity
Deposited in Parliament	20 May 2013
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 13 June 2013
Previous Committee Report	HC 83–iv (2013–14), chapter 14 (5 June 2013)
Discussion in Council	27 June 2013 European Council
Committee's assessment	Politically important
Committee's decision	Cleared

Background

14.1 Article 14(2) TEU caps the total number of MEPs at 750, plus the President of the European Parliament. It also specifies a minimum threshold of six members per Member State, and a maximum of 96, with seats to be distributed within those limits on the basis of "degressive proportionality" — broadly defined the Minister for Europe (Mr David Lidington), said in his earlier EM as the principle that the distribution of seats should, insofar as is possible, reflect the range of populations of Member States, with larger Member States having more MEPs, but those MEPs in turn representing larger numbers of citizens.

The draft Council Decision

14.2 This European Council Decision proposes a redistribution of seats following Croatian accession. There are currently 754 MEPs; an additional 12 Croatian MEPs will join the EP following Croatian accession on 1 July, for the remainder of the 2009–14 European Parliamentary term. A reduction of 15 is therefore required. Furthermore, Germany's current allocation of 99 MEPs must be reduced by three to meet the cap. Although this will affect several other Member States too, it maintains the UK's current allocation of 73 seats, and commits to a further review ahead of the 2019 EP elections.

14.3 The Minister explained that:

- this draft European Council decision mirrors the European Parliament proposal put forward earlier this year, in terms of both the numbers proposed for the distribution of MEPs, and the remainder of the European Council decision text;

- as such, it reflected the decision of the EP's Constitutional Affairs Committee: having reflected on a number of different formulae which could be used to calculate the distribution of seats in a way which more strictly reflects the principle of "degressive proportionality" and discounting them as either running up against

other provisions in the Treaties (the minimum and maximum threshold for MEP numbers, and the cap on MEPs) or requiring a more radical redistribution of seats that would be politically unpalatable, to opt for a solution which minimises the impact on Member States, whilst "very broadly reflecting the provisions outlined within the Treaties."

14.4 Thus, as well as Germany losing three MEPs, Romania, Greece, Belgium, Portugal, the Czech Republic, Hungary, Sweden, Bulgaria, Ireland, Croatia, Lithuania and Latvia all lose one MEP each.

14.5 The Minister professed himself content with the proposed allocation of seats, which maintains the *status quo* for the UK and increases the UK's proportion of seats. However, he said that a viable solution needed to be found that better reflected the principle of "degressive proportionality" in the longer term, and that a fairer system that recognised this principle and limited the comparative over-representation of citizens of smaller Member States compared to those of the larger ones could be found. He was accordingly pleased to note the commitment in the EP's report to a review of current arrangements within the first half of the next EP term, with the objective of devising "a more degressively proportional formula for the European Council to consider and agree upon, in good time before the 2019 European Parliament elections"; and said that he would push for the language in the draft to be strengthened so that this is better reflected in the Council Decision itself. He also noted "language in this draft Council decision which references voting weights in the Council" that he considered unnecessary in this context, and would be pushing for the draft Decision to be amended to this end.

14.6 Finally, the Minister said that he would be pushing for the text of the draft Decision to be amended, so as to include wording seeking to ensure that the question of composition of the European Parliament was addressed much earlier in future.

Our assessment

14.7 The outcome appeared to serve UK interests in the immediate future. However, we were concerned that this proposal had been put forward so late in the day, and asked the Minister to explain why it had not been promulgated sooner.

14.8 We asked him to do so when he was in a position to confirm that he had achieved the improvements to the draft text detailed above, and also to explain what his concerns were about the inclusion of any reference to voting weights.

14.9 In the meantime, we retained the document under scrutiny.[59]

The Minister's letter of 13 June 2013

14.10 With regard to our concern about the proposal not having been put forward sooner, the Minister says:

59 See headnote: HC 83–iv (2013–14), chapter 14 (5 June 2013).

"The Government shares the Committee's concerns on this point. The reason these proposals were put forward so late in the day appears to be two-fold:

i) "There is no guideline timetable attached to the process for determining composition, as outlined in Article 14(2) TEU. The European Parliament therefore only adopted a draft decision for consideration by the European Council (the first stage of the process outlined in Article 14(2) TEU) earlier this year, and this draft decision was only then tabled for a first discussion by Member State delegations in May.

ii) "Although the European Parliament elections are still almost a year away, there appears to have been a lack of full understanding, on this occasion, of the various processes which need to be completed in a number of Member States in advance of the elections, and how long these would take. This, combined with point (i) above, has resulted in the timetable for consideration by Member States being shortened considerably.

"In order to avoid a recurrence of these problems in future, the Government, working with our European partners, has pushed for, and achieved, an amendment to the draft European Council Decision which calls for the European Parliament to come forward with a proposal for composition of the European Parliament post 2019 (the first stage of the process outlined in Article 14(2) TEU), by the end of 2016. This should allow sufficient time for Member States to consider, discuss and amend the proposal as necessary, and complete their domestic processes, including consulting with their national Parliaments, well in advance of the 2019 European Parliament elections. Officials are also engaging with the Secretariats of the Institutions more widely to ensure that there is increased understanding of the UK's domestic scrutiny processes."

14.11 With regard to the improvements to the draft text that the Minister said that he would be seeking, and what his concerns were about the inclusion of a reference to voting weights, the Minister says:

"The Government is now in a position to confirm that we have been successful in negotiating amendments among Member State delegations to the draft text along the lines of those we outlined in our earlier Explanatory Memorandum. This draft revised text is still subject to the UK scrutiny reserve. The text of a presidency non-paper detailing these amendments is annexed to this letter for the Committee's consideration.[60]

"Crucially delegations have agreed that Article 4 of the draft Council decision could be helpfully revised to read as follows:

"'*This Decision shall be revised sufficiently far in advance of the beginning of the 2019 - 2024 parliamentary term <u>on the basis of an initiative of the European Parliament presented before the end of 2016</u> with the aim of establishing a system which in future will make it possible, before each fresh election to the European Parliament, to allocate*

60 And reproduced at Annex 1 to this chapter of our Report.

the seats between Member States in an objective, fair, durable and transparent way, translating the principle of degressive proportionality as laid down in Article 1, taking account of any change in their number and demographic trends in their population, as duly ascertained, thus respecting the overall balance of the institutional system as laid down in the Treaties.

"I have underlined the amendments to the text which address the concerns I flagged in my previous Explanatory Memorandum:

i) "Firstly, that the European Parliament should present a proposal for the composition of future European Parliaments, which reflects the principles outlined in the Treaties, in sufficient time before the 2019 elections — the imposition of a deadline for such a proposal should ensure there is sufficient time for consideration in future.

ii) "Secondly, that the explicit reference to voting weights in the Council be removed. It is the Government's view that such an explicit reference to voting weights in the Council is unhelpful; the original draft European Council Decision conflated two separate institutional issues, and arrangements, which have their own rules and parameters within the Treaties. Following discussions in COREPER, the draft decision has been amended to include a more generic reference to the importance of respecting the balance of the institutional system as laid down in the Treaties; this is preferable, as it sets the composition of the European Parliament in a wider context, but does not confuse it with a different, specific, institutional issue.

14.12 Finally, the Minister notes a number of further amendments to the draft text, with which the Government is also content: "linguistic changes, which serve to enhance the clarity of the text, alongside the introduction of a new recital five. This new recital sets the context for this European Council Decision, reflecting on the institutional balance and accountability of the institutions detailed within Article 10 TEU, and how this sets the context for Article 14 TEU."

Conclusion

14.13 **We are grateful to the Minister for this further information, which answers our questions satisfactorily.**

14.14 **We also append, at Annex 2 of this chapter of our Report, a copy of a letter of 5 June 2013 to the Minister from the Leader of the UK Delegation to the Committee of the Regions (CoR), which (its date notwithstanding) we have only just received. While endorsing the Government's position on the recomposition of the European Parliament, the Leader of the UK Delegation argues that the "UK's under-representation in the European Parliament is not only replicated in the Committee of the Regions, but is in fact much worse", says that the view of the UK delegation is that the CoR template should simply map that of the European Parliament in the ratio 750:350, and requests "that a provision be added to apply this new template and any future revisions to the composition of the CoR". We are unsighted as to any response from the Minister. We are therefore drawing this to the attention of the House, so that any interested Members may pursue the matter directly with him.**

14.15 **We now clear the Council Decision.**

Annex 1: Presidency non-paper text proposing changes to the DRAFT EUROPEAN COUNCIL DECISION establishing the composition of the European Parliament.

"Recital 4

"~~This Decision complies with the criteria laid down in the~~ **The** first subparagraph of Article 14(2) of the Treaty on European Union **lays down the criteria for the composition of the European Parliament**, namely that representatives of the Union's citizens are not to exceed seven hundred and fifty in number, plus the President, that representation is to be degressively proportional, with a minimum threshold of six members per Member State, and that no Member State is to be allocated more than ninety-six seats,

"Recital 5 (new)

"Article 10 of the Treaty on European Union provides *inter alia* that the functioning of the Union shall be founded on representative democracy with citizens being directly represented at the Union level in the European Parliament and Member States being represented by their governments, themselves being democratically accountable to their national Parliaments or citizens, in the Council. Article 14(2) on the Treaty on European Union on the composition of the European Parliament ~~should~~ therefore ~~be viewed~~ **applies** within the context of the wider institutional arrangements set out in the Treaties which also include the provisions on decision-making in the Council.

"Article 3

"Pursuant to Article 1, the number of representatives in the European Parliament elected in each Member State is hereby set as follows~~, with effect from the beginning of~~ **for** the 2014–2019 parliamentary term:

[…]

"Article 4

"This Decision shall be revised sufficiently far in advance of the beginning of the 2019–2024 parliamentary term **on the basis of an initiative of the European Parliament presented before the end of 2016** with the aim of establishing a system which in future will make it possible, before each fresh election to the European Parliament, to allocate the seats between Member States in an objective, fair, durable and transparent way, ~~based on~~ **translating** the principle of degressive proportionality as ~~set forth~~ **laid down**[61] in Article 1, taking account of any change in their number and demographic trends in their population, as duly ascertained~~, as well as of the voting system in the Council~~ **thus respecting the overall balance of the institutional system as laid down in the Treaties**."

61 "tel que fixé à" in the French version.

Annex 2: Letter of 5 June 2013 from Cllr Gordon Keymer CBE, Leader, UK Delegation to Committee of the Regions (CoR) and Leader, Tandridge District Council

"I am writing on behalf of the UK Delegation to the EU Committee of the Regions

"We have noted the proposals for adjusting the composition of the European Parliament that will be submitted to the European Council later this month. Our understanding is that the UK will support these changes as a step in the right direction towards greater proportionality, and that the UK will insist that a further review be undertaken in due course.

