House of Commons

European Scrutiny Committee

Twentieth Report of Session 2013–14

Documents considered by the Committee on 30 October 2013

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Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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

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Meeting Summary

This week the Committee considered the following documents:

European aid to the most deprived

In December 2012, the Committee reported on a draft Regulation to establish a Fund for European Aid to the Most Deprived, which sought to introduce, at an EU level, a mandatory scheme for the distribution of food and basic consumer goods. The Committee shared the Government's concerns that this breached the principle of subsidiarity (as the objective could be better achieved at a national level) and so recommended that the House debate and adopt a Reasoned Opinion. Across the EU, the number of Reasoned Opinions did not reach the threshold that would require the Commission to reconsider the proposal. We have now been told by the Minister that a Presidency compromise text has been agreed and informal discussions are underway with the European Parliament. We ask to be kept informed of the details of any prospective First Reading agreement.

EU Passenger Name Records (PNR) Agreement with Canada

These draft Council Decisions authorise the EU to sign and conclude a PNR Agreement with Canada which would set out a more comprehensive framework for PNR transfers. As a justice and home affairs measure, they are subject to the UK's JHA opt-in. In our initial Report on the proposals, we asked the Minister what factors would determine whether the UK opted in or out of the Agreement. The Committee drew attention to the striking differences between this Agreement and those between the EU and Australia and the US, respectively, with regard to the provisions on data retention and on the processing of sensitive data; we asked the Minister to explain them. We now Report the Minister's response but continue to hold the documents under scrutiny pending further information on the opt-in before its deadline of 26 November.

Adjustment of Direct Farm Payments for 2013

The EU's annual budget must comply with the MFF and Council Regulation (EC) No. 73/2009 enables adjustments to be made to expenditure on the Common Agricultural Policy if it appears the ceiling will be exceeded. Earlier in the year, the Commission put forward a draft Regulation, which was debated in European Committee in June, and would have reduced direct farm payments. However, as the European Parliament and Council were unable to adopt it by the deadline of 30 June, the Commission adopted an Implementing Regulation proposing a slightly smaller reduction and dropping the exemption threshold from €5,000 to €2,000. The Commission has subsequently put forward this draft Council Regulation, based on new information. The reduction in the payment rate would now be 2.45% but the threshold of €2,000 would be retained. The Government is satisfied with the reduction and is prepared to compromise on the threshold of €2,000, although it would prefer there be no exemption. Although the original proposal was debated, we report this update to the House because of the impact on the UK and the administrative implications for paying agencies.

The EU and Korea

In our Report of 11 September, we scrutinised a Draft Council Decision on an EU-Korea Framework Agreement on Comprehensive Partnership and Cooperation. At that time we acknowledged the political and economic significance of the Agreement but considered that there were outstanding legal questions to be resolved around the absence of a JHA legal base to cover the obligation to conclude a readmission agreement. We reiterated our often-stated opinion that the Government cannot assert an opt-in in the absence of a Title V legal base in the proposal. The revised proposal which we are now reporting splits the Decision on conclusion of the Agreement into two — one that covers the JHA content and has the relevant legal base, the other, the remaining content. We welcome the decision and clear the documents from scrutiny.

1 Sharing of benefits from genetic sources

(a) (34301) 14641/12 + ADDs 1–3 COM(12) 576	Draft Regulation on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation in the Union
(b) (34317) 14728/12 + ADD 1 COM(12) 577	Draft Council Decision on the conclusion of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity

Legal base	(a) Article 192(1) TFEU; co-decision; QMV (b) Articles 192(1) and 218(6) TFEU; QMV; consent
Department	Environment, Food and Rural Affairs
Basis of consideration	Minister's letters of 28 August and 21 October 2013
Previous Committee Report	HC 86–xviii (2012–13), chapter 4 (31 October 2012)
Discussion in Council	See para 1.12 below
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information awaited

Background

1.1 Genetic resources have a variety of purposes with a wide range of users and resultant benefits. The Convention on Biological Diversity (CBD) provides the main international framework for conserving biological diversity and the equitable sharing of the benefits, but it does not specify how this should be done in practice. The Nagoya Protocol to the Convention therefore seeks to establish more predictable conditions for access to genetic resources, ensuring benefit-sharing and that only legally acquired sources are used. All parties to the Protocol must take measures regarding user compliance, but they are free to decide whether to regulate access: however, if they do so, they must implement the detailed provisions set out in the Protocol.

1.2 The Protocol is a mixed agreement with shared competence, and has been signed by the EU and 24 Member States. These two documents comprise (a), a draft Regulation implementing those provisions falling within EU competence, and (b), a draft Council Decision, enabling the EU to ratify the Protocol, once the Regulation has been adopted. More specifically, the draft Regulation would set out minimum due diligence measures; oblige all users in the EU to exercise due diligence to ascertain that genetic resources are accessed in accordance with the legal requirements of provider countries, and that the benefits are fairly and equitably shared; require all users to transfer to subsequent users information relevant for access and benefit-sharing; require recipients of public research funding to declare that they will exercise due diligence; and oblige users to declare at the point of commercialisation that they have complied with their due diligence obligation.

1.3 In order to comply, users could build on existing codes of conduct for access and benefit sharing, and Member States would be obliged to consider that implementation of recognised best practice reduces the risk of non-compliance and justifies a reduction in compliance checks. The proposal would also require the Commission to establish an EU Register of Trusted Collections, with those included in it having to undertake to supply only fully documented samples of genetic resources. Member States would have to verify whether a collection meets the necessary requirements, and users acquiring a genetic resource from it would be considered to have exercised due diligence. In addition, Member States would be required to use a risk-based approach to check whether users comply with their obligations, and they would have to ensure that infringements are subject to effective, proportionate and dissuasive penalties.

1.4 As we noted in our Report of 31 October 2012, the Government agreed to Council Conclusions in June 2012 committing the EU to ratifying and implementing the Nagoya Protocol as soon as possible, and therefore welcomed the draft Council Decision, except insofar as it would require the EU and Member States to ratify simultaneously — a step for which it believed there was no legal obligation, and which would mean the pace of ratification being determined by the slowest to do so. However, it needed to look in greater detail at the draft Regulation as regards the requirements at national level to implement the Protocol and enable the UK to ratify it.

1.5 In the meantime, it drew attention to a number of preliminary concerns, including the possibility that certain of the measures, for example those related to Trusted Collections, might not be in accordance with the principle of subsidiarity, with much of the detail having to be set out in Implementing Acts, on which clarification was needed. We were also told that a full analysis of subsidiarity would be undertaken ahead of the deadline for raising any objection with the Commission, and that the Government would have further opportunities to consider subsidiarity in any subsequent proposal. Also, although independent research had been commissioned to provide an analysis of the UK sectors likely to be affected, the Government had yet to complete a detailed Impact Assessment, but would undertake this for any final Regulation. Finally, a detailed financial consideration of the proposal had yet to be carried out, but an initial analysis suggested that there would be minimal costs for Government and for users: and stakeholders would be consulted further on the proposals in addition to the consultations being conducted at EU level.

1.6 We commented that there appeared to be more to the proposed Regulation than met the eye, including a number of concerns in particular over subsidiarity, and, in noting that the Government would be undertaking a full analysis of those issues, we stressed the importance of our receiving this in good time to allow the preparation of a draft Reasoned Opinion, if that was seen to be required. In addition, we looked forward to receiving the Government's detailed Impact Assessment, together with its financial consideration of the proposal. In the meantime, we said that we were holding both documents under scrutiny.

Subsequent developments

1.7 Despite the potential subsidiarity concerns, and the strict timetable associated with these, the next we heard from the Government was a letter of 28 August 2013 from the

Parliamentary Under Secretary at the Department for Environment, Food and Rural Affairs (Lord de Mauley), saying that there had been no developments on the draft Directive, but providing an update on the draft Regulation. He said that, although discussions in the Council now appeared to be moving in a sensible direction, the UK remained concerned by many of the proposals still under consideration by the European Parliament. He also said that the rapporteur for the Parliament's Environment, Public Health and Food Safety Committee had not been granted a mandate for the trilogue discussions, and that the proposal would therefore be discussed at a plenary in either September or October, pointing out that there would then be considerable pressure to reach a first reading agreement in view of the European Parliament elections in May 2014.

1.8 In the meantime, the Minister said that the UK continued to support the Commission's proposed due diligence approach (where the European Parliament had proposed additional points at which users would be required to make declarations, and for all declarations to be supported by evidence); that this approach was supported by users of genetic resources (who were opposed to the alternative prohibition approach supported by some Member States, which the Government also could not support as it would criminalise the use of illegally acquired genetic resources, and discourage the pursuit of new benefits from genetic resources); that the UK could not accept a European Parliament committee proposal that the Regulation should apply retroactively to genetic resources accessed before it entered into force; that it was seeking to remove the Commission's suggestion that matters relating to traditional knowledge should be addressed by the Regulation, regarding these as Member State competences; and that concerns remained that the proposed scheme for 'Trusted' or Registered Collections would give the Commission unnecessarily broad powers to remove individual collections without reference to Member States.

1.9 The Minister also referred briefly to developments within the UK, and in particular to the fact that, alongside the independent research it has commissioned in 2012 into the Protocol's potential impact in the UK, it had been developing an initial Impact Assessment, which would be used to support its final negotiations in the trilogue. He said that, in view of the variety of possible outcomes, a comprehensive Impact Assessment for each outcome was not possible, but that the Government was assessing the possible consequences of two alternative scenarios, and that he would ensure that the details of this were communicated to us as soon as they became available.

1.10 When we considered this letter on 11 September 2013, we noted that, despite the emphasis we had placed on the issue of subsidiarity, the Minister's letter had made no mention of this, despite it being the first communication we had received from his department since our Report the previous October. Our Chairman therefore replied, asking what the Government's conclusions had been on subsidiarity, and why these had not been conveyed to us, given the importance which the House attaches to this whole issue.

1.11 We have now received from the Minister a letter of 21 October 2013, saying that his officials had been under the impression that a "nil" return on subsidiarity had been provided before the deadline, and apologising for any misunderstanding on this point. He says that implementation of the Nagoya Protocol through a Regulation has clear advantages for users of genetic resources in enabling them to operate throughout the EU,

and in helping to maintain the integrity of the Single Market, and he notes that the Commission's Impact Assessment reported unanimous support from stakeholders for a EU harmonised approach. He does identify the proposed power for the Commission to de-register Trusted Collections unilaterally as one area where the subsidiarity test has not been met, but says that the UK is well supported in the Council in opposing this, and he believes that a subsidiarity compliant solution can be found under which recommendations must be made by Member States before a collection is removed.

1.12 The Minister also provides an update on the position within the European Parliament, pointing out that its plenary session on 16 September 2013 adopted the majority of its Lead Committee's amendments. However, he adds that, although many of the Parliament's amendments cut across the Government's position, the UK's concerns are shared by the Commission and the majority of Member States, and are reflected in the Presidency's mandate for the forthcoming trilogue negotiations, which were expected to begin on 16 October and to be finalised before the end of the year. In view of this, he expresses the hope that we will now be able to clear the draft Regulation.

Conclusion

1.13 **We are grateful to the Minister for these explanations, and are pleased to note his view that the discussions within the Council have been satisfactory from the UK's point of view, and that the one aspect of the proposal on Trusted Collections giving rise to a concern over subsidiarity appears likely to be resolved satisfactorily. Having said that, there do still appear to be a number of uncertainties surrounding the position of the European Parliament, and we have yet to receive the assessments which the Minister's letter of 28 August said would be sent to us. We would therefore like further information on these elements before we would be in a position to clear either of these documents.**

2 Financing EU external action: 11th European Development Fund

(35334) 14081/13 COM(13) 660	Draft Council Regulation on the financial regulation applicable to the 11th European Development Fund

Legal base	Article 10(2) of the Internal Agreement of 17th July 2006; QMV
Department	International Development
Basis of consideration	EM of 17 October 2013
Previous Committee Report	None; but see (35144) 11672/13: HC 83–xiv (2013–14), chapter 6 (11 September 2013); also see (34961) 10212/13: HC 83–vi (2013–14), chapter 9 (19 June 2013); also 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	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

2.1 The European Development Fund (EDF) is the main instrument for delivering EU assistance for development cooperation under the Cotonou Agreement with ACP States and for financing EU cooperation with the Overseas Countries and Territories (OCT). Each EDF is concluded for a multi-annual period. The EDF is funded outside the EU budget by the Member States on the basis of specific contribution keys. The UK's share is 14.68%.

2.2 The Multi-Annual Financial Framework (MFF) agreed at the February 2013 European Council included an overall figure of €30.5 billion for the EDF for the period 2014–20. This is 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, Stability Instrument, etc.). The UK's contribution to EDF11 is €4.478 billion, equating to 14.68% of the total EDF.

2.3 The full background thus far is set out in our reports under reference.[1] In essence, the EDF element was de-coupled from the rest of the Heading 4 process. Several parts of the EDF agreement — the Internal Agreement; the Implementing Regulation; and the Financial Regulation — specify the allocation and management of the fund.

The EDF11 Internal Agreement

2.4 The Committee cleared the Commission Communication and Council Decision dealing with the "top line" elements of the EDF11 Internal Agreement at its meeting on 19 June, prior to the June EU/ACP Council of Ministers; having now been agreed with the ACP, it will form a new annex to the Cotonou Agreement.. The Internal Agreement will only enter into force once all 27 Member States have ratified it, which is expected to take 18 months or more. The Commission Communication accordingly proposed the provisional application of a number of articles of the EDF11 Internal Agreement, 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 the adoption of an Implementing Regulation and a Financial Regulation. No commitment of any EDF11 funds can be made until ratification is completed by all Member States. (The same approach was followed for the transition from EDF9 to EDF10: 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 are expected to be made available during the period before EDF11 enters into force).[2]

The Implementing Regulation

2.5 The draft Implementing Regulation sets out the programming process and monitoring framework for all EDF11 funds that will be spent on country and regional programmes, intra-ACP programmes such as the Africa Peace Facility, and the Cotonou Investment Facility.

2.6 The EDF11 Implementing Regulation complies with the provisions of the Cotonou Agreement and aligns, where appropriate, with the main provisions of other development instruments, particularly the Development Cooperation Instrument (DCI) and the common rules and procedures for the implementation of the Union's instruments for external action, the Common Implementation Regulation (CIR). This alignment would allow for the inclusion of the EDF in the EU budget post 2020, if Member States wanted this. We considered the Commission's proposal at our meeting on 11 September 2013.

2.7 It was helpfully summarised, and broadly supported, by the Parliamentary Under-Secretary of State at the Department for International Development (Lynne Featherstone): this was unsurprising, since no major changes are proposed, and the improvements are all in the right direction.[3] The fundamentals appeared to be sound — more differentiation;

1 See headnote.

2 See (34961) 10212/13: HC 83–vi (2013–14), chapter 9 (19 June 2013).

3 See our Report at (35144) 11672/13: HC 83–xiv (2013–14), chapter 6 (11 September 2013) for full details.

increased focus on poverty and fragile states; measures to increase effectiveness; a results-based approach. Unsurprisingly, the Commission was seemingly determined to carry its dogged pursuit of "budgetising" the EDF into the next financial perspective. However, as the Minister noted, there were some important elements in which the details had yet to be finalised — ensuring sufficient EDF Management Committee oversight of resource allocation; the right sort of EU coordination at country level; appropriate Member States' oversight of the new unallocated reserve; embedding the agreement on dedicated funding for monitoring and evaluation.

2.8 We therefore asked the Minister to write to us again when the negotiations have progressed further, and in good time for the outcome to be debated prior to adoption by the Council (as the Minister was aware, this is the Committee's position with regard to the negotiations on the CIR, which, as noted above, performs a similar role with regard to all the other external action financial instruments).

2.9 In the meantime, we retained the draft Regulation under scrutiny.[4]

The Financial Regulation

2.10 The draft Council Regulation contains the Commission's proposal for the Financial Regulation, which provides the detailed rules for the financial management of EDF11.

2.11 In her Explanatory Memorandum of 17 October 2013, the Parliamentary Under-Secretary of State at the Department for International Development (Lynne Featherstone) says that:

- the Commission's main aim with the Financial Regulation has been to simplify and to align where possible with the EU budget Financial Regulation and its Rules of Application, agreed by Member States in 2012;
- alignment has additionally been sought with the relevant provisions of Common Implementing Regulation (CIR);
- these have been transposed to this 11th EDF Financial Regulation where they are relevant; and
- by so doing, the Commission hopes to reduce the diversity of Union external action funding rules, which create a burden for recipients, the Commission and other actors; although the Regulation also notes that the EDF has its own distinct framework for financial implementation, including the Cotonou partnership agreement and so cannot be fully aligned.

2.12 The Minister then provides the following helpful detailed analysis:

> "Part One of the proposed Financial Regulation covers Main Provisions and is subdivided into ten Titles: Subject matter, scope and general provisions; Financial principles; 11th EDF resources and its implementation; Financial actors; Revenue operations; Expenditure operations; Various implementation provisions; Funding

4 *Ibid*.

instruments; Presentation of the accounts and accounting; and External audit and discharge. Part Two describes the management of 11th EDF resources under the Investment Facility (IF) managed by the European Investment Bank (EIB). Part Three looks at transitional and final provisions, including the rules pertaining to previous EDFs such as the transfer of any balance remaining to EDF11, and the corresponding reduction in Member State contributions.

"Of these, articles covering basic financial oversight are aligned with the EU budget financial regulation, whilst articles specific to development funding are largely aligned with the CIR or are specific to the EDF. Those articles aligned with the EU budget include Title I on subject matter scope and general provisions; Title II on financial principles; Title IV financial actors; Title VI on expenditure operations; Title VII on implementation provisions; Title IX on accounts and Accounting, save articles related to the EIB; and Title X on audit and discharge. Those where alignment is largely with the CIR, or where most articles are EDF-specific, include: Title III on EDF resources and implementation; Title V on revenue operations; and Title VIII on funding instruments, save the articles dealing with procurement, grants and budget support which are aligned with the EU budget regulation where possible; as well as Part Two on the EIB Investment Facility and Part Three on the specific transitional measures for the EDF.

"The main elements of the regulation are:

- "Payment of Member States' contributions to the fund
- "The transfer of balances from previous EDFs
- "The financial actors entrusted with budget-implementation and the funding instruments available, including procurement, grants, financial instruments and Union trust funds
- "Roles and responsibilities of national and Commission authorising and accounting officers
- "Internal and external auditing, including the Court of Auditors and the annual discharge (approval) of accounts by the European Parliament
- "Procurement procedures
- "Procedures concerning EDF resources managed by the EIB

"Key changes that the Commission has highlighted from EDF10 include:

- "The use of Union Trust Funds and the funding of interest-rate subsidies
- "Fixed dates for Member States to pay their contributions
- "Abolishing overlapping reporting where possible
- "Alignment with CIR rules on the sub-delegation of implementation and contributions to international, regional or national funds, including new rules for co-financing and the visibility of EU funds

- "Alignment with the EU Budget Financial Regulations to strengthen recovery of amounts due from recipients if necessary"

2.13 With regard to the *Legal and Procedural* aspects, the Minister explains that:

- the legal basis for this proposal is Article 10(2) of the Internal Agreement of 17th July 2006 (the Internal Agreement) between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Agreement between the African, Caribbean and Pacific States and the European Community (as was) and its Member States signed in Cotonou, Benin on 23 June 2000 and revised on 25 June 2005 (the Cotonou Agreement).

- Article 10(2) of the Internal Agreement provides for a Financial Regulation to be adopted by the Council before the ACP-EC Agreement enters into force;

- the procedure for adoption of the Financial Regulation is the Council acting by the qualified majority laid down in Article 8 of the Internal Agreement, after an opinion from the European Investment Bank and the Court of Auditors.

2.14 The Minister goes on to describe alignment of the text with the EU budget Financial Regulation as the "overarching policy implication of the proposed EDF11 Financial Regulation", which she says "should make it easier for partner countries to receive funds from multiple sources, for example where ACP countries also benefit from other on-budget global thematic instruments."

2.15 The objective of aligning with the CIR is:

> "to improve overall EU aid effectiveness, as well as allowing for the possibility of incorporating the EDF into the EU budget post 2020 if desired. However, the EDF is a separate legal instrument outside the EU budget, with strong Member State oversight and working under the unique partnership model provided by Cotonou. Full alignment with the EU budget Financial Regulation is not therefore possible and should only be an objective where it improves and streamlines oversight of the EDF."

2.16 The Minister then notes that, in Part One:

> "many of the differences between this EDF11 Financial Regulation and the former EDF10 Financial Regulation are technical changes in accordance with efforts to harmonise and simplify. However, these will need to be carefully reviewed to ensure that the current level of Member State control over EDF finances is not reduced."

2.17 The Minister then says:

> "A key policy implication is the establishment of Union trust funds and the funding of interest-rate subsidies. Trust funds are separate funds created for a limited duration for emergency, post emergency or thematic actions. They allow other donors to contribute resources, with the Commission providing financial management, and are therefore a means to pool resources and coordinate actions. The Financial Regulation of the EU Budget regulates when and how the Trust Funds

may be used, but Member States have not yet been provided with specific details of what they will be used for under the EDF. We expect that they will be used to increase the amount of resources available for blending loans with EU grant money. They can be used to pool different types of aid modalities, resulting in the leveraging of additional development finance and achieving better value for money with scarce grant resources. They can be used in a wide variety of sectors. At present, two blending funds exist in the ACPs, the EIB Investment Facility and the EU-Africa Infrastructure Trust Fund."

2.18 The Minister then also says:

"Part Two, on the EIB Investment Facility, is substantially the same in content to the text in EDF10 text. The Commission does not highlight any significant changes to Part Three, which deals with transitional and final arrangements. As for EDF10, any remaining balances from previous EDFs will be transferred to EDF11, with a corresponding reduction in Member State contributions."

The Government's view

2.19 The Minister then comments thus:

"We support the Commission's drive to simplify the Financial Regulation, and for coherent procedures between the EDF and the EC budget where this leads to more effective management and implementation of programmes, particularly for cross-regional programmes which draw financial resources from both budget lines. Alignment of rules on the sub-delegation of implementation and contributions to international, regional and national funds should improve efforts at cooperation with a range of other partners.

"However, the UK will carefully review the changes to ensure that the current level of Member State control over EDF finances is not reduced. In Part One, we will seek clarification about the innovations from EDF10, particularly those which seek fixed dates for Member State contributions and those which look to abolish overlapping reporting by the Commission. Here, we would support simplification, but want to ensure that Member States retain access to the necessary information to provide a strong oversight role.

"Although forecasting and underspend of the EDF have improved over time, the UK is committed to improving Member State oversight and financial management of the EDF and we continue to work closely with the Commission to achieve this. The UK lobbied successfully for a technical seminar on financial forecasting in July 2013, where the Commission outlined changes they are making to their forecasting processes. We are working to further strengthen EDF financial management as part of negotiations of the new 11th EDF, with the Financial Regulation key to this. This includes ensuring that language secured in the recently signed EDF Internal Agreement — committing the Commission to reporting on efficiency savings; implementing a comprehensive results framework; and improvement of financial management and forecasting — is operationalized.

> "In principle we welcome the use of Union Trust Funds, particularly where they will be used appropriately to expand blending. However, we will need to ensure that that they are well-managed and that the Commission does not overlap, or set itself up in competition with, the work already done by the EIB. We will want to see the Commission concentrate its work where it has the necessary skills, expertise, and comparative advantage over other organisations.
>
> "Overall, we welcome attempts at greater financial transparency, through the publication of recipients of financial support under the EIB's Investment Facility and the strengthening of rules on recovery and penalties where contracts have been breached according to rules set out in the EU budget Financial Regulation."

2.20 Finally, the Minister says that the Financial Regulation will be negotiated by Member States in ACP Working Group from the end of October, with the aim of agreement by unanimity by the end of the year.

Conclusion

2.21 **As with the Implementing Regulation, the direction of travel with the draft Financial Regulation would appear to be satisfactory, but some important aspects have yet to be finalised; in this case, ensuring that:**

- **Member States retain access to the necessary information to provide a strong oversight role;**
- **the commitments in the recently signed EDF Internal Agreement requiring the Commission to report on efficiency savings, to implement a comprehensive results framework and to improve financial management and forecasting, are put into practice; and**
- **any further Trust Funds are well-managed and that the Commission does not overlap, or set itself up in competition with, the work already done by the EIB, but instead concentrates its work where it has the necessary skills, expertise, and comparative advantage over other organisations.**

2.22 **We would therefore also be grateful if in this case, too, the Minister would write to us again when the negotiations have progressed further, and in good time for the outcome to be debated prior to adoption by the Council, should we so decide. When she does so, we would like her to explain how the important issues outlined above have been addressed.**

2.23 **In the meantime, we shall retain the document under scrutiny.**

2.24 **We are also drawing this chapter of our Report to the attention of the International Development Committee.**

3 European aid to the most deprived

(34394) 15865/12 + ADDs 1–2 COM(12) 617	Draft Regulation on the Fund for European Aid to the Most Deprived

Legal base	Article 175(3) TFEU; co-decision; QMV
Department	Work and Pensions
Basis of consideration	Minister's letter of 10 October 2013
Previous Committee Reports	HC 83–xiv (2013–14), chapter 10 (11 September 2013); HC 86–xxii (2012–13), chapter 3 (5 December 2012)
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background and previous scrutiny

3.1 Since 1987, the EU has operated an EU Food Distribution Programme which uses surplus public intervention stocks of agricultural products to provide food aid to the most deprived. Participation is voluntary but has risen in recent years to include 20 Member States (but not the UK). The Programme is being phased out by the end of 2013 because the range and quantity of products in intervention stocks has diminished, and there is limited scope for Member States to supplement them with food purchases on the open market. In its place, the Commission has proposed a new Fund for European Aid to the Most Deprived ("the Fund"), with a proposed budget of €2.5 billion for the period 2014–20. Unlike the Food Distribution Programme, which is a measure based on the EU's Common Agricultural Policy, the new Fund would form an integral part of EU Structural Funds. Its purpose is to promote social cohesion by alleviating poverty, thereby contributing to the Europe 2020 poverty reduction target which seeks to lift at least 20 million people out of the risk of poverty and social exclusion by 2020.