"The UK's under-representation in the European Parliament is not only replicated in the Committee of the Regions, but is in fact much worse, where we have only 24 members in an institution of 350 members. In fact, the CoR will breach that limit with the current accession of Croatia, and must go through the same process of structural adjustment as the Parliament to get back to this limit when the new mandate starts in 2015.

"The view of the delegation is that the CoR template should simply map that of the European Parliament in the ratio 750:350. By our calculation, such a readjustment would give the UK an additional 12 places, compensated by reductions in countries that are currently over-represented. There would be no budgetary implications.

"This would give us equivalent weight to that enjoyed in the EP and enable us to play an important role in scrutinising how new EU laws impact on our local councils and ensure that they impose no additional burdens and are fit for purpose.

"We therefore commend the UK position in relation to the recomposition of the European Parliament, and request that a provision be added to apply this new template and any future revisions to the composition of the CoR."

15 Further amendments to EU restrictive measures against the Syrian regime

(34985) — —	Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria

Legal base	Article 29 TEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM and Minister's letter of 11 June 2013
Previous Committee Report	None; but see (34897) —, (34898) —, and (34899) —: HC 83–iv (2013–14), chapter 25 (5 June 2013); (34746) —: HC 86–xxxv (2012–13), chapter 4 (13 March 2013) and HC 83–i (2013–14), chapter 2 (8 May 2013); also (34309) — and (34310) — : HC 86–xiii (2012–13), chapter 27 (17 October 2012); and (34101–3) — : HC 86–xi (2012–13), chapter 26 (5 September 2012); (34024) — and (34025) — : HC 86–vi (2012–13), chapter 10 (27 June 2012) and (33974) 10751/12: HC 86–vi (2012–13), chapter 3 (27 June 2012); (33768) — and (33769) — : HC 428–lvi (2010–12), chapter 7 (27 March 2012); (33711) — , (33712) — and (33705) 6604/12: HC 428–lii (2010–12), chapter 20 (29 February 2012); (33635–7) — : HC 428–l (2010–12), chapter 12 (8 February 2012); (33515) — and (33516) — : HC 428–xliv (2010–12), chapter 15 (14 December 2011); (33213) — and (33214) — : HC 428–xxxviii (2010–12), chapter 19 (19 October 2011); (33160) 14410/11 and (33168) — : HC 428–xxxvii (2010–12), chapter 20 (12 October 2011); (33072) 13474/11 and (33073) 13475/11: HC 428–xxxv (2010–12), chapter 16 (7 September 2011); (33101) — , (33102) 13640/11, (33103) 13643/11: HC 428–xxxv (2010–12), chapter 19 (7 September 2011); (32933–36) —: HC 428–xxxi (2010–12), chapter 11 (29 June 2011); and (32747) — and (32748) —: HC 428–xxvi (2010–12), chapter 11 (11 May 2011)
Discussion in Council	31 May 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Background

15.1 In its 4 June 2013 Fact Sheet, the European Union describes its response so far to the crisis in Syria. This includes 22 sets of restrictive measures.[62]

15.2 Scrutiny by the Committee of the previous Council Decision and Council Regulations, and their background and justification, are set out in our previous Reports.[63]

Council Decision 2012/739/CFSP

15.3 Council Decision 2011/782/CFSP was due to expire on 1 December 2012 unless otherwise renewed. The documents that we considered on 19 December 2012:

— renewed the existing sanctions regime for another three months and consolidated into one new Council Decision — Council Decision 2012/739/CFSP — earlier Council Decisions that had amended Council Decision 2011/782/CFSP;

— amended the asset freezing measures to allow for the release of assets subject to post-designation judicial proceedings; and

— amended the identifying information of three designated individuals made subject to the asset freeze and travel ban restrictions.

The further Council Decision amending Council Decision 2012/739/CFSP

15.4 In the Foreign Affairs Council Conclusions of 18 February 2013, paragraphs 6 and 7 stated:

> "6. In accordance with the European Council conclusions of 13–14 December the EU will pursue efforts to reinforce its support and assistance to the civilian population In this context it welcomes the establishment by the National Coalition of an Assistance Coordination Unit and looks forward to enhancing its coordination with it.
>
> "7. The Council agreed to renew the restrictive measures against Syria for a further three months, amending them so as to provide greater non-lethal support and technical assistance for the protection of civilians. The Council will actively continue the work underway to assess and review, if necessary, the sanctions regime against Syria in order to support and help the opposition."[64]

15.5 The further Council Decision, which the Committee considered on 13 March, extended the EU's regime until 1 June 2013 and amended the restrictive measures in line with the conclusions. The Minister for Europe (Mr David Lidington) explained that it would thus allow:

62 Council Factsheet www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/128379.pdf.

63 See headnote.

64 See www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/135529.pdf for the full Council Conclusions.

— 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.

15.6 In its Report to the House, the Committee asked the Minister to clarify a number of uncertainties concerning, *inter alia*:

— what equipment — other than armoured non-combat vehicles — was to be provided; what the prior limitations to the types of assistance that could be provided to the opposition were 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 (all issues that the Minister had said were at the heart of the protracted negotiations among Member States, but about which he said nothing else);

— what the "new types of non-lethal equipment" were that the Foreign Secretary had subsequently said would be provided for the protection of civilians, going beyond anything provided hitherto;

— what protective equipment was to be provided; and

— 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.

15.7 Given the evident level of interest among Members in the crisis in general and "arming the Syrian opposition" in particular, the Committee recommended a debate on the Floor of the House, so that the Government could respond to its questions and set out its latest thinking, and asked that it take place as soon as possible.[65]

15.8 The debate finally took place on 21 May 2013.[66]

The Council Decision, Council Implementing Decision and the Council Implementing Regulation

15.9 The 22 April 2013 Foreign Affairs Council agreed to the adoption of two further Council Decisions and an accompanying Implementing Regulation that amend, or implement amendments to, the regime of restrictive measures on Syria. The details are in our most recent Report.

15.10 In essence, the provisions in Council Decision 2012/739/CFSP that prohibit:

65 See headnote: see (34746) —: HC 86–xxxv (2012–13), chapter 4 (13 March 2013).

66 For the record of the debate, see *HC Debs*, 21 May 2013, cols. 1175–1199. It is also available at http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130521/debtext/130521–0004.htm#13052186000002.

— the import, purchase or transfer of crude oil and petroleum products from Syria, as well as the provision of financing or financial assistance connected to these activities;

— the supply of key equipment and technology for key sectors of the Syrian oil and natural gas industry, as well as the provision of related technical assistance, training, financing or financial assistance; and

— the granting of loans to Syrian enterprises engaged in key sectors of the Syrian oil industry, acquisition of or extension of participation in such enterprises (e.g. through the purchase of shares), and the creation of joint ventures with such enterprises;

were amended to permit Member States to authorise these, provided:

— the Syrian National Coalition for Opposition and Revolutionary Forces had been consulted in advance by the relevant Member State;

— the activities would not directly or indirectly benefit individuals designated for an asset freeze under Syria sanctions; and

— the activities would not contravene any other EU Syria restrictive measures.

15.11 Member States are also required to inform other EU Member States of any authorisation granted under this exemption.

15.12 The Minister said that these derogations were complementary to the "proportionate derogations" with respect to the arms embargo on Syria, in order to allow Member States greater flexibility when seeking to support the protection of civilian life; they would support the civilian population, in particular in meeting humanitarian concerns, restoring normal life, upholding basic services, reconstruction, and restoring normal economic activity or other civilian purposes; and complement the strong political message sent by amendments to the arms embargo in March.

Our assessment

15.13 Our understanding was that the thinking behind these derogations was also that enabling the EU to support the oil trade in areas free from regime control would help to strengthen the hand of the National Coalition, and thus head off any reliance by the moderate Syrian opposition on Islamist-backed armed groups to fight a well-armed Syrian regime, and thereby boost the appeal and effectiveness of moderate groups over these extremists. We also understood that the National Coalition had to be consulted on each activity, and that private companies would not be able to trade oil in Syria until appropriate safeguards were in place.

15.14 The debate on the previous change to the Syria sanctions regime testified to both the degree of interest in the House in the Syria crisis and to its complexity. However, we considered it appropriate to leave it to interested Members to pursue any questions that arose from these further derogations through the other means at their disposal.[67]

67 See headnote: (34897) —, (34898) —, and (34899) —: HC 83–iv (2013–14), chapter 25 (5 June 2013).

Council Decision 2013/255/CFSP

15.15 In his Explanatory Memorandum of 11 June 2013, the Minister says that on 27 May 2013, the EU Foreign Affairs Council issued a Declaration on Syria which established a political commitment among Member States that, upon expiry of restrictive measures against Syria on 31 May, the majority of restrictive measures should be renewed for a further 12 months. This, he says, was with the exception of provisions restricting the export of arms and related materiel and of equipment which might be used for internal repression to Syria.[68]

15.16 The Minister says that the Declaration took note of Member States' commitment that in their national policies any sale, supply, transfer or export of such goods to Syria should be for the Syrian National Coalition for Opposition and Revolutionary Forces (SNC) and intended for the protection of civilians; that adequate safeguards against misuse of such authorisations should be required; and that export license applications for such goods should be reviewed by Member States on a case-by-case basis, taking full account of common EU rules governing control of exports of military technology and equipment set out in Council Common Position 2008/944/CFSP. He also recalls that Member States agreed not to proceed at that stage with delivery of equipment mentioned above; and to review its position before 1 August 2013, following a report from the High Representative.

15.17 The Minister then says that, subsequent to this Declaration, the RELEX working group began drafting a Council Decision, to give effect to this high-level political commitment:

> "The draft Decision was prepared very quickly, and was subject to intense negotiation at working group level over the course of one day (29 May). An amended draft was then placed under written procedure for adoption midday on 31 May. The Decision was then published in the Official Journal and therefore entered into effect on the afternoon of 31 May, thus averting the collapse of the entire Syria sanctions regime which would otherwise have fallen away on 1 June."
>
> "Specifically, this Council Decision contains the following changes to the arms embargo provisions of the Syria restrictive measures:

- "*removes* prohibitions on the sale, supply, transfer or export of arms and related materiel, and on the provision of technical assistance, financing or financial assistance related to these items;
- "*removes* prohibitions on the sale, supply, transfer or export of items which might be used for internal repression, and on the provision of technical assistance, financing or financial assistance related to these items; and
- "*retains* controls on certain chemical weapons precursors and related equipment (which is also referred to as 'equipment which might be used for internal repression' in the text of this Decision, and which will be specified further as equipment related to chemical weapons in the upcoming Regulation implementing

68 The Council Decision is reproduced at the Annex to this chapter of our Report, and is available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137315.pdf.

amendments to this regime) unless a Member State has determined that they are intended for food, agricultural, medical or other humanitarian purposes, or for the benefit of UN, EU or member states' personnel.