3.2 We shared the Government's concern that the introduction of a mandatory scheme at EU level for the distribution of food and basic consumer goods would be inconsistent with the principle of subisdiarity and could be achieved by Member States acting on their own. The House endorsed our recommendation to issue a Reasoned Opinion last December. A further four Reasoned Opinions were issued by the Danish and Swedish Parliaments, the German Bundestag and the House of Lords, insufficient to meet the threshold required to trigger a formal review of the proposal under Protocol (No 2) on the application of the principles of subsidiarity and proportionality.

3.3 When we last considered the draft Regulation, at our meeting on 11 September 2013, the Government told us that discussions within the Council had focussed on three issues:

- whether the participation of Member States in the Fund should be mandatory or voluntary;
- whether the scope of the Fund should be expanded to include broader social inclusion activities; and
- how the Fund should be allocated between Member States, in light of a Council Declaration agreed as part of negotiations on the EU Multiannual Financial Framework for 2014–20 which gives Member States the option of topping up the Fund by an additional €1 billion (bringing the total to a maximum of €3.5 billion).[5]

The Minister's letter of 10 October 2013

3.4 The Minister for Employment (Esther McVey) informs us that a Presidency compromise text was presented to Coreper on 4 October which commanded sufficient support to serve as a basis for informal negotiations with the European Parliament with a view to achieving a First Reading agreement. The Presidency text confirms that participation in the Fund will be mandatory for all Member States, but is also more flexible in terms of the scope of the Fund and the methodology for allocating funding to each Member State. Whilst welcoming a more flexible approach, the Government reiterated its concern that the Fund was inconsistent with the principle of subsidiarity and maintained a general and Parliamentary scrutiny reserve on the text. The Minister describes the main elements of the Presidency compromise.

3.5 Turning first to the scope of the Fund, the Minister explains:

> "The text incorporates the proposal made by the UK and likeminded Member States to broaden the scope of the Fund to support social inclusion activities. A Member State will be able to choose whether to use the Fund to support social inclusion activities or material assistance (food aid and consumer goods) or a combination of both social inclusion and material assistance. To allow the Fund to support social inclusion activities, there have been changes to the articles on programming, monitoring, evaluation, information and communication to reflect the addition of social inclusion activities to the Fund. These changes are drawn from the Common Provisions Regulation governing the EU Structural and Investment Funds, so there is consistency with the rules applied to social inclusion activity under the European Social Fund."

3.6 The Minister makes clear that the allocation each Member State receives from the Fund is not new or additional funding, but will be drawn from its Structural Funds allocation for the period 2014–20. She continues:

> "The UK supported adjustments to the allocation methodology which reduce the UK's share and therefore the amount that will need to be top-sliced from the UK's structural fund allocation. These adjustments include a minimum amount of €3.5 million that will be allocated to each Member State. A Member State has the option to reduce its allocation to no lower than this minimum amount. The UK has decided

5 See (34394) 15865/12 + ADDs 1–2: Fourteenth Report (HC 83-xiv) agreed on 11 September 2013 .

to use this flexibility and has indicated it would like only the minimum amount of €3.5 million. At this point, some other Member States have still to indicate their desired allocation. However it is clear that the total of all Member States' allocations will be above the lower limit of €2.5 billion in the 2014–2020 Multi-annual Financial Framework and may reach the upper limit of €3.5 billion. The seven-year allocation for each Member State will be set out in an annex to the Regulation establishing the Fund."

3.7 The Minister undertakes to report back on the progress made in discussions between the Presidency and European Parliament, before an agreed text is submitted to the Council for formal approval.

Conclusion

3.8 **We thank the Minister for her latest update on the Presidency compromise text. We note that informal discussions with the European Parliament are underway and ask the Minister to ensure that the details of any prospective First Reading agreement are made available to us in good time before they are submitted to the Council for formal approval. We trust that, by that stage, the Minister will be able to confirm the amount of funding that the UK will receive and provide some indication of how it will be used. Meanwhile, the draft Regulation remains under scrutiny.**

4 Financial services: benchmarks

(35328) 13985/13 + ADDs 1–2 COM(13) 641	Draft Regulation on indices used as benchmarks in financial instruments and financial contracts

Legal base	Article 114 TFEU; co-decision; QMV
Document originated	18 September 2013
Deposited in Parliament	26 September 2013
Department	HM Treasury
Basis of consideration	EM of 14 October 2013
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; further information requested.

Background

4.1 In recent years, following the financial services crisis, the Commission has presented a wide range of regulatory proposals.

The document

4.2 The Commission now presents this draft Regulation on indices used as benchmarks in financial instruments, financial contracts or to measure the performance of investment funds. The proposal appears to have four main objectives:

- to improve the governance and controls over the benchmark process and in particular ensure that administrators avoid conflicts of interest, or at least manage them adequately;
- to improve the quality of the input data and methodologies used by benchmark administrators and in particular ensure that sufficient and accurate data is used in the determination of benchmarks;
- to ensure that contributors to benchmarks are subject to adequate controls, in particular to avoid conflicts of interest and that their contributions to benchmarks are subject to adequate controls — where necessary the relevant competent authority would have the power to mandate contributors to continue to contribute to benchmarks; and
- to ensure adequate protection for consumers and investors using benchmarks by enhancing transparency, ensuring adequate rights of redress and ensuring suitability is assessed where necessary.

4.3 Articles 2–21 of the draft Regulation:

- set out various governance requirements proposed for administrators and contributors, such as managing conflicts of interest and transparency;
- contain provisions relating to the input data and methodology of the benchmark itself; and
- contain provisions relating to proposed mandatory participation for contributors and third country equivalence for non-EU countries.

4.4 Articles 22–41 of the draft Regulation would:

- provide the procedure for authorisation and supervision of administrators by competent authorities; and
- create a mechanism for enforcement of the Regulation, for example by requiring Member States to provide competent authorities with certain powers.

4.5 The draft Regulation is accompanied by the Commission's impact assessment and an executive summary of the assessment.

The Government's view

4.6 The Financial Secretary to the Treasury (Sajid Javid) comments that the Government is concerned that this proposal and its scope may raise subsidiarity issues. The basis for this

concern appears to be illustrated by some of the policy implications he discusses, after first telling us that:

- the Government has shown clear commitment to benchmark reform, taking a leading role with carefully crafted reforms to LIBOR;
- following the revelations about misconduct relating to LIBOR in the summer 2012, the Government commissioned Martin Wheatley (Chief Executive of the Financial Conduct Authority) to carry out a review of LIBOR;
- the Government acted swiftly to implement the recommendations of his review — the Financial Services Act 2012 brought benchmark activities within the scope of regulation under the Financial Services and Markets Act 2000 and created a new criminal offence of making a false or misleading statement or impression in connection with the determination of benchmarks; and
- the Government has also been supportive of ongoing work on broader benchmark reform in various international fora — most notably in the International Organization of Securities Commissions (IOSCO), where a group co-chaired by Martin Wheatley developed international principles for financial benchmarks.

4.7 The Minister continues that:

- the Government questions the need for, and appropriateness of, the Commission legislating for this issue in the manner that it has done;
- the Commission has not demonstrated that pan-EU legislation is needed across all benchmarks;
- for the majority of benchmarks, the action that the Commission has proposed can be taken effectively at Member State level, as exemplified by the Government's reforms to LIBOR;
- the scope of the Commission's proposal is broad and contains detailed rules that would apply to a diverse range of benchmarks and do not seem to be fully in line with internationally agreed IOSCO principles;
- the Government questions whether such a broad scope is appropriate, given the nature of the proposal;
- benchmarks are not homogeneous in nature and as such, the rules that work for one will not necessarily work for another;
- it is therefore important to understand the implications and appropriateness of rules set out in the proposal for all benchmarks potentially caught within the scope; and
- the EU is the first jurisdiction to propose legislation covering all financial benchmarks — benchmark reform is an international issue and given the use of many benchmarks across borders, it is important that the legislation properly allows for benchmarks based in other jurisdictions to be used within the EU.

4.8 The Minister also notes that the draft Regulation empowers the Commission to develop delegated acts in a number of different areas and comments that:

- the Government will consider the appropriateness in each case;
- it is important that matters of policy are decided in the overarching proposal; and
- as the text evolves during negotiation, the Government will monitor these issues to ensure that any that may have policy implications are dealt with in the draft Regulation itself.

4.9 Turning to the Commission's impact assessment the Minister says that:

- the Government considers that the assessment provides insufficient detail for such a broad proposal;
- it is important that the impacts of implementing the proposed legislation are properly assessed;
- despite the assessment stating that "the size of the market for financial instruments and contracts potentially impacted by the benchmark industry is enormous", it also states that "the approximate number of benchmark administrators under scope in Europe is 500 and the approximate number of contributors to benchmarks under scope is also 500";
- when the scope of this Regulation is intended to cover all financial benchmarks within the EU, these figures appear exceptionally low; and
- the Government considers that a more considered estimate of the number of financial benchmarks likely to be covered by the proposal is necessary before a true impact assessment can be made.

4.10 In a further comment illustrative of the apparent inadequacy of the presentation of the proposal by the Commission the Minister, noting that it is currently unclear how many benchmarks and companies would be covered, given that at present many of them are not supervised and do not fall within the scope of financial regulation, says that it is not possible to calculate the potential financial implications on UK financial market participants and UK companies of the obligations that would be imposed.

Conclusion

4.11 **The Minister makes plain that the Government finds this draft Regulation unappealing. Nevertheless it seems implicit in some of his comments, such as that about the approach to delegated acts the Government will take, that it expects the measure to be adopted. We would have expected, given the imperfections in the proposal and its presentation, the prospect of a more robust challenge to the principle of the proposal. We ask the Minister to give us a clearer idea of whether the Government intends to block the proposal, or at the least have it radically amended.**

4.12 **As for the presentation of the proposal we are concerned about two points. First, the Minister illustrates the inadequacies of the Commission's impact assessment. We**

should like hear about the Government's efforts to secure a better assessment from the Commission.

4.13 **Secondly, the Minister suggests that the Government has subsidiarity concerns about the proposal. He ought to know, however, that it is not sufficient to state that the "Government is concerned that this proposal and its scope may raise subsidiarity issues" under the subsidiarity heading of an Explanatory Memorandum. If the Minister is so concerned, it is incumbent on him to explain his concerns to Parliament under this heading and in detail. The principle of subsidiarity is intended to protect EU electorates from supranational legislation where national legislation is more appropriate, and so is of primary importance to the scrutiny we carry out, particularly for a proposal as important as this. We therefore ask the Minister to send a full analysis of the Government's subsidiarity concerns in time for our meeting on 12 November, which we will take into consideration when deciding on that day whether to recommend that the House issue a Reasoned Opinion, the deadline for which is 2 December.**

4.14 **In undertaking this analysis, we ask the Minister to address the Commission's justifications for action at the end of section 5 of its impact assessment, entitled *Baseline scenario — how would problems evolve without EU action?*, which, in the absence of evidence to the contrary, appear difficult to refute:**

> **"While the principles by IOSCO's and ESMA/EBA and the work by the OSSG may stimulate action and encourage convergence in rules, given their non-binding nature, not all Member States may respond, and those that do may act in different ways. This could lead to a fragmented regime governing the use of benchmarks within the EU. While this is not a problem for benchmarks that are entirely national, for those that are widely used or produced across a number of Member States national action typically does not capture all links in the chain of a benchmark's production. Another drawback is that risks would be addressed by in a piecemeal fashion, but would not address all risks, or constitute an integrated framework. Fragmentation could also facilitate regulatory arbitrage, as benchmark production can be easily moved to other Member States. This would compromise benchmark quality. Besides, sanctions under the MAR proposal have a deterrent but not preventive effect and they address manipulation by contributors but do not cover the current deficiencies of the benchmark setting process regarding the lack of appropriate governance, controls and transparency by administrators and contributors.**
>
> **"Consequently, in the absence of European action, important benchmarks with a European dimension would be regulated only at the national level. Other critical benchmarks such as those for oil might continue to be self-regulated in some jurisdictions and so not address the fundamental conflicts of interest that exist. Allowing this baseline scenario to remain would result in the on-going lack of trust in benchmarks, contracts and financial instruments would continue to reference unreliable benchmarks and their prices would be distorted.**
>
> **"Finally, as there is an international consensus of the need for a coordinated approach on benchmarks' reform, the Commission is participating in IOSCO**

and ESMA/EBA task forces on benchmarks' reform in order to ensure the maximum level of alignment across these work streams and the Commission's proposal."

4.15 **Additionally, the Minister says in his Explanatory Memorandum that the Commission's approach is not suitable for all the benchmarks potentially within the scope of the proposal. We ask him to say which of the benchmarks are not suitable, and why. We will consider his further explanation on this when considering whether to recommend a Reasoned Opinion.**

4.16 **Pending the Minister's replies, the proposal remains under scrutiny.**

5 EU PNR Agreement with Canada

(a) (35226) 12645/13 COM(13) 529	Draft Council Decision on the signature of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name data
(b) (35225) 12637/13 COM(13) 528	Draft Council Decision on the conclusion of the Agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data

Legal base	(a) Articles 82(1)(d), 87(2)(a) and 218(5) TFEU; QMV (b) Articles 82(1)(d), 87(2)(a) and 218(6)(a) TFEU; QMV; EP consent
Department	Home Office
Basis of consideration	Minister's letter of 14 October 2013
Previous Committee Report	HC 83–xiii (2013–14), chapter 22 (4 September 2013)
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background and previous scrutiny

5.1 In 2010, the Council authorised the Commission to negotiate new Passenger Name Record (PNR) Agreements with Australia, Canada and the United States of America (the US). These Agreements provide for the transfer of PNR data (information on passengers held in air carriers' reservation and departure control systems) to the competent national authorities responsible for border control and security. A formal legal framework is needed because EU data protection laws prohibit the transfer of personal data to third

countries unless they ensure an adequate level of protection. The Agreements establish the purposes for which PNR data may be used — to prevent detect, investigate and prosecute terrorist offences and serious transnational crime — and the data protection safeguards that must be applied. They also provide legal certainty for air carriers by providing the necessary assurance that PNR data transfers are lawful.

5.2 PNR Agreements are subject to the UK's Title V (justice and home affairs) opt-in. The UK has already opted into the Agreements with Australia and the US. The latest draft Council Decisions would authorise the EU to sign and conclude a new Agreement with Canada. It would replace an earlier Agreement, concluded in 2005, and is intended to provide a more comprehensive framework for PNR data transfers which is consistent with the principles set out in the Commission's 2010 Communication, *On the global approach to transfers of PNR data to third countries*.[6] Our Thirteenth Report, agreed on 4 September 2013, describes the main elements of the proposed Agreement with Canada and the Government's position.

5.3 We noted that there were many similarities between EU PNR Agreements already concluded with Australia and the US, and the one proposed with Canada, but that there were also striking differences in the provisions on data retention and on the processing of sensitive data. The PNR Agreement with the US allows PNR data to be held for up to 15 years, whereas the Canada Agreement limits the data retention period to five years. The PNR Agreement with Australia prohibits the processing of sensitive data, whereas the Agreements with Canada and the US authorise it in exceptional circumstances. We asked the Minister to address these apparent anomalies, which seemed all the more surprising given that the purposes for which PNR data may be collected and processed are broadly the same under all three Agreements.

5.4 We also asked the Minister to set out the factors which the Government would take into account in determining whether or not to opt into the EU PNR Agreement with Canada, and to inform us of the date by which the UK's opt-in decision has to be notified to the Council Presidency.

The Minister's letter of 14 October 2013

5.5 The Minister for Immigration (Mr Mark Harper) tells us that the deadline for notifying the Government's opt-in decision is 26 November 2013. He says that the UK has first-hand knowledge of the benefits of PNR data, through its e-Borders system, which have led to the arrest of suspects wanted for serious offences, such as murder, rape and kidnap. He continues:

> "For this reason, the Government remains committed to the use of PNR as a way of tackling serious crime and terrorism but not at the expense of data protection and civil liberties.
>
> "When considering whether to opt into this Agreement with Canada, the Government will take into consideration the safeguards that will be afforded to

6 See Council document (31960) 13954/10: HC 428–xi (2010–11), chapter 21 (15 December 2010).

passengers. The Agreement is clear that Canada must ensure its competent authority processes PNR data 'strictly' and that it limits the purposes of processing to the 'legitimate objective' of prevention, detection, investigation and prosecution of terrorism and other serious crime that is transnational in nature.

"In addition, we will also consider whether opting into this proposal will better serve the UK's priorities by removing legal uncertainty and helping to ensure that, where appropriate, PNR data can be shared quickly and securely with all necessary data protection safeguards in place.

"The Agreement makes extensive reference to data protection and the significant weight placed on this within the Agreement will also be an important factor when considering whether to opt in. The data protection provisions are listed in my earlier Explanatory Memorandum and include measures such as non-discrimination safeguards, regulatory measures and complaint mechanisms for passengers who have concerns about the processing of their data."

5.6 Turning to the differences in data retention periods and restrictions on the processing of sensitive data in the EU PNR Agreements with Australia, Canada and the United States of America, the Minister observes:

"The Agreements were negotiated on behalf of the European Member States by the Commission based on the mandate agreed. The UK was therefore not directly involved in the individual negotiations, however the contents of the individual Agreements reflect each third country's individual situation including threat level and how the passenger data is used.

"The retention period for the Canadian Agreement is five years. This is in line with the United Kingdom's own assessment of PNR data retention, which has concluded that for our law enforcement purposes, five years is an appropriate period.

"In relation to the processing of sensitive data, the Canada Agreement states that it must be masked and only further processed in exceptional circumstances where the processing is indispensable because an individual's life is in peril or there is a risk of serious injury. If these requirements are met, the processing must still not be carried out without compliance with the strict procedural measures outlined in Article 8(4). The EU Agreement with the USA has similar limitations on the use of sensitive information (Article 6(3) of that Agreement). The Australian Agreement differs from the American and Canadian Agreements in that it does not allow for use of PNR in exceptional circumstances where life is at risk. As stated above, the individual Agreements were negotiated at a European level and the UK were not party to individual negotiating discussions; however, the limited use of sensitive data as described in the Canadian and American Agreements is in line with the UK's high data protection standards."

Conclusion

5.7 **We thank the Minister for his letter and note his view that the five-year data retention period proposed in the EU PNR Agreement with Canada, as well as the**

limitations imposed on the processing of sensitive data, are in line with UK data protection standards. We ask the Minister to ensure that we are informed of the Government's opt-in decision and that the reasons for its decision are set out clearly in a Written Ministerial Statement to Parliament. Meanwhile, the draft Decisions on the signature and conclusion of the EU PNR Agreement with Canada remain under scrutiny.

6 Maritime spatial planning and integrated coastal management

(34769) 7510/13 COM(13) 133	Draft Directive establishing a framework for maritime spatial planning and integrated coastal management

Legal base	Articles 43(2), 100((2), 192(1) and 194(2) TFEU; co-decision; QMV
Department	Environment, Food and Rural Affairs
Basis of consideration	Minister's letters of 30 September and 23 October 2013
Previous Committee Report	HC 86-xxxix (2012–13), chapter 5 (24 April 2013)
Discussion in Council	See para 6.8 below
Committee's assessment	Politically important
Committee's decision	Cleared

Background

6.1 The Commission says that, although the maritime sectors can contribute to the EU's objective of becoming a smart, sustainable and inclusive economy by 2020, this has also put pressure on marine and coastal resources, giving rise to the need for integrated and coherent management. This led it to put forward, in March 2013, this draft Directive, which would require each Member State to establish and implement a maritime spatial plan and an integrated coastal management strategy, applying an eco-system based approach to prevent conflicts between competing sectors.

6.2 The Commission said that planning details and the determination of management objectives should be left to Member States, but that every plan and strategy would at least need to be mutually coordinated; to ensure effective trans-boundary cooperation between Member States; to identify any trans-boundary effects on neighbouring third countries, and to deal with these in cooperation with those countries. It also set out the activities which Member States' marine spatial plans and integrated coastal management strategies would have to take into consideration.

6.3 As we noted in our Report of 24 April 2013, the Government strongly supports maritime spatial planning, and has drawn attention to the Marine Policy Statement of March 2011, noting also that the UK already makes every effort to engage at an early stage with neighbouring Member States. However, it believed that the proposal in its current form would be likely to require an amendment to current UK legislation, and that some of the provisions appeared to go beyond what was required to ensure effective implementation. The Government therefore intended to seek a number of amendments reinforcing the underlying principle that it is for Member States to decide priorities and how they deliver them, and deleting or amending a provision which appeared to give the Commission unnecessarily wide implementing powers.

6.4 The Government also pointed out that, although the proposal requires plans and strategies to be in place within 36 months of the Directive coming into force, approaches within the UK vary for a variety of reasons, and it would therefore be seeking to extend this time limit. However, it added that, as the UK has legislation in place and/or under consideration to implement the proposal, it did not expect there to be any regulatory or economic impact on business, and that the financial implications were likely to be minimal (although, if plans and strategies had to be implemented more quickly, additional resources might be needed).

6.5 We commented that, insofar as the proposal would seek to develop further an EU framework for these activities, it clearly made sense, given also the need for cross-border cooperation, though we went on to note the Government's concerns over the potential conflict with the ability of Member States to determine their own priorities and solutions. For that reason, we decided to hold the document under scrutiny, pending further information. We also said that we had considered the subsidiarity implications of the proposal, and had concluded, overall, that it had addressed these correctly, adding that, although individual elements, most notably the timetable for Member States to submit plans and strategies, may require changes to UK legislation, this appeared to us to give rise to issues of proportionality, rather than subsidiarity.

Subsequent developments

6.6 We received a letter from the Government on 4 July 2013, indicating that several Member States shared the UK's concerns, that it had been joined by a number of these in submitting amendments, and that the Lithuanian Presidency had scheduled an "ambitious" programme of meetings, in the hope of reaching a general approach by December. This was followed by a letter of 30 September 2013, saying that, although a recent Presidency text had taken on board many of the UK's suggestions, it left a number of concerns, particularly as regards integrated coastal management, and the timing of the Directive's implementation. The Government added that, whilst the UK and a few others were pressing for integrated coastal management to be made voluntary, there was only a fragile alliance, and that the UK risked being marginalised if it took too hard a line. It therefore asked if we would be prepared to give scrutiny clearance.

6.7 Our Chairman replied on 9 October, saying that, although the Government had clearly worked hard to improve the proposal, there appeared still to be a number of uncertainties, and that it seemed there was far from being a done deal. In view of this, he said that we

would be reluctant to give clearance, but that, if the Government concluded that it needed to support the measure in the Council in order to avoid a worse outcome, it would be open to it to do this, and to send a letter justifying such an approach.

6.8 We have now received a further letter of 23 October 2013 from the Parliamentary Under Secretary of State for Farming, Food and Marine Environment (George Eustice), which says that the main focus of discussion has been on integrated coastal management, where the UK, along with a core group of Member States, has now successfully negotiated changes which would allow Member States to choose how to implement this, and that he believes this will turn out to be the preferred option. He says that the latest proposal represents the best deal for the UK, and understands that the Presidency plans to take it to COREPER and the General Affairs Council for a decision in November. He suggests that, if the UK is unable to agree then what is on offer, there is a risk of ending up with a less favourable proposal. In view of this, he expresses the hope that scrutiny clearance can now be given.

Conclusion

6.9 **As we have already observed, the underlying rationale for this proposal appears to be sound, the main point at issue being whether it is overly prescriptive. This is clearly a judgement which the Government is best placed to make, and, if its conclusion is that the text now on the table meets its essential concerns, represents the best outcome achievable, and risks being lost if the UK is unable to agree to it, we would be content to clear the document. However, we would be glad if the Minister could inform us of the eventual outcome.**

7 Adjustment of direct farm payments for 2013

(35391) 14460/13 COM(13) 712	Draft Council Regulation fixing an adjustment rate to direct payments provided for in Regulation (EC) No. 73/2009 in respect of calendar year 2013 and repealing Commission Implementing Regulation (EU) No. 964/2013.