"During the course of these negotiations, Member States also agreed additional derogations to certain restrictive measures relating to banking, in order to enable EU financial institutions to open representative offices, subsidiaries or banking accounts in Syria, provided a number of conditions are met: i) that the Syrian National Coalition has been consulted; ii) that the activities concerned do not directly or indirectly benefit designated persons or entities; and iii) that the activities concerned do not breach other sanctions provisions.

"These changes to the banking provisions are designed to benefit the moderate Syrian opposition, to lay the ground for restoration of normal life and economic activity in areas of Syria free from regime control, and more specifically to allow the operation of a reconstruction and non-humanitarian assistance trust fund spearheaded by Germany and the United Arab Emirates."

The Government's view

15.18 The Minister comments as follows:

"The situation in Syria continues to deteriorate sharply. The humanitarian crisis is appalling. With the likely regime use of chemical weapons and the growth of extremism, the conflict has entered an even more dangerous phase. The United Kingdom believes a political solution is the only way to end the conflict in Syria. The longer the violence continues, the greater the threat to Syrians, the region and indeed the UK from radicalisation and regional escalation. But in order to maximise the prospects for a successful political solution, it is vital that we continue to strengthen the opposition and increase the pressure on the regime in order to bring both sides to the table. Lifting the EU arms embargo is therefore an essential enabler for a political solution: it helps put pressure on the regime to negotiate by sending a clear signal that no options are off the table.

"The decision to lift the arms embargo will also allow EU states the flexibility to offer support that strengthens the moderate opposition relative to extremists by reducing reliance by the moderate Syrian opposition on Islamist-backed armed groups to fight a well-armed regime. Crucially, it will ensure we could respond flexibly should the conflict see a major escalation, such as chemical weapons attacks. For these reasons, and after long negotiations on 27 May, EU ministers issued a political Declaration of their intention to end the EU arms embargo on Syria and to return to Member States decisions on arms and related materiel and internal repression items. They agreed that other elements of EU sanctions on the Assad regime should be retained.

"The Declaration (which is attached to this EM for information), and the subsequent 31 May Council Decision, took note of Member States' commitment with regard to the possible export of arms to Syria to proceeding in their national policies in line with a framework for the supply of military equipment to the National Coalition, intended for the protection of civilians, subject to safeguards against misuse of

authorisations and subject to existing obligations under the EU Common Position for arms exports (CP944).

"The UK has made no decision to send arms to the National Coalition, or anyone in Syria. UK assistance to the moderate opposition remains as the Foreign Secretary set out to the House of Commons on 20 May: non-lethal assistance such as body armour, protected vehicles and satellite phones, human rights training to members of Syrian civil society, and £171.1 million in humanitarian assistance to support people in opposition-held and contested areas in Syria and to help refuges in the region."

The Minister's letter of 11 June 2013

15.19 The Minister explains that, owing to the very brief window between the ministerial-level agreement at the 27 May Foreign Affairs Council to these further amendments and the expiry of the existing package of measures, a draft Council Decision renewing and amending the measures in line with the Council Declaration of 27 May was swiftly drafted for working group level negotiation on 29 May, and adopted by written procedure on 31 May. Given the compressed negotiating timescale and the vital importance of adopting a Decision before the measures fell away entirely, the Minister says that the need for the override of scrutiny on this occasion was regrettably unavoidable.

Conclusion

15.20 **Even though they have been debated in the House in other contexts, we are nonetheless drawing these changes to the attention of the House because of their continuing political significance. Though in other circumstances a further debate might be appropriate, the situation is, if anything, even more uncertain and fast-moving than it was at the time of our most recent Report. We therefore continue to regard it as preferable to leave it to interested Members to pursue these matters through the other means at their disposal.**

15.21 **We now clear the Council Decision, and do not object to the Minister having over-ridden scrutiny on this occasion and in these circumstances.**

Annex: Council declaration on Syria of 27 May 2013

"The Council agreed the following elements on the renewal of the restrictive measures against Syria:

"1) At the expiry of the current sanctions regime, the Council will adopt for a period of 12 months restrictive measures in the following fields, as specified in Council Decision 2012/739/CFSP:

— "Export and import restrictions with the exception of arms and related material and equipment which might be used for internal repression;

— "Restrictions on financing of certain enterprises;

— "Restrictions on infrastructure projects;

— "Restrictions of financial support for trade;

— "Financial sector;

— "Transport sector;

— "Restrictions on admission;

— "Freezing of funds and economic resources.

"2) With regard to the possible export of arms to Syria, the Council took note of the commitment by Member States to proceed in their national policies as follows:

— "the sale, supply, transfer or export of military equipment or of equipment which might be used for internal repression will be for the Syrian National Coalition for Opposition and Revolutionary Forces and intended for the protection of civilians;

— "Member States shall require adequate safeguards against misuse of authorisations granted, in particular relevant information concerning the end-user and final destination of the delivery;

— "Member States shall assess the export licence applications on a case-by-case basis, taking full account of the criteria set out in Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

— "Member States will not proceed at this stage with the delivery of the equipment mentioned above.

"The Council will review its position before 1 August 2013 on the basis of a report by the High Representative, after having consulted the UN Secretary General, on the developments related to the US-Russia initiative and on the engagement of the Syrian parties."

16 EU relations with Belarus

(35033) — —	Council Decision amending Decision 2012/642/CFSP concerning restrictive measures against Belarus

Legal base	Article 29 TEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 13 June 2013
Previous Committee Report	None; but see (34208) —: HC 86–xiii (2012–13), chapter 26 (17 October 2012); also see (33809) — and (33810) —: HC 428–lvii (2010–12), chapter 12 (18 April 2012); (33728) — and (33729) —: HC 428–liii (2010–12), chapter 11 (7 March 2012); (33639) —: HC 428–xlix (2010–12), chapter 20 (1 February 2012); (33193) —, (33194) — and (33158) 14303/11: HC 428–xxxvii (2010–12), chapter 25 (12 October 2011); (32857) —: HC 428–xxx (2010–12), chapter 16 (22 June 2011); (32435) —: HC 428–xiii (2010–11), chapter 16 (19 January 2011); (32019) —: HC 428–iii (2010–11), chapter 17 (13 October 2010); (31171) —: HC 5–iii (2009–10), chapter 17 (9 December 2009) ; (30507) — : HC 19–xiii (2008–09), chapter 10 (1 April 2009); (30076) —: HC 16–xxxiii (2007–08), chapter 5 (29 October 2008); and (27458) 8836/06 and (27459) — : HC 34–xxviii (2005–06), chapter 15 (10 May 2006)
Discussion in Council	24 June 2013 Foreign Affairs Council
Committee's assessment	Politically important
Committee's decision	Cleared

Background

16.1 In September 2004, the EU imposed a travel ban on four individuals implicated in the disappearances in 1999/2000 of four well-known persons and the subsequent obstruction of justice; a further two names were added in November 2004.

16.2 Following more seriously flawed Presidential elections in 2006 and the subsequent crackdown on protesters, an EU wide visa ban and asset freeze was imposed on 41 key members of the regime, including the chief miscreant, President Lukashenko.

Council Decision 2012/642/CFSP

16.3 This Council Decision (which we considered on 17 October 2012) renewed the restrictive measures imposed on Belarus— an arms embargo, prohibition on equipment

which could be used for internal repression and targeted sanctions (travel ban and asset freeze) — for a further 12 months, until 31 October 2013, and consolidated the numerous listing criteria that had previously been used to target individuals and entities into two categories:

— those responsible for serious violations of human rights or the repression of civil society and democratic opposition, or whose activities otherwise seriously undermine democracy or the rule of law in Belarus, or any person associated with them; and

— those benefiting from or supporting the Lukashenko regime.

16.4 The targeted individuals and entities were also consolidated into one annex, and totalled 243 individuals and 32 entities.

16.5 As our most recent Report recalled, following a period of suspension:

— sanctions were re-imposed in January 2011 in response to events following another flawed Presidential election in December 2010;

— in January 2012 the listing criteria were expanded to allow the EU to target those responsible for serious human rights abuses (not directly linked to presidential elections) and those who are benefiting from or supporting the Lukashenko regime;

— in February 2012, 19 judges involved in the most serious human rights abuses, along with the Chief of Police and Chair of the Court in Minsk were added; and

— in March 2012, three businessmen close to the regime and their companies were targeted, together with further judges, prosecutors, military and KGB officials.

16.6 On that last occasion, what seems to have tipped the balance with some hitherto reluctant Member States was that, in addition to no change of policy, the two individuals accused of carrying out the April 2011 bombing of the Minsk Metro were executed — death sentences that were, the Minister for Europe (Mr David Lidington) said at the time, implemented with unusual speed and against a background of real concerns about the fairness of the trial process.

16.7 Last October, the Minister said that the authorities had continued their harassment of independent journalists, political opposition, and civil society. Although three high-profile political prisoners had been released in April, after applying for a presidential pardon, they had not been rehabilitated, leaving them unable to take part in political life; and EU Heads of Mission in Minsk judged that 10 political prisoners remained in detention, with many reportedly facing very difficult conditions. Moreover, parliamentary elections held on 23 September were found by the OSCE observer mission again to have fallen short of international standards.[69]

69 For the full background, see headnote (34208) —: HC 86–xiii (2012–13), chapter 26 (17 October 2012).

The draft Council Decision

16.8 In his Explanatory Memorandum of 13 June 2013, the Minister for Europe (Mr David Lidington) says that — the PSC[70] having recommended on 31 May 2013 that the application of the EU travel ban against Belarus Foreign Minister Vladimir Makei should be suspended — this draft Council Decision will amend Council Decision 2012/642/CFSP accordingly.