Legal base	See para 7.7 below
Document originated	16 October 2013
Deposited in Parliament	16 October 2013
Department	Environment, Food and Rural Affairs
Basis of consideration	EM of 28 October 2013
Previous Committee Report	None; but see footnote
Discussion in Council	See para 7.9 below
Committee's assessment	Politically important
Committee's decision	Cleared

Background

7.1 According to the Commission, it is a fundamental rule of the Treaty on the Functioning of the European Union (TFEU) that the Union's annual budget must comply with the Multiannual Financial Framework, and, in order to ensure that this principle is observed as regards the financing of the Common Agricultural Policy (CAP), Council Regulation (EC) No. 73/2009 provides for an adjustment to be made to market related expenditure and direct farm payments when expenditure forecasts indicate the relevant annual sub-ceiling will be exceeded.

7.2 Because the first estimates for the 2014 draft budget indicated that expenditure in this area was likely to exceed the financial ceiling agreed by the European Council in February 2013 as part of the Multiannual Financial Framework for 2014–20, the Commission put forward in March 2013 a draft Regulation[7] which would have reduced by 4.98% all direct farm payments[8] in excess of €5,000 for the 2013 calendar year (for which the payment falls under the EU financial year for 2014).

7.3 As we noted in our Report of 24 April 2013, the Government recognises the need to prevent overspending on the CAP, but was concerned at the proposed exemption for any payment below €5,000, believing there should be an equal proportional reduction for all such payments, that the proposal would wait provide an incentive for some Member States to call for increased expenditure in the knowledge that a large proportion of their own farms would not be affected, and that it would create an additional burden for paying agencies. It also pointed out that the percentage reduction in the direct payment budget for

7 See (34803) 7935/13: HC 86–xxxix (2012–13), chapter 1 (24 April 2013).

8 Except in Romania and Bulgaria, which are still in the process of phasing in direct payments, and Croatia.

the UK would be somewhat larger than in most other Member States as it has a higher than average proportion of payments above €5,000.

7.4 We commented that, whilst it was clearly right to prevent overspending under the CAP, we noted the Government's concerns particularly as regards the disproportionate effect which the exemption proposed for payments under €5,000 would have on Member States like the UK. Consequently, although the Government had said that it would try to have the exemption removed, we believed the proposal raised issues which the House should consider further, not least in terms of the precedent it could set for the future application of financial discipline in this area. We therefore recommended the document for debate in European Committee A, and this duly took place on 17 June 2013.

Subsequent developments

7.5 When the proposal was put forward, we were told that Regulation (EC) No. 72/2009 required it to be adopted by the European Parliament and the Council by 30 June 2013, failing which the Commission had the power to make the decision. In the event, the Council and European Parliament were not able to adopt the proposal by that date, and, as a consequence, the Commission adopted on 9 October 2013 an Implementing Regulation ((EU) No. 964/2013), proposing that there should be a somewhat smaller reduction of 4.001%, reflecting the ceiling on CAP expenditure implied by the political agreement reached in June 2013 on the Multiannual Financial Framework for 2014–20. The Regulation also reduced from €5,000 to €2,000 the threshold above which this reduction would be applied, this lower figure reflecting a political agreement reached by the Agriculture Council in June 2013.

7.6 We were also told that, if the Commission had new information, it could, if appropriate, propose an adaptation of the adjustment rate, and that the Council would then have until 1 December 2013, which marks the opening of the 2013 payment window for direct payments, to adopt that rate. The Commission has accordingly now put forward this draft Council Regulation which would retain the €2,000 threshold, but further lower the reduction in the payment rate to 2.45%, in line with the lower budgetary appropriations now forecast for 2014.

The Government's view

7.7 In his Explanatory Memorandum of 28 October 2013, the Parliamentary Under Secretary of State for Farming, Food and Marine Environment (George Eustice) refers first to the legal base for this measure, pointing out that the Council Legal Service disagrees with the Commission's proposal that this should be Article 18(5) of Council Regulation (EC) No. 120/2005, and believes that it should instead be Article 43(3) TFEU, which gives the Council alone power in a matter of this kind. The base has therefore been amended accordingly by the Lithuanian Presidency.

7.8 As regards the substance of the proposal, he says that the UK supports a reduction of 2.45%, and that paying agencies need an urgent decision to avoid any potential delays in payments to recipients. He also points out that, although the UK was opposed to the original exemption for payments below €5,000, it was subsequently prepared to

compromise on a figure of €2,000, and, although it would ideally still prefer there to be no exemption, he regards it as extremely unlikely that the Council would agree to amend the proposal. He also notes that the proposal would cut about €90 million from the UK's direct payment budget of €3.3 billion.

7.9 Finally, the Minister says that, if the proposal is not adopted by 1 December 2013, the Commission's Implementing Regulation, proposing a cut of 4%, will take effect. Consequently, although the next Agricultural Council is on 18–19 November, many Member States would like to adopt the proposal at any other Council before then, if possible.

Conclusion

7.10 **Since the original proposal was debated in European Committee on 17 June 2013, we think it sufficient simply to draw this latest proposal to the attention of the House, but to clear it. In doing so, we note that the smaller percentage cut would help to reduce the overall impact of the measure, but that, despite the lower threshold, it would still, on average, have a slightly greater effect on the UK than on most other Member States. Also, operating any threshold would have administrative implications for paying agencies.**

8 Health-enhancing physical activity

(35292) 13277/13 COM(13) 603	Draft Council Recommendation on promoting health-enhancing physical activity across sectors
ADDs 1–3	Impact Assessments

Legal base	Articles 165 and 168 TFEU; QMV
Document originated	28 August 2013
Deposited in Parliament	11 September 2013
Department	Health
Basis of consideration	EM of 28 October 2013
Previous Committee Report	None
Discussion in Council	26 November 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Background

8.1 In 2007, the Commission published a White Paper on Sport which demonstrated the extent to which EU law and policies affect sport and sought to "give strategic orientation on the role of sport in Europe, to encourage debate on specific problems, to enhance the

visibility of sport in EU policy-making and to raise public awareness of the needs and specificities of the sector".[9] It was accompanied by an Action Plan setting out initiatives which the Commission intended to take or support, while fully respecting the principle of subsidiarity and the autonomy of sporting organisations. Both documents recognised the role of sport and physical activity as a means of promoting public health goals and recommended developing EU guidelines on physical activity which were subsequently adopted in 2008.

8.2 With the entry into force of the Lisbon Treaty, on 1 December 2009, the EU acquired a specific competence (set out in Article 165 of the Treaty on the Functioning of the European Union (TFEU)) to "contribute to the promotion of European sporting issues" and to develop "the European dimension in sport". The EU also has competence, under Article 168 TFEU, to support and complement national policies in the field of public health with a view to "preventing human illness and diseases, and obviating sources of danger to physical and mental health". The type of activities envisaged include "the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation".[10] Articles 165 and 168 TFEU both contemplate the adoption of incentive measures or non-binding Council Recommendations and preclude the harmonisation of national laws.

8.3 A Commission Communication published in 2011 included an analysis of the societal role of sport and the importance of physical activity as a means of promoting social inclusion and healthy living.[11] It suggested that the EU could "add value" by helping Member States to develop comparable data to inform their policy making and by supporting the development of transnational networks and the exchange of good practice.

8.4 In November 2012, the Council agreed Conclusions which encouraged Member States to develop and implement strategies and cross-sectoral policies to promote physical activity and invited the Commission to propose a Council Recommendation on health-enhancing physical activity. The Conclusions envisaged "a light monitoring framework to evaluate progress with the help of a limited set of indicators that builds to the largest possible extent on available data sources" as well as the sharing of best practice.[12]

The draft Council Recommendation

8.5 Existing efforts to promote physical activity, based on the EU Physical Activity Guidelines agreed in 2008, have not succeeded in increasing the rate of physical activity across all Member States to the levels recommended by the World Health Organisation. The purpose of the draft Council Recommendation is to encourage the development of more effective policies on health-enhancing physical activity. It invites Member States to:

- develop national strategies and action plans on health-enhancing physical activity involving a broad range of policy areas, such as sport, health, education,

9 See (28796) 11811/07 + ADDs 1–4; HC 41–xxxiii (2006–07), chapter 3 (2 October 2007).

10 See Article 168(2) TFEU.

11 See (32464) 5597/11; HC 428-xx (2010–11), chapter 2 (16 March 2011) and HC 428-xxiv (2010–12), chapter 8 (27 April 2011).

12 See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/133870.pdf

environment and transport, that have a bearing on participation in physical activity;

- monitor levels of physical activity across the population, using the set of indicators annexed to the draft Recommendation;
- appoint a national "focal point" to collate data required for the EU monitoring framework and other related databases, such as the World Health Organisation (WHO) database on nutrition and physical activity; and
- strengthen cooperation and the exchange of best practice.

8.6 The Commission is entrusted with the following tasks:

- facilitating the exchange of information and good practice, networking and peer-learning;
- developing a monitoring framework for health-enhancing physical activity "based on existing forms of monitoring and data collection" — activities may include capacity building and training for national focal points, using the data collected to produce EU statistics on physical activity, and working closely with WHO to develop its database on nutrition and physical activity and to produce country-specific overviews and analyses of trends in physical activity; and
- producing a report every three years on progress made in implementing the Recommendation, and undertaking an evaluation after six years.

8.7 The draft Recommendation is based on Articles 165 and 168 TFEU and, consistent with the limitations on EU competence set out in both Articles, is not legally binding. Whilst recognising that Member States bear the primary responsibility for policies in the field of health and sport, the Commission suggests that EU action can "add significant value over and above what Member States can achieve on their own" by strengthening policy coordination, building capacity and helping to identify the most effective policy interventions to promote health-enhancing physical activity.[13] The Commission emphasises that its monitoring framework is light touch, based mainly on information already available to Member States and utilised for other purposes, and builds on existing international tools and strategies developed by the World Health Organisation. The costs involved in establishing the monitoring mechanism and supporting Member States through capacity building activities would be covered by the Sport Chapter of the *Erasmus* + Programme for 2014–20.

8.8 The Commission highlights the importance of health-enhancing physical activity as a tool in implementing the Europe 2020 Strategy, noting:

> "By helping to reduce the significant social and economic costs of physical inactivity, and by addressing key factors contributing to active and healthy ageing, a healthy workforce and ultimately higher productivity, they will strengthen Member

13 See p.7 of the Commission's explanatory memorandum accompanying the draft Recommendation.

States' ability to achieve the growth objectives set out in the Europe 2020 Strategy. They will also address the determinants of health inequities outlined in the Strategy as a prerequisite for growth and competitiveness."[14]

The Government's view

8.9 The Parliamentary Under Secretary for Public Health (Jane Ellison) welcomes the draft Recommendation and considers that EU action is appropriate "to help reduce health inequalities across the Union by disseminating good practice, benchmarking policies and outcomes, and coordinating the collection and collation of internationally comparable data".[15]

8.10 She notes that the areas of policy covered by the draft Recommendation are devolved matters. She continues:

> "The extent to which the policies of the Devolved Administrations already align with this Recommendation will differ. Similarly, commitment to the national strategy model set out in the Recommendation will vary across the UK. For example DH [Department of Health] Ministers have eschewed policies in England that would mandate local areas to deliver HEPA [health-enhancing physical activity], rather delegating responsibility for local public health planning to Local Authorities. UK officials and other national delegations have secured the inclusion of caveats to the text of the Recommendation to the effect that the actions taken by the Member States will depend upon national legislation and practice.
>
> "Variation in approach across the UK also introduces complications for supporting the monitoring framework, which is likely to require separate datasets for England, Scotland, Northern Ireland and Wales. There may be a case for harmonisation of these data across the UK, but this would create resource and cost implications. It is also unlikely that we would be able to provide data for all of the indicators for the whole of the UK. Our approach will be to offer the best available data to support the Monitoring Framework. We have established the principle that the Monitoring Framework will build upon existing data and this is reflected in the text of the Recommendation, indeed most of the quantitative indicators are already supported by data available and validated within the WHO database on nutrition and physical activity."[16]

8.11 Although the UK has established policies for physical activity, as well as arrangements for monitoring participation, the Minister acknowledges that "coordination of policies across sectors remains an issue".[17] She expects that some modest administrative resource will need to be found within the Department of Health and Public Health England to collate UK data for the proposed monitoring framework but highlights the difficulty of using this information to produce European statistics on physical activity, adding:

14 *Ibid*.

15 See para 13 of the Minister's Explanatory Memorandum.

16 See paras 14 and 15 of the Minister's Explanatory Memorandum.

17 See para 16 of the Minister's Explanatory Memorandum.

> "The variability in methodology and quality of Member States' data on physical activity levels will offer challenges in terms of an accurate assessment of HEPA levels across the Union or comparison between Member States. We will urge the Commission to continue with EU-wide measurement of physical activity via the Eurobarometer survey, unless a satisfactory means of aggregating data from the Member States can be developed."[18]

8.12 The Minister considers that the draft Recommendation is most likely to add value "in those Member States not yet committed to a strategic, cross-sectoral approach". She continues:

> "Such an approach, which should extend beyond government to civil society, business and other strategic partners, is essential to address the social and economic determinants of physical inactivity and thereby tackle health inequalities."[19]

8.13 She underlines the importance of research and evaluation to enable Member States to develop and implement evidence-based policies, and suggests that obtaining more and better data on physical activity levels will help to inform policy development at EU level and within the World Health Organisation.

8.14 The Minister expects the draft Recommendation to be considered by Coreper on 6 November with a view to formal approval at the Education, Youth, Culture and Sport Council on 26 November.

Conclusion

8.15 **We note the Government's support for the draft Recommendation which goes with the grain of existing efforts in the UK to promote health-enhancing physical activity across a wide range of policy areas. When we considered the Commission's 2011 Communication, *Developing the European Dimension in Sport*, we underlined the need for vigilance in ensuring that any future action at EU level in the field of sport fully respects the principle of subsidiarity and the limitations on EU competence set out in Article 165 of the Treaty on the Functioning of the European Union. We are satisfied that the draft Recommendation is consistent with the limited competence conferred on the European Union in the field of sport and public health under Articles 165 and 168 TFEU and complies with the principle of subsidiarity. Accordingly, we clear it from scrutiny.**

18 See para 18 of the Minister's Explanatory Memorandum.

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

9 Inland waterways: vessel standards

(35318) 13717/13 + ADDs 1–2 COM(13) 622	Draft Directive laying down technical requirements for inland waterway vessels and repealing Directive 2006/87/EC

Legal base	Article 91(1) TFEU; co-decision; QMV
Document originated	10 September 2013
Deposited in Parliament	25 September 2013
Department	Transport
Basis of consideration	EM of 8 October 2013
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Cleared

Background

9.1 Directive (2006/87/EC) sets out the technical standards applicable to vessels operating on inland waterways in the EU.

9.2 The Central Commission for Navigation on the Rhine (CCNR) also has its own set of standards applicable to vessels operating on the Rhine and some of its tributaries, which are to be found in the Revised Convention for Rhine Navigation.

9.3 The Directive requires vessels to carry a certificate confirming compliance for that particular type of vessel. For vessels operating on the Rhine, either a certificate issued in accordance with the Directive or a certificate issued in accordance with CCNR requirements is acceptable.

9.4 Achieving equivalence between the two types of certificate is difficult to maintain because they are linked to two different legal frameworks, each of which operates to a separate set of standards in accordance with its own rules and procedures. In order to achieve a level playing field, it is therefore desirable to move towards a situation whereby a uniform set of technical vessel standards exist. Because of the two legal regimes progressing to a uniform set of standards can only be achieved gradually.

9.5 An administrative agreement has been signed by the Commission and the CCNR to establish a committee structure so that they can jointly develop and maintain common technical standards. This committee is created under the auspices of the CCNR but will be open to experts representing EU and CCNR Member States. The aim will be to develop a single set of technical standards to achieve harmonisation between the current two standards. The CCNR will take the lead in setting up the committee that will provide the necessary administrative functions. The committee will be in charge of developing technical standards at a "working" level. Once these are published, any involvement at this

committee level ceases. Instead, the adoption of the standards will be considered by the EU and CCNR for incorporation into their respective regulatory frameworks for inland navigation.

The document

9.6 This draft Directive, whilst repealing Directive (2006/87/EC), would set out the technical standards applicable to vessels operating on inland waterways in the EU. The purpose of repealing the current Directive, is so that a mechanism can be introduced to enable administrative changes to be introduced so that both EU and CCNR standards can be revised and harmonised in a more timely and efficient manner.

9.7 In order to benefit from the new committee structure, the EU and CCNR need to adapt their legislative frameworks so that the outcome from the committee can be taken into account by these organisations, by making reference to its standards when adopting the technical requirements included in the Directive. To facilitate this, the rules referring to decision-making are to be separated from those concerned with the technical vessel standards and procedural issues in the proposed Directive. This will be done by re-organising the annexes to the Directive so that they only cover the specific technical standards, plus any procedural issues associated with those standards. Any aspects associated with the decision-making mechanism will be integrated into the main body of the proposed Directive and out of the annexes. These aspects are mainly concerned with equivalences and derogations and the carrying out of technical inspections.

9.8 This approach would give the Commission the power by delegated act to adapt the technical annexes to the draft Directive in the light of technical progress and the work of other organisations, in particular the CCNR. In doing so, the Commission would be assisted by the existing Committee of Member States established under Council Directive 91/672/EEC on the reciprocal recognition of national boatmasters' certificates. The delegation of power to the Commission would be for an indeterminate period, but either the European Parliament or Council could revoke this at any time. A delegated act would enter into force only if neither the European Parliament nor the Council objected within two months of notification of the act, a period which could be extended by two months by either institution.

The Government's view

9.9 The Parliamentary Under-Secretary of State, Department for Transport (Stephen Hammond), says that:

- Article 7.1 of the current Directive allows Member States, which have inland waterways not linked by inland waterways to the waterways of other Member States, to authorise derogations from some or all of the requirements of the Directive; and

- this has been given effect in the UK by regulation 4 of the Merchant Shipping (Technical Requirements for Inland Waterway Vessels) Regulations 2010, which exempts all vessels that operate on EU inland waterways within the UK (as listed in Annex 1 to the Directive) from the Directive's technical requirements.

9.10 The Minister explains that the purpose for using this power of derogation was as follows:

- the technical requirements laid down in the current Directive for non-passenger vessels are heavily based on those developed for vessels on the Rhine;
- they reflect the scale of those vessels and the operations and navigational environment of the Rhine and similar waterways;
- those requirements would impose an excessive and unjustifiable burden on inland waterway non-passenger vessels within the UK, where the corresponding scales are much smaller and the risk to safety is consequently less;
- such vessels in the UK are currently subject to only minimal technical requirements relating to life-saving appliances and fire protection — the UK safety standards which apply to such vessels, as a condition of the exemption, are the standards relating to life-saving appliances and fire protection;
- the UK has a robust national safety regime for inland waterway passenger vessels, enhanced following the Public Inquiry into the MARCHIONESS disaster of August 1989;
- some of the UK safety requirements are of a higher standard than those laid down in the Annexes to the current Directive;
- in some respects the UK safety requirements are also of a higher standard than the additional national technical requirements allowed in accordance with Article 5.1 and 5.3 of, and Annex III, to the Directive;
- the Government considers that it can safeguard UK national standards which are an important part of minimising accidents on such vessels and which it considers it is justified in maintaining, by exercising the UK's power of derogation; and
- using a provision within Article 7 the UK is also exempted from requirements to carry out technical inspections and to issue EU inland navigation certificates, thus avoiding costs greatly outweighed by any benefit.

9.11 The Minister notes that the draft Directive contains an article which replicates, apart from a minor editorial difference, Article 7 of the current Directive. This means that the UK would be able to continue with its present exemptions.

Conclusion

9.12 **Given that the intention is continue the derogation presently available to such Member States as the UK, this proposal would have no significant impact for the UK. So whilst drawing it to the attention of the House we clear it from scrutiny.**

10 The EU and Korea

(a) (35238) 12843/13 COM(13) 551	Draft Council Decision on the conclusion of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Union and its Member States and the Republic of Korea
(b) (35367) —	Draft Council Decision on the conclusion of the Framework Agreement between the European Union and its Member States and the Republic of Korea, with the exception of matters related to readmission

Legal base	(a) Articles 207, 212 and 218(6) (a) TFEU; QMV; consent; (b) Articles 91, 100, 191(4), 207, 212 and 218(6)(a) TFEU; QMV; consent
Department	Foreign and Commonwealth Office
Basis of consideration	EM and Minister's letter of 23 October 2013
Previous Committee Report	(a) (35328) 12843/13: HC 83–xiv (2013–14), chapter 11 (11 September 2013) (b) None
Discussion in Council	18 November Foreign Affairs Council
Committee's assessment	Legally and politically important
Committee's decision	Cleared

Background

10.1 Relations between the EU and the Republic of Korea are currently based on the Framework Agreement for Trade and Cooperation between the European Community and its Member States and the Republic of Korea (RoK), which entered into force in 2001.

10.2 A new Framework Agreement was co-signed on 10 May 2010 in Seoul.

10.3 In his Explanatory Memorandum of 28 August 2013, the Minister for Europe (Mr David Lidington) explained that:

- the Agreement will provide a framework aiming to consolidate and strengthen cooperation between the European Union and its Member States (MS) and the RoK in a range of sectors of mutual interest;
- these include promoting democratic principles and respect for human rights; countering the proliferation of weapons of mass destruction; combating illicit trade of small arms and light weapons; taking measures against the most serious crimes of concern to the international community; and combating terrorism;

- the Agreement will allow for further engagement and cooperation between the Parties in regional and international organisations; on trade and investment; economic policy dialogue; business cooperation; and further engagement and cooperation on fields including taxation, customs, competition policy, the information society, science and technology, energy, transport, maritime transport policy, consumer policy, health, employment and social affairs, environment and natural resources, climate change, agriculture, rural development and forestry, marine and fisheries;

- the Agreement was negotiated in parallel with the EU-RoK Free Trade Agreement (FTA), which was signed on 6 October 2010, but it has taken time for all Member States, including the UK, to complete domestic ratification;

- this is the first time that this dual approach has been followed and was designed to satisfy the long-standing EU (and UK) agreed position that all FTAs must either contain political clauses (commitments in the fields of human rights and non-proliferation), or be linked to Partnership and Cooperation Agreements (PCA) or updated Framework Agreements containing such provisions; and

- this Framework Agreement will essentially establish a fully coherent, modernised framework for bilateral relations between the UK and RoK.

10.4 Following domestic ratification by all EU Member States, the Council Decision submitted with his Explanatory Memorandum (document (a)) was the final step towards entry into force of the Agreement.

10.5 With regard to its political and economic importance, the Minister said that, as one of the EU's largest trading partners outside Europe, the Framework Agreement would bring significant benefits to the UK and EU economies and, once concluded, would send a politically important signal of the EU's commitment to working with the RoK.

10.6 The Minister noted that the draft Council Decision was likely to be tabled for adoption at the 21 October 2013 Foreign Affairs Council, ahead of the EU-RoK Summit on 8 November, and that the Committee "should treat the document as one containing JHA obligations and enhanced scrutiny timings apply" and that, as such, "the Government's opt-in decision will need to be taken by 28 October 2013."

10.7 The Minister further noted, with regard to *Legal And Procedural Issues*, that:

- the proposed legal bases were Articles 207 and 209, in conjunction with Article 218(6)(a) TEU;

- the Council Decision was subject to Qualified Majority Voting "though as this agreement is mixed it would not be adopted unless there is common accord of Member States"; and

- as a mixed agreement, it had been specified as an EU Treaty in accordance with Article 1(3) of the European Communities Act, 1972; no additional implementation measures are envisaged.

- the Framework Agreement contained an obligation to conclude a readmission agreement:

> "We believe that this JHA content engages our opt-in protocol, and will be pushing for the insertion of relevant legal bases and a recital protecting our opt-in. For the purposes of JHA enhanced scrutiny, the Committees should treat the document as one containing JHA obligations. We are also currently considering whether the inclusion of additional (non-JHA) legal bases is required in regard to other binding commitments in the Agreement."

10.8 With regard to the Timetable, the Minister said:

> "The last language version of this draft Council Decision was published on 29 July 2013; as such, the Government's opt-in decision will need to be taken by 28 October 2013.
>
> "As per the usual enhanced JHA scrutiny procedures, the Government commits not to make an opt-in decision until the Parliamentary Scrutiny Committees have had eight weeks from the 29 July to opine, i.e. 23 September 2013. We appreciate that this will leave only a short window for the scrutiny committees to consider the opt-in issue. Unfortunately, the timings of Parliamentary recess have created that situation in this case.
>
> "The Council Secretariat is likely to table this draft Decision for adoption at the Foreign Affairs Council on 21 October 2013. Before the Framework Agreement is concluded through adoption of this proposed Council Decision, negotiations, including on the legal base, will continue. The FCO will provide further updates to the Parliamentary scrutiny committees, via Ministerial letter, to reflect those negotiations, before 21 October 2013."

Our assessment

10.9 We acknowledged the political and economic significance of this Agreement for both UK and EU interests. But equally significant legal considerations had still to be resolved.