The Government's view

16.9 The Minister comments as follows:

> "Vladimir Makei was appointed as Foreign Minister in August 2012. In his former position as Head of the President's Administration, he was considered to be the second most powerful person in the regime and thus responsible for organising the repression of peaceful demonstrators following the fraudulent presidential election in December 2010. He was added to the visa ban and asset freeze lists in January 2011.
>
> "The Council of the European Union keeps the restrictive measures against Belarus under constant review. EU member states are keen to expose Belarus to the benefits of increased engagement with the EU. An Eastern Partnership Foreign Ministers' meeting is scheduled for 22 July in Brussels ahead of an Eastern Partnership Summit in November in Vilnius. Within the policy of critical engagement with Belarus, EU members are seeking to enable Makei's attendance at the July meeting. The visa ban has an exemption mechanism to enable listed individuals to travel to the EU in certain circumstances, for example to attend meetings "where a political dialogue is conducted that directly promotes democracy, human rights and the rule of law in Belarus". However, Makei has made it clear that he is not prepared to attend on this basis. Suspension of his ban should encourage him to take the opportunity to attend the July meeting.
>
> "The proposed amendment only **suspends** Makei's travel ban. He remains a listed individual and all other restrictive measures against him will remain in place. The suspension can only apply if he retains his role as Foreign Minister, and will be reviewed along with the rest of the EU's measures by 31 October 2013. As the draft Council Decision makes clear, the suspension will be kept under constant review, and may be amended at any time. The Decision does not reflect a change in policy in relation to Belarus."

16.10 The Minister notes that this Council Decision is planned to be adopted by the 24 June Foreign Affairs Council.

70 The Political and Security Committee (PSC) meets at the ambassadorial level as a preparatory body for the Council. Its main functions are keeping track of the international situation, and helping to define policies within the Common Foreign and Security Policy (CFSP) including the CSDP. It is also tasked with preparing a coherent EU response to a crisis and exercising political control and strategic direction during it.

Conclusion

16.11 **The Foreign and Commonwealth Office website notes that Belarus remains one of the countries of concern for its human rights record, and that the Government's policy is threefold:**

- **working to get Belarus to participate in regional organisations and to commit to the principles of international law and fundamental values, including democracy and good governance;**
- **working with EU partners, non-government organisations and others to raise human rights issues with the Belarusian government; and**
- **calling on the Belarusian government to release all political prisoners and rehabilitate them.**[71]

16.12 **The suspension of Mr Makei's travel ban for the purpose outlined thus makes sense.**

16.13 **Looking ahead, when the Minister submits his Explanatory Memorandum on the renewal of the overall sanctions regime in October, we should be grateful if he would provide his assessment of the effectiveness of this suspension.**

16.14 **In the meantime, we now clear this document.**

71 https://www.gov.uk/government/priority/improving-the-international-rules-based-system-in-belarus-including-respect-for-human-rights.

17 EU assistance to the Palestinian Authority

(35034) — —	Council Decision on the European Union Police Mission for the Palestinian Territories (EUPOL COPPS)
(35035) — —	Council Decision amending and extending Joint Action 2005/889/CFSP on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EUBAM Rafah)

Legal base	Article 28 and 43(2) TEU; unanimity
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 13 June 2013
Previous Committee Report	None; but see (34006) — and (34007) — : HC 86–v (2012–13), chapter 15 (20 June 2012); also (33517) — and (33518) —: HC 428–xliv (2010–12), chapter 16 (14 December 2011); (32749) —: HC 428–xxvi (2010–12), chapter 12 (11 May 2011) and (32230) —: HC 428–x (2010–11), chapter 20 (8 December 2010)
Discussion in Council	June 2013
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested

Background

EUBAM Rafah

17.1 Following the 15 November 2005 Agreement on Movement and Access for Gaza between Israel and the Palestinian Authority, the EU adopted Joint Action 2005/889/CFSP to establish a European Security and Defence Policy Border Assistance Mission at the Rafah crossing point between Gaza and Egypt. Whilst active, EUBAM Rafah facilitated the crossing of over 500,000 people and contributed to confidence building activity between the parties related to border control and customs. However, following the Hamas takeover of the Gaza strip the mission has not been opened since June 2007, and has been on standby ever since.

17.2 In June 2010, the mission was downsized to 13 international staff; but its scope remained to provide a Third Party presence at the Rafah Crossing Point in order to contribute, in cooperation with the Union's institution-building efforts, to the opening of the Rafah Crossing Point and to build up confidence between the Government of Israel and the Palestinian Authority.

17.3 To this end the mission was tasked to:

— actively monitor, verify and evaluate the Palestinian Authority's performance with regard to the implementation of the Framework, Security and Customs Protocols concluded between the parties on the operation of the Rafah terminal;

— contribute, through monitoring, to building up the Palestinian capacity in all aspects of border management at Rafah;

— contribute to the liaison between the Palestinians, Israeli and Egyptian authorities in all aspects regarding the management of the Rafah Crossing Point.

17.4 The Council Decision in question established costs for the mission at €1.95 million, of which the UK was to contribute approximately £236,000.

17.5 At that time, the Minister for Europe (Mr David Lidington) said that:

— the Government continued to support EUBAM Rafah as a demonstration of EU political commitment to the Middle East Peace Process and reactivating EUBAM Rafah as soon as political and security conditions allowed this;

— the UK had consistently argued for the mission to be downsized in line with its current standby role, to a level that retained operational readiness and flexibility;

— the mandate of EUBAM Rafah had not changed, but the number of international staff had been decreased from 18 to 13, which was the minimum number required to maintain a mission ready to reactivate quickly if the border were to reopen;

— the border could only be opened with agreement between Israel, the Palestinian Authority and the United States, and the mission therefore continued to be on standby;

— EUBAM Rafah might be crucial to implementing the lifting of restrictions on Gaza when the situation allowed it; and

— the EU would need to stand ready to respond.

EUPOL COPPS

17.6 An EU Co-ordinating Office for Palestinian Police Support (EUPOL COPPS) was established in January 2005 within the office of the EU Special Representative (EUSR) to the Middle East Peace Process.[72] It then consisted of four police advisers seconded and funded by Sweden, Denmark, the United Kingdom and Spain, and a local office manager based in the PNA Ministry of Interior in Ramallah, a liaison office in Jerusalem and a forward office in the Palestinian Police HQ in Gaza. Non-personnel related start-up and running costs for EU COPPS were funded by the UK Department for International Development until 31 December 2005.

17.7 On 2 November 2005, the then Committee cleared Joint Action 2005/797/CFSP, which, reflecting preparatory work by the Council Secretariat, including an earlier fact-finding mission under the guidance of the Political and Security Committee (PSC),[73]

72 EU Special Representatives (EUSR) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union, to represent the EU in troubled regions and countries and play an active part in promoting the interests and the policies of the EU.

73 The committee of senior officials from national delegations who, under article 25 of the EU Treaty, monitor the international situation in areas covered by the CFSP and, under the general responsibility of the Council, exercise political control and strategic direction of crisis management operations.

authorised an ESDP mission that built on the then EU-COPPS police support mission by increasing staff to 33. The mission, which continued to be known as EU-COPPS, was launched on 1 January 2006, with a three-year mandate.

17.8 Against the background of the Israeli withdrawal from Gaza and some parts of the West Bank, the aim was to find a way to build on the work of the EU-COPPS and help the Palestine Authority to fulfil its "security" and "institution-building" obligations under the so-called Road Map.

17.9 Although the three year mandate was longer than normal, it was considered necessary if the EU was to support the Palestinian National Authority's comprehensive Police Development Programme, which included both institutional change and capacity-building, together with "Rule of Law elements", with the purpose of creating an effective Palestine police force.

17.10 The previous Committee's and our consideration of subsequent annual mandate renewals and budgets are set out in our Reports under reference.[74]

17.11 In November 2011, the Committee cleared Council Decisions that were intended to pave the way to a merger by June 2012. However, as the Minister noted at the time, this was only the first phase, and a degree of uncertainty surrounded both the timing and the shape of the second phase. We commended him for the part he had played thus far in driving forward the process of securing greater strategic cohesion to the EU's work in support of the Palestinian Authorities' development at lower cost. Beyond that, we looked forward to hearing more about developments in due course, as promised by the Minister. When he did so, we asked that he also said something about the extent to which the review process considered not just the future, but also provided an assessment of what had been achieved in relation to the considerable expenditure thus far, in line with the long-promised new architecture for evaluation, lessons learned and best practices of civilian European Security and Defence Policy (ESDP) operations.[75]

17.12 However, in May 2012, the Minister wrote to say that an alternative agreement had been reached by Member States after Israel had rejected this proposal. That agreement included EUBAM Rafah's operational element relocating to Tel Aviv to reduce costs and the overall numbers being reduced from 19 to five. The Minister said that efforts to merge the two Heads of Mission would continue.

17.13 Thus, the Council Decisions that we cleared in June 2012 provided for: a EUBAM Rafah budget of €980,000 for the next 12 months (the previous budget was €970,000 across six months: a pro rata reduction of 49% on the previous budget); and an unchanged mandate for EUPOL COPPS and budget for the next 12 months of €9.33 million (a 2% reduction).

74 See headnote.

75 See (33517) — and (33518) —: HC 428–xliv (2010–12), chapter 16 (14 December 2011).

Our assessment

17.14 We left it to others to judge the rightness or otherwise of allowing the Israeli authorities to countermand the merger of these two missions. Beyond that, we commended the Minister for his continuing efforts to drive down the costs of these missions.

17.15 The difficulties faced by EUBAM Rafah spoke for themselves. With regard to EUPOL COPPS, the Minister talked of its impressive results, of its being "a crucial vector of EU support to Palestinian state building" and of its contribution to growing Palestinian public confidence in the Palestinian Civilian Police and justice institutions. This sounds very encouraging. However, as and when a further Explanatory Memorandum was put forward, we again asked the Minister to provide at least some indications of what these impressive results consist of, over what will by then be nearly eight years, and of how its contribution to growing Palestinian public confidence has been measured — in short, the illustrated assessment of its achievements that the Committee had long been seeking.

17.16 Before then, we asked the Minister to provide information about the outcome of the upcoming further strategic review, including the situation on the ground, the total cost of each mission by then, and what he envisaged as the best way forward.[76]

The further Council Decisions

17.17 The draft Council Decisions extend the mandates of both missions for 12 months to 30 June 2014.

17.18 The EUPOL COPPS proposed budget is €957,000 for twelve months.

17.19 The EUBAM Rafah proposed budget is €940,000 for twelve months.

The Government's view

17.20 The Minister for Europe's (Mr David Lidington) detailed analysis of both budgets, as set out in his Explanatory Memorandum of 13 June 2013, is reproduced at the annex to this chapter of our Report.

17.21 The Minister says that in June 2013, a 12 month extension of the mandates for both missions was agreed, and continues as follows:

> "This agreement takes account of the broader political situation, where the United States, and particularly Secretary of State Kerry, are investing heavy political capital in making progress on Middle East Peace Process. The Foreign Secretary has made clear that there is no more urgent global priority in 2013 than the search for Middle East peace. The UK and EU are committed to doing all they can to support and advance US efforts. EU CSDP engagement in Israel and the OPTs has the potential to play a substantive role in support. Alongside the main political track, Secretary Kerry is also focusing on supportive economic and security measures. He recently

76 (34006) — and (34007) —: HC 86–v (2012–13), chapter 15 (20 June 2012).

unveiled a plan to double the Palestinian economy through $4billion of private investment. He has asked Tony Blair in his role as Quartet Representative to lead these efforts, which will run in parallel with a renewed political process."

17.22 With regard to EUPOL COPPS, the Minister says:

"EUPOL COPPS trains Palestinian police and penitentiary officials in the West Bank, and continues to achieve impressive results. The mission plays a critical role in the wider Palestinian Authority security sector and is a crucial component of EU support to Palestinian state building. It contributes to the MEPP by doing highly effective work to strengthen law and order in the OPTs under a strong leadership team, and to growing Palestinian public confidence in the Palestinian Civilian Police and justice institutions. The mission also contributes to broader EU aims; to give the Palestinian police the capability to police all areas in the West Bank and aiming, in line with May 2012 Foreign Affairs Council conclusions, to encourage more cooperation between Palestinian and Israeli security forces and access into areas B and C. Secretary Kerry's extensive personal engagement on the MEPP, and focus on economic and security issues, make the mission's aims even more relevant now. We therefore support renewing the mandate for 12 months to maintain the work in supporting the Palestinian Authority's development of their policing and rule of law capabilities."

17.23 With regard to EUBAM Rafah, the Minister recalls that it has been largely suspended since 2007, and then says:

"However, following the recent Gaza crisis and the subsequent ceasefire agreement signed on 21 November, the strategic context around the mission has changed. The ceasefire agreement committed the parties to deal with the issues of crossings and facilitating the movement of people and transfer of goods to and from Gaza."

17.24 With regard to the 12 month mandate extensions, the Minister says:

"There are benefits to an extension of the mission mandate for a number of reasons. Firstly, an extension would allow time for further Egyptian-brokered talks under the second phase of the Gaza ceasefire and to follow the progress of Palestinian reconciliation. Fatah and Hamas have recently agreed a timetable of 3 months in which to form a unity government and this, along with wider diplomatic efforts, may add impetus to the talks. Secondly, Secretary Kerry's plan to revitalise the Palestinian economy could provide a basis for EUBAM Rafah to be reactivated, if it leads to changes to movement and access restriction.

"Finally, given the broader political situation, closing the mission at this time would not be in our wider MEPP interests, as it would risk demonstrating a lessening of EU commitment to the Peace Process at a time when the US are seriously investing in progress. We therefore support renewing the mandate for 12 months to maintain EU support for both the ongoing Gaza ceasefire talks and wider US efforts to resolve the conflict. We would support any reactivation of the mission during its forthcoming mandate should circumstances allow, but note reactivation cannot be guaranteed.

We therefore strongly support plans for a strategic review of the mission by Spring 2014 to explore all further options for EUBAM Rafah."

Conclusion

17.25 **We again commend the Minister for his and his officials' continuing efforts towards and success in maintaining budgetary discipline, and are content to clear the Council Decisions.**

17.26 **We are less happy, however, about the Minister's failure to provide any information either that substantiates the various claims for EUPOL COPPS' achievements or about the strategic review that he foresaw a year ago. On the latter, we now see that a further review is promised for next Spring. Yet the Minister makes no mention of the earlier review; nor does he suggest what the options for EUBAM Rafah might be. What transpired with regard to last year's promised review? Is a merger still a possibility? Or has this been ruled out because of Israeli objections?**

17.27 **We would like the Minister to respond to our earlier request about measuring and assessing EUPOL COPPS' achievements, and past and prospective strategic reviews, within two working weeks, i.e., in time for our meeting on 3 July.**

Annex: The Minister's detailed analysis of each mission's budget

"The **EUBAM Rafah** proposed budget is €940,000 over the next 12 months, a €40,000 reduction on the previous year. A comparison of the new budget to the previous budget is set out below:

- "Personnel costs: €654,394.19 (reduced from €698,637.53 in the previous year)
    - "This reduction is due to a decrease in daily allowances for staff in the mission in accordance with new guidelines approved by the Council. The changes to the daily allowances across all CSDP missions are cost neutral, and so do not have any effect on the UK's overall contribution to the CFSP budget.
- "Mission costs: €17,574 (negligible difference from last year's budget of €17,082)
    - "The Mission has reduced the allowances and accommodation costs by reducing the number of visits to Europe and the rest of the world, but the balance is made up by an increase in activity within Israel and Palestine, for which accommodation costs are required. This is in line with what we expect from this Mission as it continues to aid the MEPP.
- "Running Expenditure: €239,719 (increased from €233,356.44 last year)
    - "There is a small increase in the press and public information budget line. This reflects actual spends of the previous year.
    - "The cost of audits has increased with real rates from €15,000 to €20,000.
- "Capital Expenditure: €1,500 (increased from €1,000 last year)

- "Costs are for purchase of a laptop battery and new phone only.

- "Representation costs: €2,400 (decreased from €2,540 last year)

- "Contingency funds: €24,412.81 (decreased from €27,384.03 last year)

"The **EUPOL COPPS** proposed budget has increased slightly from €9.33m to €9.57m. A comparison of the new budget to the previous budget is set out below:

- "Personnel costs: €5,991,504 (reduced from €6,088,035 last year)

  - "This reduction is due to a decrease in daily allowances for staff in the mission in accordance with new guidelines approved by the Council. The changes to the daily allowances across all CSDP missions are cost neutral, and so do not have any effect on the UK's overall contribution to the CFSP budget.

- "Mission costs: €206,344 (increased from €143,349 last year)

  - "More than was foreseen was spent on travel last year. This increase reflects that greater level of activity. Funds have also increased for travel and accommodation in the West Bank in line with the mission's aims to broaden their coverage in the region.

- "Running Expenditure: €2,248,346 (reduced from €2,260,475 last year)

  - "We have pressed the EEAS on this aspect of the budget and are satisfied that the reduced budget running expenditure is a realistic prediction for the mission's needs this year.

- "Capital Expenditure: €914,204 (increased from €711,735 last year)

  - "The mission has budgeted for the following:

    - "Hardware for the public information office
    - "IT: A backup server (6 of 10 are old and it is expected one will break)
    - "Satellite equipment — UHF radios and IP phones
    - "Office furniture as the current standard is very low
    - "Security equipment such as software, lockable safes and cupboards

- "Representation costs: €12,000 (decreased from €13,000 last year)

- "Contingency funds: €197,602 (increased from €113,406 last year)

  - "This includes funding visiting experts for advising on public order as planned, although with no formalised agreement in writing yet, this cannot be incorporated in the budget in any other way.

"In line with the UK approach on all other CSDP missions, we have worked hard to scrutinise these budgets to ensure they are fit for purpose. By questioning the assumptions behind each budget line we are happy that these budgets as accurately as possible predict the actual spend for the year."

18 EU Special Representative for the Southern Mediterranean region

(35036) ——	Council Decision extending the mandate of the European Union Special Representative for the Southern Mediterranean region

Legal base	Articles 31(2) and 33 TEU; QMV
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 13 June 2013
Previous Committee Report	None; but see (33915) —: HC 86–iv (2012–13), chapter 20 (14 June 2012); and also (32981) —: HC 428–xxxiii (2010–12), chapter 12 (13 July 2011); (32588) 7592/11: HC 428–xxiii (2010–12), chapter 9 (5 April 2011) and (32815) 10794/11: HC 428–xxix (2010–12), chapter 2 (8 June 2011)
Discussion in Council	June 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Background

18.1 EU Special Representatives (EUSRs) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They are established under Article 33 of the Treaty on the European Union and are appointed by the Council. Their purpose is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

18.2 An EUSR is appointed by Council through the legal act of a Council Decision. The substance of his or her mandate depends on the political context of the deployment.[77] Some provide, *inter alia*, a political backing to an ESDP operation; others focus on carrying out or contribute to developing an EU policy. Some EUSRs are resident in their country or region of activity; others work on a travelling basis from Brussels.

18.3 All EUSRs carry out their duties under the authority and operational direction of the High Representative of the Union for Foreign Affairs and Security Policy (HR; Baroness Catherine Ashton). Each is financed out of the CFSP budget. In addition, Member states

77 Article 33 TEU says that "The Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the High Representative." Article 31(2) TEU provides for his or her appointment to be adopted, not by unanimity as is normally the case with decisions relating to the EU's external action and common foreign and security policy, but by QMV.

also contribute regularly through, for example, seconding some of the EUSR's staff members.[78]

The EUSR for the Southern Mediterranean region

18.4 The post was created in 2011 on the back of two joint Commission/HR Communications, first on the Southern Neighbourhood and, secondly, on European Neighbourhood Policy. The central notion in both is a more incentive-based approach based on greater differentiation — "more for more" in which those that go "further and faster" in their reforms would receive greater support, while those who do not follow agreed reform plans would have their support reallocated. How this would work in reality, plus doubts as to whether more funding was really needed (as opposed to more effective spending) was why the Committee recommended the second of these joint Commission/HR Communications for debate in European Committee B.[79]

18.5 At the same time, recognising the political pressure to move ahead, the Committee concluded that the appointment of this new EUSR made obvious sense and that the proposed incumbent appeared to be well-suited to the challenges that would come with the job. He was (and still is) Mr Bernardino Leon: a Spanish diplomat of more than 20 years experience who had devoted much of his career to the Arab world; had worked in Libya and Algeria and been personal adviser to the EU Special Representative for the Middle East Peace Process; and had also been Spain's Secretary of State for Foreign Affairs (PUS-equivalent), Secretary-General at the Spanish Prime Minister's Office and the Spanish G20 Sherpa. Mr Leon was known to his UK counterparts and, in the estimation of the Minister for Europe (Mr David Lidington), had the skills, experience and credibility to be an effective EUSR for the Southern Mediterranean region.[80]

18.6 A year ago, the Minister gave Mr Leon a good report. At that time, the budget for 2012–13 had yet to be agreed: the Minister said that, at this time of austerity and budget cuts, he was working to ensure that the EUSR gave maximum value for money, and accordingly arguing for a reduction in the proposed total of €1,070,000.[81]

The draft Council Decision

18.7 The draft Council Decision extends the mandate of Mr Bernardino Leon for a further twelve months from 30 June 2013.

18.8 The mandate covers Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Occupied Palestinian Territories, Syria and Tunisia, and focuses on enhancing the EU's political dialogue with these countries and improving the EU's effectiveness, presence and visibility in the region in the wake of the "Arab Spring."