10.10 It was all the more important, therefore, for the Minister to provide the fullest possible explanation of the outcome of the negotiations on the legal base to which he referred, and to include in it what he should have told us now, viz., which additional (non-JHA) legal bases were being considered in regard to which other binding commitments in the Agreement.

10.11 We noted the Minister's comments on the applicability of the opt-in Protocol. As we had stated previously and often, we do not consider the Protocol to apply in the absence of Title V legal base; and that, accordingly, the enhanced scrutiny procedures do not apply. We expected, however, the Government to succeed in adding a Title V legal base, given the contents of the agreement, after which the enhanced scrutiny procedures would apply. (We noted that we bore in mind a similar situation with the EU Partnership and Cooperation Agreement with Indonesia, where two Council Decisions were drafted to cover, respectively, Title V and non-Title V competences, the Title V competence relating to a readmission provision.)

10.12 In the meantime, we retained the document under scrutiny.[20]

The further draft Council Decision

10.13 In his Explanatory Memorandum of 23 October 2013, the Minister for Europe (Mr David Lidington) says that the revised Council proposal:

- splits the Decision on conclusion into two, with one covering the Justice and Home Affairs (JHA) content on the readmission of nationals illegally present in another State, and the other covering the remaining content; and
- the legal base for the Council Decision on readmission is Article 79(3) of the Treaty on the Functioning of the European Union (TFEU) (border checks, asylum and immigration).

10.14 The Minister then continues as follows:

> "This is consistent with the approach taken in the EU-Indonesia PCA where two Council Decisions were drafted to cover, respectively, Title V and non-Title V competences. The Title V competence is Art 79(3) TFEU, relating to a readmission provision.
>
> "In line with the approach we took with the Indonesia PCA, we are minded to support the inclusion of a separate JHA legal base. However, we would not opt-into these elements of the agreement and are minded to assume the obligations in our own right. This would mean the UK is bound by the readmission commitment, but not as part of the EU. This is our preferred approach because the readmission provision falls in an area of unexercised shared competence, where either the EU or Member States could act. We take the view that the EU should not bind the UK by its exercise of such a shared competence. We are able to take this approach due to the mixed competence nature of the agreement and because it is unclear from the text whether the EU or the Member States (or both) would be entering into the commitments on readmission.
>
> "The proposed non-JHA Council Decision has the following legal bases: Articles 91 and 100 TFEU (transport), Article 191(4) TFEU (environment), Article 207 TFEU (common commercial policy) and Article 212 TFEU (economic, financial and technical cooperation). The UK is currently arguing that the transport provisions should be solely undertaken by Member States and is seeking their removal from the Council Decision. However, if this is not possible we will make a UK statement asserting the limits to the exercise of EU competence in this area.
>
> "This Council Decision is likely to be tabled for adoption at the Foreign Affairs Council on 18 November 2013. As stated in the Explanatory Memorandum of 28 August, the Decision covers JHA obligations and enhanced scrutiny timings apply. The last language version of this draft Council Decision was published on 29 July; as such, the Government's opt-in decision will need to be taken by 28 October 2013."

20 See headnote: (35238) 12843/13: HC 83–xiv (2013–14), chapter 11 (11 September 2013).

The Minister's letter of 23 October 2013

10.15 The Minister says:

> "Two revised Council Decisions (MD 124/13 COASI) were issued on 10 October 2013 splitting the original Decision into two, with one Decision covering readmission of nationals illegally present in another State, and the other Decision covering the other provisions of the Framework Agreement. This approach is consistent with the approach taken in the EU-Indonesia Partnership and Cooperation Agreement.
>
> "In my Explanatory Memorandum of 28 August, I indicated that the Agreement contained JHA content and that the process and timings of enhanced JHA scrutiny should apply. Given the last language version of this draft Council Decision was published on 29 July the Explanatory Memorandum specified that the Government's opt-in decision will need to be taken by 28 October 2013. I have submitted the Explanatory Memorandum on the revised Council Decision within the required 10 working days of the decision being published. However, given the UK's JHA opt-in window expires on 28 October, this does not give the Committee time to further consider the JHA elements before the expiration of this opt in window.
>
> "The Explanatory Memorandum provides full details of the position we are minded to take, which is consistent with the approach taken with the Indonesia PCA. Subject to progress on negotiations, the EU is likely to seek agreement to the Council Decisions in the Foreign Affairs Council on 18 November 2013."

Conclusion

10.16 **We welcome the decision to split the Council Decision to conclude the Agreement into two: one concerning JHA measures — a readmission provision — to which the UK's opt-in applies; the other concerning non-JHA measures. The approach follows that taken to the EU-Indonesia Partnership and Cooperation Agreement, and provides for greater legal certainty about the UK's participation in JHA measures, something for which this Committee has called since early in this Parliament. We trust this approach becomes standard practice for future EU international agreements which include Title V provisions.**

10.17 **We are grateful to the Minister for the explanation of the reasons for which the UK does not propose to opt into the readmission provision as part of an EU commitment, but proposes to ratify it as a bilateral commitment. We support the Government's approach.**

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

11 Customs

(33713) 6784/12 COM(12) 64	Draft Regulation laying down the Union Customs Code (Recast)

Legal base	Articles 33, 114 and 207 TFEU; co-decision; QMV
Department	HM Revenue and Customs
Basis of consideration	Minister's letters of 9 September and 14 October 2013
Previous Committee Reports	HC 86-xxxv (2012–13), chapter 11 (13 March 2013) and HC 428-lviii (2010–12), chapter 4 (25 April 2012)
Discussion in Council	27 September 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Background

11.1 The Community Customs Code, in its latest form the Modernised Customs Code (MCC) made under Regulation (EC) No. 450/2008, along with its yet to be agreed Implementing Provisions, set out the customs rules for trade between the EU and third countries. The key aims of the MCC are to deliver the strategic objectives of the Customs Union by modernising and simplifying the customs rules and procedures, facilitating legitimate trade, strengthening controls and increasing safety and security. It will replace the current Community Customs Code that dates back to 1992 and which, despite some amendment, has not kept pace with changes in the global business trading environment. The MCC entered into force on 24 June 2008 but will only become applicable when its Implementing Provisions come into force.

11.2 With this draft Regulation, presented in February 2013, the Commission proposed a recast (consolidation and amendment) of the MCC, before it is due to take effect, in order to:

- postpone the 24 June 2013 implementation date;
- align the code with the Lisbon Treaty and rename it, as the Union Customs Code (UCC); and
- adjust the text to reflect essential changes.

11.3 The Commission emphasised that:

- the UCC would not change the original policy objectives of the MCC or the substance of its provisions in respect of customs procedures and requirements; and
- the proposal would replace the MCC with an amended Regulation that was aligned to the Lisbon Treaty, incorporated necessary changes to reflect recent legislative and procedural developments in customs and other areas concerning the

movement of goods between the EU and third countries, and provided sufficient time for the IT systems needed to support implementation to be funded, developed and delivered.

11.4 However, the Commission acknowledged that most of the provisions were impacted to some extent by the proposed changes, particularly alignment under the Lisbon Treaty.

11.5 When we considered this proposal, in April 2012, we commented that, whilst this recast was clearly necessary, we noted the Government's concerns about some aspects of the proposal, particularly in relation to delegated and implementing powers. So before considering the draft Regulation further we asked to hear about progress in the negotiations. We asked to hear also about the views expressed about the measure by UK businesses in the Revenue and Customs' Joint Customs Consultative Committee (JCCC).[21] In March this year we heard that the matter was about to go to Trilogue discussion, following improvements in the text, including in relation to delegated and implementing powers and to most of the issues of concern to the JCCC. We asked, before the draft Regulation was to go to the Council for final endorsement, for a report on the thrust of the Trilogue discussions, in particular as to whether the improvements had been secured and whether the situation in relation to mandatory guarantees (a JCCC concern) had been further improved. Meanwhile the document remained under scrutiny.[22]

The Ministers' letters

11.6 In his letter the then Economic Secretary to the Treasury (Sajid Javid) told us that Trilogue negotiations had concluded with an agreed text which was a balanced package of measures representing a good deal for the UK. Outlining some of the detail the Minister first explained that:

- the text retained the mandatory requirement that businesses provide financial guarantees for goods held under special procedures prior to payment of customs charges (duty suspension arrangements);
- this was not unexpected as the UK was isolated in the Council in attempting to get this provision removed from the compromise text and similarly the European Parliament had no appetite for changing it;
- however, while the Government did not welcome the requirement for a mandatory guarantee, the final text secured a good compromise measure that would allow the guarantee to be waived for those businesses that met the required standard;
- the Government considered the waiver to be an essential facility for reducing the additional burden that would otherwise result;
- an additional success had been achieved, which would reduce the cost of the guarantees required from those businesses operating duty deferment arrangements;

21 See http://www.hmrc.gov.uk/consultations/jccc.htm

22 See headnote.

- the text originally required a business to provide a 100% guarantee with no waiver facility;
- the Government secured a provision in the agreed text that would allow trusted businesses, Authorised Economic Operators (AEOs), to obtain a reduction in the amount of the guarantee to be provided;
- this change would contribute to increased benefits for AEOs, which businesses had said they were very keen to see extended in this way;
- alongside the guarantee provisions was an associated proposal to introduce an EU-wide transaction-based guarantee monitoring system — the Government had expected this to be dropped as a result of reservations expressed by the UK and other Member States; and
- a very general reference to the need to monitor guarantees remained in the text — the scope and detail would not be known until 2014 when the proposals for Commission acts were due to issued for discussion and agreement with the Member States.

11.7 Secondly, in relation to delegated and implementing powers, the Minister said that:

- the outcome of the Trilogue discussions reflected a substantial shift in the European Parliament and Commission positions on delegated and implementing acts towards the Government's view;
- the original proposal was unacceptably weighted in favour of delegated acts;
- the Council adopted a negotiating position based on the principle promoted by the UK that delegated acts should set out 'what' needs to be done and implementing acts should cover in more detail 'how' it should be done;
- this approach had helpfully shifted the overall balance in favour of implementing acts — the number of delegated acts had been reduced from 49 to 39 and implementing acts had increased from 35 to 48; and
- the Government considered this to be an excellent result, especially given the European Parliament's usual preference for delegated acts.

11.8 The Minister concluded that:

- the Government considered that the UCC text agreed in Trilogue to be a good overall result and a sound deal for the UK;
- its key concerns had been largely addressed and where necessary acceptable compromise measures had been included; and
- the text was likely to be voted on at Coreper, on either 16 or 18 September, before being adopted at Council in the following weeks.

11.9 We were unable to consider this letter during the Conference Recess and with her letter the present Economic Secretary to the Treasury (Nicky Morgan) updates us on the

UCC. Reiterating that the Government considers the result of the negotiations to be a very good result for the UK the Minister tells us that:

- following the discussions previously reported to us the legislation has been finalised by both the European Parliament and the Council;
- the proposal went to the Council on 27 September and, while the UK abstained on scrutiny grounds, the other Member States voted in support; and
- the UCC was published in the Official Journal of the European Union on 10 October as Regulation (EU) No. 952/2013.

Conclusion

11.10 **We are grateful to the Ministers for their accounts of the largely successful outcome on this draft Regulation and now clear the document.**

12 Financial management

(a) (35342) 14273/1/13 + ADD 1 COM(13) 682	Commission Communication: *Protection of the European Union budget to end 2012*
(b) (35343) 14289/13 + ADDs 1–2 COM(13) 668	Commission Report on the follow-up to the discharge for the financial year (Summary)

Legal base	—
Documents originated	(a) 20 September 2013 (b) 26 September 2013
Deposited in Parliament	4 October 2013
Department	HM Treasury
Basis of consideration	(a) EM of 22 October 2013 (b) EM of 21 October 2013
Previous Committee Report	None
Discussion in Council	None planned
Committee's assessment	Politically important
Committee's decision	Cleared

Background

12.1 The Commission receives a "discharge" of the annual General Budget from the European Parliament, on the basis of a recommendation by the Council, which follows from the European Court of Auditors' audit. The Commission is required to report on its actions in response to recommendations made during the discharge process.

The documents

12.2 The Commission Communication, document (a), is a response to a European Parliament request made in the context of the 2011 discharge and concerns protection of the EU Budget. The Commission gives:

- an overview of the mechanisms used to identify and to deal with administrative errors, irregularities and suspected fraud detected by EU bodies and by Member States;
- an estimate of the total amounts of financial corrections and recoveries for 2012, alongside the cumulative impact over four years (2009 to 2012), to give a better picture of how the EU budget is protected from errors and how the Member States are involved and impacted; and
- information on the amounts recovered in relation to pre-financing (advances) that have not been used by beneficiaries and on the additional corrections reported by Member States under agriculture and cohesion policies, following their controls and audits for the current programming period.