78 For full information, see eeas.europa.eu/policies/eu-special-representatives/index_en.htm.

79 See headnote: (32815) 10794/11 : HC 428–xxix (2010–12), chapter 2 (8 June 2011).

80 See headnote: (32981) —: HC 428–xxxiii (2010–12), chapter 12 (13 July 2011).

81 See headnote: (33915) —: HC 86–iv (2012–13), chapter 20 (14 June 2012).

The Government's view

18.9 In his Explanatory Memorandum of 13 June 2013, the Minister for Europe (Mr David Lidington) endorses the extension of the mandate of EUSR Leon until June 2014.

18.10 He continues his comments as follows:

> "His work is consistent with the UK's objectives of supporting political and economic reform in the Middle East and North Africa. We are pressing his team to demonstrate value for money in a time of austerity, and to cooperate effectively with other parts of the EU in a coherent regional strategy.
>
> "The EUSR's objectives agreed in June 2012 were: to enhance the EU's political dialogue with Southern Mediterranean countries, especially those undergoing political transition; to support political reform and democratic transition; to enhance the EU's effectiveness and visibility in the region; and to establish close coordination with local, regional, and international partners.
>
> "His mandate was: to dialogue with governments, international organisations, civil society and other relevant interlocutors; to maintain close contact with all parties involved in regional democratic transition, fostering stabilisation and reconciliation; to contribute to better coherence, consistency and cooperation between the Union and Member States' (MS) activities towards the region; to promote coordination with international partners in support of reform, especially by assisting the EU High Representative for Foreign Affairs in the work of Task Forces and follow-up meetings; and to contribute to the implementation of EU human rights policy in the region.
>
> "The mandate of the EUSR for the Southern Mediterranean region is consistent with the UK's objectives in the region. The UK's Arab Partnership initiative is supporting political and economic reform in the Middle East and North Africa. HMG has committed £110 million to the Arab Partnership Fund over 2011–2015 to support political and economic reform across the region. Under our 2013 G8 Presidency, the UK is also working through the G8 Deauville Partnership[82] to support open economies and inclusive growth in the MENA region.
>
> "The proposal for mandate renewal currently being considered essentially retains the same objectives and mandate of the EUSR as for the previous year.
>
> "EUSR Leon's work falls under the European Neighbourhood Policy (ENP). The ENP is the overarching framework for EU relations with its neighbours, including those in the Southern Mediterranean. Following a 2011 review of the ENP, it is now

82 The Deauville Partnership provides support for the political and economic transitions of the people in Egypt, Tunisia, Morocco, Libya, Jordan and Yemen. The Partnership includes the G8 countries (Canada, France, Germany, Italy, Japan, Russia, United Kingdom, and the United States), the EU and regional partners (Kuwait, Turkey, Qatar, Saudi Arabia and the UAE). The Partnership also includes international financial institutions and organisations. The Islamic Development Bank is the rotating chairman of the IFI platform that includes: the African Development Bank, the Arab Fund for Economic and Social Development, the Arab Monetary Fund, the European Investment Bank, the European Bank for Reconstruction and Development, the International Finance Corporation, the International Monetary Fund, the African Development Bank, the OPEC Fund for International Development, and the World Bank. See https://www.gov.uk/government/publications/deauville-partnership.

more focused on incentivising political and economic reform. Support targets partners who make the most progress on reform, in line with the 'more for more' principle. Since 2011, the EU has given political support on behalf of 27 MS, over €4bn in financial support, and has offered negotiations on free trade agreements (which have begun with Morocco) and mobility partnerships. The revised ENP is, on the whole, a valuable mechanism through which the UK supports regional political and economic reform.

"Overall, the UK assesses that EUSR Leon has played a significant role in implementation of the revised ENP, and hence in supporting political and economic reform in the region. One complaint previously often heard in the region regarded the complex network of EU interlocutors. The EUSR role has provided a single point of contact, helping to develop relations with the new political leaderships in the region and increasing the visibility of the EU's work there.

"He has also worked in tandem with other actors, thereby increasing the EU's influence and effectiveness. He has been working in challenging circumstances, often with political actors with very little experience, and assessment of his achievements should be viewed in that context.

"With regards to the specific objectives of the EUSR's mandate, the first — enhancing the EU political dialogue with the countries of the Southern Mediterranean — was a priority objective for the UK. Leon has effectively raised the profile of the EU in a busy schedule of high-level meetings with regional interlocutors. The most high-profile of these meetings were the EU Task Forces he arranged in Tunisia, Jordan and Egypt, chaired by Baroness Ashton and the respective Head of State. The Task Forces offered a public forum for the partner country to set out its reform plan, after which the EU announced what bilateral support it would provide. The Task Forces also acted as a donor co-ordination platform to leverage offers of support from different parts of the EU (various Commission Directorates-General, the European Investment Bank, the European Bank for Reconstruction and Development, and MS). In the build-up and during these Task Forces Leon showed himself to be an effective operator, and they have significantly increased the visibility of the EU in the region.

"The next objective was supporting political reform and democratic transition. Leon principally sought to do this through high-level messaging, and has communicated privately and publicly the need for inclusive political processes, respect for human rights, and the importance of economic reform. By engaging with an impressively wide range of actors, including members of the government and opposition, and representatives of civil society, he has also emphasised the importance of inclusivity in the EU's approach. The Task Forces, by outlining the full range of EU support available, have helped to increase the EU's leverage with partners as we stress the importance of reform.

"His third objective was to enhance the EU's effectiveness and visibility in the region. We assess he has complemented the EU's support for reform through the ENP, and raised EU profile in the region. This has been achieved to some extent due to effective use of communications techniques. In particular, the Task Forces have had

a significant public impact on the ground. By raising EU profile, and contributing to the re-set of EU-Southern Mediterranean relations which followed the 2011 review of the ENP, Leon has supported UK objectives in the region.

"Leon's final objective was building co-operation with local partners, regional and international organisations. Leon has been active in working with the major IFIs, specifically the European Investment Bank, European Bank of Reconstruction and Development and the International Monetary Fund. He has also engaged widely with civil society, as well as the Union for the Mediterranean. This has helped the EU to leverage greater support for partners and ensured coordination in our approach.

"Since Leon's appointment, progress of the democratic transitions in the Southern Mediterranean has not been linear, and there remain significant challenges to be overcome. We engage closely with EUSR Leon to discuss how he might increase his effectiveness to respond to these challenges, particularly in terms of consistent messaging around conditionality of EU support. We have argued, for instance, that with hindsight the timing of the EU-Egypt Task Force could have been changed to maximise the EU's leverage.

"There does also remain more work to be done in ensuring maximum coordination between the EUSR and MS. However, these are difficult issues, and EUSR Leon and his team do frequently discuss their approach with the Council and the UK bilaterally."

18.11 All in all, the Minister supports the extension of the mandate of EUSR Leon until June 2014, and says that he and his officials will continue to work closely with him to support ongoing political and economic reform in the MENA region — such reform being key to a more stable and prosperous future for the region.

18.12 Turning to the budgetary aspects, the Minister says:

"A budget of €945,000 for twelve months has been proposed, an increase of €5,000 on last year's budget equivalent to a rise of 0.5%. This is due to a slight increase in missions' costs, due to a higher number of flights within Europe to meet interlocutors, as well as an increase in the contingency fund. At this time of austerity and budget cuts, we are working to ensure that the EUSR gives maximum value for money.

"After extensive negotiations on the budget resulting in a decrease from what the EU initially proposed — due to maintaining the EUSR's financial officer as a part-time position rather than full-time as proposed — and only a very slight increase overall, HMG is now content with the budget. The budget will be found from within the existing CFSP allocation, and will not therefore entail additional costs for the UK."

18.13 The Minister provides details of the draft budget (which are at the annex to this chapter of our Report), and says that he has "reserved final approval of the budget until confirmation of the date of a discussion of horizontal issues around EU Special Representatives", but does not expect that it will now change.

Conclusion

18.14 **We are grateful to the Minister for all the evidence that he has provided to demonstrate the validity of his continuing positive assessment of Mr Leon's work, and about the proposed budget for the next twelve months.**

18.15 **We commend him and his officials for having driven down the cost of the 2012–13 budget, and for continuing to hold the line with regard to the one for the year to come.**

18.16 **We now clear the Council Decision.**

Annex: Detail of Proposed Budget:

"Personnel expenditure = €604,276.70: a decrease of 0.7% on last year's budget line. The budget covers the salaries of the EUSR, and 1.5 members of administrative staff. It also covers the daily allowances of three Political Advisors seconded by EU institutions/ MS, and insurance for the EUSR and travelling members of the team. The salary level of the EUSR was not open to challenge in the negotiation of the individual mandate, but salary levels for EUSRs in general will form part of future horizontal negotiations.

"Missions = €220,770: an increase of 0.5% on last year's budget line. It covers transport, per diems and accommodation. 63 missions for the EUSR and his team are foreseen to the Southern Mediterranean Region, 63 to Europe for consultations with MFAs, and 6 missions to the USA for possible discussions in Washington and under the framework of the UN. An increase in the budget for flights reflects strong international appetite for discussion of Arab Spring issues, and the EUSR's need to engage with a wide variety of interlocutors.

"Running expenditure = €68,790: a decrease of 21% on last year's budget line. It covers costs for areas such as office support, equipment and supplies, IT services, office rent, interpretation, training, security services, financial and audit costs.

"Capital expenditure = €6,750: an increase of 242% on last year's budget line. It is for purchase of communication, security and office equipment. The increase is due to purchases of office furniture, IT equipment and security items. The UK questioned the EEAS on the need for this increase, and we were informed the items were necessary to the EUSR's work.

"Representation = €6,000: 29% less than last year's budget line. €500/month is covered in the budget for additional representation costs.

"Contingencies = €38,413: a 97% increase on the previous year. This contingency reserve can only be used with prior written approval by the EU Commission."

19 Restrictive measures against Iran

(a)	
(35042)	Council Decision 2013/270/CFSP of 6 June 2013 amending Decision
—	2010/413/CFSP concerning restrictive measures against Iran
—	
(b)	
(35043)	Council Implementing Regulation (EU) No. 522/2013 of 6 June 2013
—	implementing Regulation (EU) No. 267/2012 concerning restrictive
—	measures against Iran

Legal base	(a)Article 29 TEU; unanimity (b)Article 46(2) of Council Regulation (EU) 267/2012; QMV
Department	Foreign and Commonwealth Office
Basis of consideration	EM and Minister's letter of 14 June 2013
Previous Committee Report	None: but see (34093)12453/12, (34484) 16624/12, (34606) —, (34597) — and (34598) —: HC 86–xxvii (2012–13), chapter 11 (16 January 2013); (34361) —, (34362) — and (34093) 12453/12: HC 86–xviii (2012–13), chapter 14 (31 October 2012); also see (33818) —: HC 428–lvii (2010–12), chapter 13 (18 April 2012); (33643) —, (33644) — (and 33633) —: HC 428–xlix (2010–12), chapter 19 (1 February 2012); also see (33388) — and (33389) —: HC 428–xliii (2010–12), chapter 23 (7 December 2011); (31779) —: HC 428–i (2010–12), chapter 61 (8 September 2010); (31905) 13082/10: HC 428–ii (2010–11), chapter 24 (15 September 2010); and (31937) —: HC 428–iii (2010–12), chapter 15 (13 October 2010)
Discussion in Council	6 June 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Background

19.1 As the Committee's previous Reports (referred to in the headnote) illustrate in detail, the EU has been engaged since December 2006 in a "dual track" strategy — with both engagement and restrictive measures — regarding Iran's nuclear activities, not simply

implementing measures in the EU, but also strengthening in that context, successive UN Security Council Resolutions (UNSCRs).[83]

19.2 UNSCR 1929 of 9 June 2010 imposed a number of further restrictive measures which in broad terms:

— reaffirmed that Iran shall cooperate fully with the IAEA;

— banned new Iranian nuclear facilities and banned Iranian nuclear investment in third countries;

— banned exports of several major categories of arms, and further restricted Iran's ballistic missile programme;

— froze the assets of 40 entities, including one bank subsidiary, several Islamic Revolutionary Guard Corps companies, and three Islamic Republic of Iran Shipping Lines subsidiaries, which had been involved in multiple sanctions violations cases;

— froze the assets of, and banned travel by, one senior nuclear scientist;

— implemented a regime for inspecting suspected illicit cargoes and authorising their seizure and disposal;

— placed restrictions on financial services, including insurance and reinsurance, where there was suspicion of a proliferation link;

— banned existing and new correspondent banking relationships where there were proliferation concerns;

— established a Panel of Experts to advise and assist on sanctions implementation; and

— reaffirmed the dual track strategy (of pressure and diplomacy).

Council Decision 2010/413/CFSP

19.3 As well as implementing the measures contained in UNSCR 1929, the EU imposed additional EU sanctions in the following areas:

— the *energy sector*, including the prohibition of investment, technical assistance and transfers of technologies, equipment and service;

— the *financial sector*, including additional asset freezes against banks and restrictions on banking and insurance;

— *trade*, including a broad ranging ban on dual use goods and trade insurance;

— the Iranian *transport sector* in particular the Islamic Republic of Iran Shipping Line (IRISL) and its subsidiaries and air cargo; and

83 See headnote.

— new *visa bans* and *asset freezes*, especially on the Islamic Revolutionary Guard Corps (IRGC).

19.4 Council Decision 2010/413/CFSP was adopted by the 26 July 2010 Foreign Affairs Council,[84] together with a Regulation (Council Regulation (EU) 961/2010) extending the list of entities and individuals subject to an assets freeze.

19.5 We cleared both documents at our first and second meetings on 8 and 15 September 2010.[85]

19.6 More recently, in his Explanatory Memorandum of 30 October 2012, the Minister for Europe (Mr David Lidington) noted that in September 2012 the IAEA Board of Governors passed a strong resolution, expressing "serious concern" about continuing uranium enrichment and heavy-water related activities in Iran, and stating that Iranian co-operation with the Agency was "essential and urgent". He drew attention to the resolution having been "passed by a significant majority — 31 out of the 35 countries on the Board" — and to the IAEA having also reported that Iran had tripled its enrichment capacity at the Fordow facility and continued to deny the IAEA access to important information and sites; this, the Minister said, "indicated that Iran was continuing to expand a programme which could have no plausible civilian justification."

19.7 The Minister also noted that, prior to this, at the end of June 2012, the European Council had stressed its serious concerns about the nature of Iran's nuclear programme and the urgent need for Iran to comply with all its international obligations, including full implementation by Iran of UNSC and IAEA Board of Governors resolutions; and had urged Iran to:

> "decide whether it is willing to commit to a serious negotiation process aimed at restoring the confidence in the exclusively peaceful nature of the Iranian nuclear programme. Iran has to engage constructively by focussing on reaching an agreement on concrete confidence-building steps and addressing the concerns of the international community."

19.8 A further package of EU sanctions was duly presented to and adopted by the 15 October Foreign Affairs Council. The Committee cleared the relevant Council Decision on 31 October. The Council Regulation required to implement the October package was adopted on 21 December 2012. It fully implements the package adopted at the 15 October Foreign Affairs Council and includes the following measures:

- **Finance:** a financial cut-off, prohibiting all but specifically licensed trade with a notification system for humanitarian payments up to €100,000 and other payments (€ 40,000); a full listing of the Central Bank of Iran except to permit channels for the provision of liquidity and repayment of debts; a full ban on the public provision of export credit guarantees (adding short term to the already prohibited medium and long term);

84 The text of the Council Decision is available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:195:0039:0073:EN:PDF.

85 See headnote: (31779) —: HC 428–i (2010–11), chapter 61 (8 September 2010) and (31905) 13082/10: HC 428–ii (2010–11), chapter 24 (15 September 2010).

- **Energy sector:** a gas embargo: a further ban on exporting equipment for the Iranian Energy Sector; a ban on construction of oil tankers;
- **Trade:** bans on exporting graphite and metals that can be used in Iran's nuclear programme; naval equipment for ship building and maintenance; software for integrating industrial processes;
- **Transport:** bans on the flagging and classification of Iranian oil tankers and cargo vessels; and on the leasing/chartering of vessels for the transport or storage of Iranian oil;
- **New Designations:** the Council Decision and Council Implementing Regulation imposed an asset freeze on further Iranian companies and updated the entries for 3 already listed entities.

19.9 The Regulation also included language that would allow the Department for Energy and Climate Change to take forward domestic legislation that would permit vital maintenance work on the Rhum gas field, which had been shut-in since 2010 because of Iran sanctions.

19.10 We cleared these measures at our meeting on 16 January 2013.[86]

The further Council Decision and Council Implementing Regulation

19.11 In his Explanatory Memorandum of 14 June 2013, the Minister for Europe (Mr David Lidington) says that:

- on 6 June 2013, EU Ministers agreed to target five additional entities under the Iran sanctions as well as agreeing to update some of the existing listings;
- Council Decision 2013/270/CFSP sets out this agreement;
- Council Implementing Regulation (EU) No. 522/2013 gives the Council Decision effect;
- the Council Decision and the Council Implementing Regulation were adopted on 6 June 2013, and came into force on the same day.

The Government's view

19.12 The Minister says that the Government remains committed to the dual track policy of increasing pressure against Iran in order to persuade it to negotiate seriously about its nuclear programme.

19.13 He says that the Council Decision and Implementing Regulation do three things:

86 See headnote: (34093) 12453/12, (34484) 16624/12, (34606) —, (34597) — and (34598) —: HC 86–xxvii (2012–13), chapter 11 (16 January 2013).

— "Firstly, they introduce restrictive measures against 5 companies relating to oil & gas, completing a previous round of sanctions against Iranian oil and gas companies. Four of the five were subsidiaries of Petropars Ltd;

— "The fifth of the new listings, the Iranian Oil Company (UK) Ltd (IOC) is a UK based company. The listing of IOC is on the basis that they provide support to the Iranian government through their ultimate owner NIOC. IOC partly owns the Rhum gas field, a joint venture with BP, although production on the field has been suspended since late 2010;

— "Secondly, the Council also took the opportunity to amend eight existing designations at the same time. Six of these were to update their details. The other two were entities moved from annex IX of the Regulation to Annex VIII reflecting their designation by the UN in December 2012. Both were already listed by the EU so none of these update measures represent any significant change in the Iran sanctions.

— "Thirdly, two entities were delisted as the companies have ceased to exist."

19.14 The Minister concludes by saying:

> "All the sanctions that have been put in place are proportionate and reversible. Iran's leaders can bring sanctions to an end by taking steps to change their nuclear programme."

The Minister's letter of 14 June 2013

19.15 The Minister says that he originally expected the Council to agree these listings in July:

> "However, in order to give effect to this listing ahead of the Iranian elections on 14 June the date was moved forward. This meant that the substantive discussions of the listing occurred during recess and I regret that due to this fact I found myself in the position of having to agree to the adoption of the Council Decisions and Implementing Regulation before your Committee had an opportunity to scrutinise the documents. As you know, the responsibility to keep your Committee informed on issues concerning sanctions is something I take seriously and the need for the override of scrutiny on this occasion is regrettably unavoidable."

Subsequent developments

19.16 On 14 June, with 72.2% of the 50 million eligible voters casting ballots, Hassan Rouhani won just over 50% of the votes and was thus elected the new President of Iran. According to the BBC, during live televised debates in the run-up to the elections, almost all the candidates criticised another candidate, Saeed Jalili — who came third in the elections with about 11% of the votes, and has been Iran's top nuclear negotiator since 2007 — for failing to make progress in international talks on Iran's nuclear programme, leading to the imposition of international sanctions.[87] Mr Rouhani was Iran's chief nuclear

87 http://www.bbc.co.uk/news/world-middle-east-22929225.

negotiator under former President Akbar Hashemi Rafsanjani, who is widely seen as representing moderate elements in Iran, and who endorsed Mr Rouhani. The BBC quotes Mr Rouhani thus:

> "Iran has nothing to hide. However, in order to proceed towards settling the Iranian nuclear file, we need to reach national consensus and rapprochement and understanding on an international level. This can only happen through dialogue." (Interview with al-Sharq al-Awsat, 13 June)."[88]

19.17 On 15 June 2013, the EU High Representative for Foreign Affairs and Security Policy and Vice-President of the Commission (Baroness Ashton) issued the following statement:

> "The Iranian people have chosen a new president in elections on 14 June. The announced results confirm that they have decided to entrust Mr. Hassan Rohani with a strong mandate to govern Iran in the next four years.
>
> "I wish Mr. Rohani well in forming a new government and in taking up his new responsibilities. I remain firmly committed to working with the new Iranian leadership towards a swift diplomatic solution of the nuclear issue."[89]

Conclusion

19.18 **Time alone will tell whether the early optimism invested in Mr Rouhani's election bears fruit.**

19.19 **In the meantime, we now clear these latest adjustments to the EU's current sanctions regime.**

19.20 **We do not object to the Minister having over-ridden scrutiny on this occasion and in these circumstances.**

88 See http://www.bbc.co.uk/news/world-middle-east-22921680.

89 See http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137487.pdf.

20 EU Special Representative for Central Asia

(35045)	Council Decision extending the mandate of the EU Special Representative for Central Asia
—	
—	

Legal base	Articles 31(2) and 33 TEU; QMV
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 14 June 2013
Previous Committee Report	None; but see (33905) —: HC 86–iv (2012–13), chapter 18 (14 June 2012); also see (32932) —: HC 428–xxxii (2010–12), chapter 15 (6 July 2011) and (31860)—: HC 428–i (2010–11), chapter 66 (8 September 2010)
Discussion in Council	June 2013
Committee's assessment	Politically important
Committee's decision	Cleared; further information requested

Background

20.1 EU Special Representatives (EUSRs) are appointed to represent Common Foreign and Security Policy (CFSP) where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They are established under Article 33 of the Treaty on European Union and are appointed by the Council. Their purpose is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

20.2 An EUSR is appointed by Council through the legal act of a Council Decision. The substance of his or her mandate depends on the political context of the deployment.[90] Some provide, *inter alia*, a political backing to a CFSP operation; others focus on carrying out or contribute to developing an EU policy. Some EUSRs are resident in their country or region of activity; others work on a travelling basis from Brussels.