12.3 An accompanying Staff Working Document provides more detailed information on the stages and forms of preventive and corrective measures, as well as the financial impact on the EU and/or national budgets, under the different policy areas and implementation methods. The Commission is of the view that the figures presented in the document demonstrate efforts in ensuring that the EU budget is adequately protected from expenditure incurred in breach of applicable law.

12.4 The following statistics in the Communication show the result of financial corrections and recoveries in 2012 and cumulatively over four years (2009–12):

- the total financial corrections and recoveries implemented (which mostly relate to irregularities of past years) amounted to €4.4 billion (£3.7 billion), or 3.2% of all payments in 2012, €139 billion (£116 billion), to Member States;
- the average amount of financial corrections and recoveries implemented by the Commission during the period between 2009 to 2012, was €2.6 billion (£2.2 billion) or 2% of the average amount of payments from the EU budget;
- the cumulative amount of recoveries implemented between 2009 and 2012 was €2.5 billion (£2.1 billion);

- the total amount borne by national budgets from financial corrections in 2012, amounted to €3.7 billion (£3.1 billion), 3.5% of the total payments received from the EU Budget;
- concerning agriculture (European Agricultural Guarantee Fund and Rural Development), the amount of financial corrections imposed by the Commission since the first clearance of accounts decision in 1999, totals €8.3 billion (£6.9 billion);
- the cumulative corrections, following controls and checks made by the Member States for Cohesion Policy, over the current programming period, amounted to €1.7 billion (£1.4 billion); and
- the recovery of pre-financing amounts was €575 million (€481 million) for expenditure policy areas and €293 million (£245 million) for Own Resource revenues during the period.

12.5 The Commission Report, document (b), is on the follow-up to the European Parliament discharge resolutions and the Council Recommendation for 2011. The Commission sets out the actions it has taken, intends to take, or is unable to follow up, in response to both the Council and European Parliament discharge recommendations. It focuses on the four priority actions of "institutional accountability and financial nature" highlighted by the European Parliament in the general discharge resolution for 2011:

- a Communication on protection of the EU budget (that is, document (a));
- error rates in shared management;
- the Commission's Evaluation Report[23] and enhanced use of performance audits; and
- revenues and traditional own resources.

12.6 The report is accompanied by two Commission Staff Working Documents that detail its responses to the 387 requests from the European Parliament and 87 from the Council. In total, the Commission agreed to action 181 requests (143 from the European Parliament and 38 from the Council), considers that required action has already been taken or is ongoing for 252 requests (205 from the European Parliament and 47 from the Council), though in some cases the results of the actions will need to be assessed, and has not accepted 41 requests (39 from the European Parliament and two from the Council), with the reasons given relating to the existing legal and budgetary framework or its institutional role or prerogatives.

The Government's view

12.7 In her Explanatory Memorandum on the Commission Communication, the Economic Secretary to the Treasury (Nicky Morgan) says that the Government supports the use of both preventive and corrective measures to reduce error rates in shared

23 See (35142) 11859/13 + ADDs 1–2: HC 83-xiii (2013–14), chapter 55 (4 September 2013).

management and works closely with the Commission to implement remedial action plans to ensure interruptions and suspensions are lifted as promptly as possible. She adds that the Government believes, however, that the Commission must:

- be transparent and consistent in its application of the corrective measures; and
- maintain good communication, so Managing Authorities are able to respond quickly and positively where concerns over the management of funds have been raised.

12.8 In her Explanatory Memorandum on the Commission Report the Minister says that:

- the Government is a strong advocate of sound financial management and budget discipline in relation to EU budget expenditure; and
- it notes that this Report provides useful a summary of the actions taken by the Commission in response to the discharge recommendations of the 2011 EU budget.

12.9 The Minister then comments on two particular points. She says, first, in relation to improvements to interruptions procedures, that:

- the Government supports in principle, the amendments to Commission Regulation (EC) No. 883/2006 to facilitate interruptions of rural development payments, as a means of promoting sound financial management;
- it believes however that these amendments would not necessarily, in themselves, address the underlying problem of high error rates in scheme payments; and
- there is a continuing need for simplification of the regulations in such a way that policy objectives (for example, environmental benefits) can be maximised and error rates in expenditure minimised.

12.10 Secondly, in relation to actions concerning revenues in the UK, the Minister says that HM Revenue and Customs (HMRC) is working closely with UK trade bodies to assess the national impact of delay to the implementation of the Modernised Customs Code, with a primary focus being on the current timetable for the Union Customs Code implementation in 2015.[24] She also explains some of the detail of work HMRC is undertaking against fraud and evasion of own resources, in the context of European Court of Auditor EU-wide findings.

Conclusion

12.11 **Whilst clearing these documents, we draw them to the attention of the House as illustrative of continuing efforts to limit abuse of the EU's financial resources.**

24 (33713) 6784/12: see chapter 11 of this Report.

13 Financial services: insurance and reinsurance

(35378) 14513/13 COM(13) 680	Draft Directive amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) as regards the dates of transposition and application and the date of repeal of certain Directives

Legal base	Articles 53(1) and 62 TFEU; co-decision; QMV
Document originated	2 October 2013
Deposited in Parliament	7 October 2013
Department	HM Treasury
Basis of consideration	EM of 23 October 2013
Previous Committee Report	None
Discussion in Council	Not known
Committee's assessment	Politically important
Committee's decision	Cleared

Background

13.1 Directive 2009/138/EC, known as Solvency II, is intended to provide a modern, risk-based system for the regulation and supervision of EU insurance and reinsurance undertakings.

13.2 In January 2011, the Commission issued a proposal, known as Omnibus II,[25] to amend the Solvency II Directive (and the Prospectus Directive) in order to reflect certain changes brought about by the Lisbon Treaty and the creation of the European Insurance and Occupational Pensions Authority. The proposal also included transitional provisions, hooks for detailed subordinate legislation (known as level 2 measures) and provisions to extend the transposition, repeal (of the present existing insurance and reinsurance Directives collectively referred to as Solvency I) and application dates in Solvency II.

13.3 Solvency II cannot become properly operative until the Omnibus II package is adopted. In September 2012 Directive 2012/23/EU (a so-called Quick Fix Directive) was adopted to extend the deadline for transposition of Solvency II to 30 June 2013 with application on 1 January 2014, together with repeal of Solvency I on the latter date, because negotiation of Omnibus II had been very slow.

13.4 Omnibus II has still not been adopted — negotiations have proved difficult and the trilogue parties have been unable to reach agreement on the overall package, most notably on the capital treatment of long-term insurance products. Consequently, it is evident that there will not be enough time formally to adopt and bring Omnibus II into force before 1 January 2014, when the unamended Solvency II Directive starts to apply.

25 See (32459) 5523/11: HC 428-xvii (2010–11), chapter 13 (16 February 2011).

The document

13.5 Without legislation to further postpone the current transposition and application dates, Solvency II will apply unamended and will need to be implemented urgently without transitional rules and other important elements contained within Omnibus II. So the Commission presents this draft Regulation solely to amend the transposition date of Solvency II to 31 January 2015, with it coming into force, together with repeal of Solvency I, on 1 January 2016. This timetable would provide firms and supervisors with 11 months to prepare for implementation of Solvency II, that is a "bifurcation period" of 11 months after the transposition deadline before the Solvency II measures start to apply.

13.6 In presenting the proposal the Commission says that:

- this change to the implementation timetable should also ensure that there is time for the level 2 measures, which will set out more of the detail on how Solvency II should be implemented, to be completed before it comes into force;
- the level 2 measures cannot be proposed until Omnibus II is agreed and published (because they would be proposed under powers which will only be introduced into Solvency II as part of the Omnibus II package of amendments); and
- supervisors and firms need sufficient time to prepare for the application of Solvency II after the framework is finalised (including the level 2 measures and the national transposition measures).

The Government's view

13.7 The Financial Secretary to the Treasury (Sajid Javid) says that the Commission's proposal reflects widespread recognition that the dates currently in the Solvency II Directive are not achievable and that amendments are therefore necessary.

13.8 Noting that the current transposition date for Solvency II is 30 June 2013, the Minister reports that:

- the Commission gave oral assurances ahead of the 30 June deadline that it was not expecting Member States to comply with this deadline;
- it finally gave written assurances to Member States, in a letter of 3 July, that it "does not envisage opening infringement proceedings for failure to transpose Solvency II before the outcome of [Omnibus II] trilogues is clear"; and
- so far as the Government is aware, no Member State has complied with the 30 June transposition deadline.

13.9 The Minister comments that:

- the Government is in favour of the proposed Directive as further delays to the Solvency II timetable would be an undesirable outcome for firms in the insurance industry who would incur significantly increased costs;

- there would also be a significant degree of legal ambiguity for supervisors, firms and Member States in the event that this proposal is not adopted, which would lead to confusion and uncertainty around how to implement Solvency II, as it would come into force without political agreement on the overall framework;
- the Government believes that a bifurcation period of nine months (starting from 1 April 2015) would have been sufficient and would have allowed greater time for the development of level 2 measures;
- it is important for a degree of time pressure to remain on the overall level 2 process, particularly given the widespread expectation that Solvency II will now apply from 1 January 2016; and
- the proposal needs to be adopted prior to 1 January 2014 in order to avert potential cost and confusion and the consequent financial burden on affected firms.

Conclusion

13.10 **Clearly the implementation dates for Solvency II need to be amended and so we clear this document, whilst drawing it to the attention of the House, both in relation to the situation of Solvency II itself and to that of Omnibus II.**

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

Department for Business, Innovation and Skills

(35237) 14734/13 + ADD 1 COM(13) 688	Draft Council Decision on the conclusion of the Agreements in the form of an Exchange of Letters between the European Union and the Commonwealth of Australia, the Federative Republic of Brazil, Canada, the Hong Kong Special Administrative Region of the People's Republic of China, the Republic of India and Japan pursuant to Article XXI of the General Agreement on Trade in Services (GATS) 1994, relating to the modifications of the commitments in the schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union.
(35371) 14577/13 COM(13) 656	Commission Report: *regarding possible new labelling requirements of textile products and on a study on allergenic substances in textile products*.
(35375) 14717/13 + ADD 1 COM(13) 689	Draft Council Decision on the signing of the Agreements in the form of an Exchange of Letters between the European Union and the Commonwealth of Australia, the Federative Republic of Brazil, Canada, the Hong Kong Special Administrative Region of the People's Republic of China, the Republic of India and Japan pursuant to Article XXI of the General Agreement on Trade in Services (GATS) 1994, relating to the modifications of the commitments in the schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union.

Department for Environment, Food and Rural Affairs

(35387) 14637/13 COM(13) 683	Commission Report on: *the implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources based on Member State reports for the period 2008–2011*.
(35392) 14772/13 + ADDs 1–2 COM(13) 657	Commission 6th Financial Report on: *the European Agricultural Guarantee Fund 2012 financial year*.

Department for International Development

(35335) 14110/13 COM(13) 658	Commission Report: *Annual Report on the European Union's Humanitarian Aid and Civil Protection Policies and their Implementation in 2012*.

Food Standards Agency

(35372) 14594/13 COM(13) 681	Commission Report on: *the overall operation of official controls in the Member States on food safety, animal health and animal welfare, and plant health*.

Foreign and Commonwealth Office

(35404) — —	Council Decision 2013/xxx/CFSP of [xxx] on the signing and conclusion of the Agreement between the European Union and Georgia establishing a framework for the participation of Georgia in European Union crisis management operations.

HM Treasury

(35333) 14048/13 COM(13) 639	Draft Regulation amending Regulation (EU, Euratom) No. 966/2012 on the financial rules applicable to the general budget and repealing Council Regulation (EC, Euratom) No. 1605/2002.
(35351) 14422/13 + ADD 1 COM(13) 661	Commission Report on: *the guarantee fund and its management in 2012*.

Formal minutes

Wednesday 30 October 2013

Members present:

Mr William Cash, in the Chair

Andrew Bingham	Chris Kelly
Mr James Clappison	Stephen Phillips
Michael Connarty	Jacob Rees-Mogg
Nia Griffith	Linda Riordan
Kelvin Hopkins	Henry Smith

The Committee deliberated.

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

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

Paragraphs 1.1 to 14 read and agreed to.

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

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

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[Adjourned till Wednesday 6 November at 2.00pm.

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)
Andrew Bingham MP (*Conservative, High Peak*)
Mr James Clappison MP (*Conservative, Hertsmere*)
Michael Connarty MP (*Labour, Linlithgow and East Falkirk*)
Geraint Davies MP (*Labour/Cooperative, Swansea West*)
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*)
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*)
Penny Mordaunt MP (*Conservative, Portsmouth North*)
Mr Joe Benton MP (*Bootle*)