20.3 All EUSRs carry out their duties under the authority and operational direction of the High Representative of the Union for Foreign Affairs and Security Policy (HR; Baroness Catherine Ashton). Each is financed out of the CFSP budget. In addition, Member States also contribute regularly through for example, seconding some of the EUSR's staff members.[91]

90 Article 33 TEU says that "The Council may, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, appoint a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his mandate under the authority of the High Representative". Article 31(2) TEU provides for his or her appointment to be adopted, not by unanimity as is normally the case with decisions relating to the EU's external action and common foreign and security policy, but by QMV.

91 For full information, see http://eeas.europa.eu/policies/eu-special-representatives/index_en.htm.

Central Asia

20.4 The EU established a EUSR for Central Asia in September 2005 to ensure coordination and consistency of external EU actions in the region.

20.5 The EUSR's mandate focuses on enhancing EU effectiveness and visibility in the region. It also aims to contribute to the strengthening of democracy, rule of law, good governance and respect for human rights and fundamental freedoms in Central Asia. It was amended by a Joint Action on 15 February 2007 to allow the Special Representative to contribute to wider Common Foreign and Security Policy work on energy security, and to help develop bilateral energy cooperation with important producer and transit partners in Central Asia. It was further refined in Joint Action 2007/113/CFSP of September 2007 following the adoption of a new EU Strategy for Central Asia at the June 2007 European Council. That Council assigned to the EUSR an enhanced role in monitoring the implementation of the Strategy, making recommendations and reporting to relevant Council bodies on a regular basis. It also added a specific tasking for the EUSR to contribute to the formulation of counter-narcotics aspects of the Common Foreign and Security Policy. The EUSR's mandate was further amended by Joint Action 2008/900/CFSP of 2 December 2008, which added water management aspects to the responsibilities and, in 2012, updated to include border security, environment and climate change and regional security within Central Asian borders as ISAF troops begin to draw down.

The draft Council Decision

20.6 The mandate of the current EUSR, Mrs Patricia Flor, ends on 30 June 2013. The draft Council Decision sets out a proposal to extend the mandate from 1 July 2013 to 30 June 2014.

The Government's view

20.7 In his Explanatory Memorandum of 14 June 2013, the Minister for Europe (Mr David Lidington) underlines the strategic importance to the UK and the EU of Central Asia:

> "The UK's main interests in Central Asia broadly fall under three strands: energy/commerce; regional stability/security; and governance/human rights. The first two relate directly to HMG's foreign policy priorities on prosperity and national security, and the third to HMG's commitment to a foreign policy that has the practical promotion of human rights at its core. These interests are substantial and growing, but the UK has only limited resources to put into our national network. We need the continuation of the EUSR mandate to help make things happen in the region and to leverage the EU's vastly larger resources."

20.8 The Minister refers to the previous EUSRs in positive terms, prior to the appointment of Mrs Patricia Flor in June 2012 (2012/328/CFSP of 20 June 2012),[92] and continues thus:

92 See headnote: see (33905) —: HC 86–iv (2012–13), chapter 18 (14 June 2012).

> "As EU Special Representative (EUSR), Mrs Flor has travelled extensively in the region since taking over and performed well in her first year. She has been receptive to our views and launched a potentially valuable High Level Security Dialogue last November during the Central Asia Ministerial meeting in Kyrgyzstan, attended by Baroness Ashton, the EU High Representative/Vice President. She has been effective in raising the EU's level of influence in Central Asia.
>
> "As EUSR, Mrs Flor will continue to provide a common focus for delivering EU messages not just on key human rights issues, but also on the benefits of regional co-operation and on potential EU assistance in helping the region to address some of its shared socio-economic difficulties.
>
> "The EU needs to be perceived as an effective player in region, particularly as we engage the Central Asian states on Afghanistan transition. The extension of the mandate of the EUSR is important to enable continued personal, high-level engagement with the leaders of the five Central Asia states. It is particularly important as there are not yet EU Delegations in all five countries, and there are relatively few other senior EU visitors to the region. The Government therefore supports the extension of the mandate of the EUSR for Central Asia."

20.9 The Minister then says that the High Representative (Baroness Ashton) initially proposed a 16 month extension of the mandate, and says:

> "While this would mean continuity of EU engagement through-out the entire period of 2014 draw-down and underline clear EU commitment to the Central Asian leaders during this difficult transition period, the UK wants more broadly to strengthen the principle that mandates should not run for more than 12 months. Periods of longer than the standard 12 months reduces accountability and our ability to scrutinise the work of the EUSR. On 15 May, at UK suggestion it was agreed in RELEX[93] to revise the Council Decision to renew the mandate for 12 months."

20.10 With regard to the budget for this next mandate period, the Minister says:

> "The EUSR is paid for through the CFSP budget. The overall budget has decreased by 6.25% to EUR 1,050,000. Only capital expenditure has increased due to the provision for security improvements in accordance with the recommendations of the EEAS Security Department. However, this increase has been outweighed by the decreased personnel and running expenditures, and costs of missions, representation and contingencies. For example, despite the hiring of a driver in Ashgabat, 7% has been saved on personnel expenditure due to the loss of an administrative assistant in Brussels. The UK welcomed this saving as it is important we ensure EUSRs offer value for money."

Conclusion

20.11 **The mandate extension raises no questions. And we again commend the Minister and his officials for their part in keeping a tight rein on the budget. However,**

93 The relevant Council working party.

we are provided with only the bare essentials. Looking ahead, we think that it would be helpful if the budgetary component of all future mandate renewals could be standardised along the lines of that provided in connection with the mandate renewal for the EUSR to the Southern Mediterranean, which we consider elsewhere in this Report.[94]

20.12 **We now clear the Council Decision.**

94 See (35036) — at chapter 18 of this Report.

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

Department for Business, Innovation and Skills

Anti-Dumping Measures

(34968) 8160/13 COM(13) 178	Draft Council Implementing Regulation amending Implementing Regulation (EU) No. 1008/2011 imposing a definitive anti-dumping duty on imports of hand pallet trucks and their essential parts originating in the People's Republic of China following a partial interim review pursuant to Article 11(3) of Regulation (EC) No. 1225/2009.
(34970) 8516/13 COM(13) 201	Draft Council Implementing Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia.
(34971) 8537/13 COM(13) 206	Draft Council Implementing Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China.
(34978) 8884/13 COM(13) 238	Draft Council Implementing Regulation amending Regulation (EC) No. 192/2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Thailand and Taiwan.

Other

(34889) 8627/13 SWD(13) 142	Commission Staff Working Document: *strengthening the environment for Web entrepreneurs in the EU*.
(34926) — —	Special Report No. 23/12: *Have EU structural measures successfully supported the regeneration of industrial and military Brownfield sites? (pursuant to Article 287(4), second subparagraph, TFEU)*.
(34952) 10069/13 COM(13) 309	Draft Council Decision establishing the European Union position within the TRIPS Council of the World Trade Organisation on the request for an extension of the transition period under TRIPS Article 66.1 for least-developed countries

(34924) — —	Special Report No. 20/12: *Is Structural measures funding for municipal waste management infrastructure projects effective in helping member states achieve EU waste policy objectives? (pursuant to Article 287(4), second subparagraph, TFEU)*.
(34925) — —	Special Report No. 21/12: *Cost-effectiveness of Cohesion Policy investments in energy efficiency (pursuant to Article 287(4), second subparagraph, TFEU)*.

Department for Communities and Local Government

(34864) 8703/13 COM(13) 225	Commission Report — *Financial support for energy efficiency in buildings*.

Department for Environment, Food and Rural Affairs

(34946) 9862/13 COM(13) 287	Commission Report on the exercise of the delegation conferred on the Commission pursuant to Regulation (EU) No. 1236/2010 of 15 December 2010 laying down a scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries.
(34929) — —	Special Report No. 1/13: *Has the EU support the food-processing industry been effective and efficient in adding value to agricultural products? (pursuant to Article 287(4), second subparagraph, TFEU)*.

Department for Work and Pensions

(34941) 9783/13 COM(13) 288	Draft Regulation amending Regulation (EU) No. 528/2012 concerning the making available on the market and use of biocidal products with regard to certain conditions for access to the market.

HM Treasury

(34927) —	Special Report No. 24/12: *The European Union Solidarity Fund's response to the 2009 Abruzzi earthquake — The relevance and cost of operations (pursuant to Article 287(4), second subparagraph, TFEU)*.

Formal minutes

Wednesday 19 June 2013

Members present:

Mr William Cash, in the Chair

Mr James Clappison	Jacob Rees-Mogg
Michael Connarty	Linda Riordan
Kelvin Hopkins	Henry Smith
Chris Kelly	

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In the absence of the Chair, Mr James Clappison was called to the chair.

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The Committee deliberated.

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

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

Paragraphs 1.1 to 1.15 read and agreed to.

Paragraph 1.16 read, amended and agreed to.

Paragraphs 2.1 to 21 read and agreed to.

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

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

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[Adjourned till Wednesday 26 June 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 Joe Benton MP (Labour, *Bootle*)
Mr James Clappison MP (*Conservative, Hertsmere*)
Michael Connarty MP (*Labour, Linlithgow and East Falkirk)*
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 members were also members of the committee during the parliament:
Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)
Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)