House of Commons

European Scrutiny Committee

Twenty-fifth Report of Session 2013–14

Documents considered by the Committee on 27 November 2013, including the following recommendations for debate:

A Europe for Citizens Programme 2014–20

Commission Work Programme 2014

HC 83-xxii

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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).

Staff

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

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Contents

Report

Meeting Summary

This week the Committee considered the following documents:

Commission Work Programme

The Committee reports this week on the Commission Work Programme 2014. With European elections scheduled for May 2014, this Programme is clearly of a different nature than previous years. That said, it provides an interesting indication both of which proposals will be prioritised in the early part of 2014 and also areas of work which might be taken forward once a new European Parliament has been elected, and a new Commission appointed, towards the end of next year. The Committee Report summarises the Work Programme and the Government's views on it, and concludes that — like last year — it should be debated on the floor of the House, ideally before the Christmas recess. We hope that many other Members, particularly Members of Departmental Select Committees, will take part in that debate.

Europe for Citizens Programme 2014–20

This draft Regulation would establish a Programme with a budget of €229 million for the period 2014–20, focussing on two main strands, 'Remembrance and European Citizenship' and 'Democratic engagement and civic participation'. The Committee has held this document under scrutiny pending confirmation of the final budget and certain legal queries. The Minister has now written to inform us that the Government has secured a reduction in the budget for the Programme to €185 million. Notwithstanding the reduction, we have concerns about the absolute level of expenditure involved, and recommend a debate in European Committee.

Fisheries: total allowance catches for 2014

This Draft Regulation sets out the EU Total Allowable Catches (TACs) for particular fish stocks in 2014. This is an annual process and has habitually presented scrutiny difficulties, as agreement is needed before the start of the calendar year in question, and the requirement to take into account scientific evidence means that official texts have often been available too late to be considered properly beforehand. Some information is now available: the Government observes that the Commission has generally been more precautionary than the International Council for the Exploration of the Seas (ICES) in its treatment of stocks for which the data are limited, and states that one of the UK's priorities will be to seek an approach which takes account of all relevant available data. The Government also notes that the Commission proposes a 20% reduction in effort (days-at-sea) for most of the cod fisheries covered by the Cod Recovery Plan, and says the UK will resist this. No information is, however, yet available on a number of stocks which are of great importance to the UK which are managed jointly with Norway. In these circumstances the Committee agrees the granting of a scrutiny waiver on the condition that the Government arranges a general debate on fisheries which will enable Members to have a chance to raise points with the Government before any decision is taken. The proposals remain under scrutiny.

EU Passenger Name Record (PNR) Agreement with Canada

These Council Decisions authorise the signature and conclusion by the EU of an Agreement for the transfer of Passenger Name Record (PNR) data to Canada. They have been held under scrutiny since September. The UK has already opted into PNR Agreements with Australia and the USA, and the latter Agreement was the subject of a debate. We note that the Agreement with Canada includes a shorter data retention period (five years) and that the limitations imposed on the processing of sensitive data are in line with UK data protection standards. We therefore agree to clear this proposal from scrutiny.

Vehicle type approval: sound levels of motor vehicles

The aim of this Draft Regulation is to lower permissible noise levels for motor vehicles. The Committee first considered it in January 2012 and has kept it under scrutiny ever since, commenting that the proposal had important implications for vehicle manufacturers, consumers and those affected by vehicle noise. In May this year the Committee heard that the position the UK Government was taking was that it broadly supported the Commission's limit values for all vehicles and supported its timescale for light duty vehicles, but was seeking a longer timescale for heavy duty vehicles. The Minister now reports that a proposed compromise text represents a satisfactory outcome, and that significant dispensations to minimise burdens on small UK manufacturers have been achieved. Accordingly, we have decided to clear the document.

1 A Europe for Citizens Programme 2014–20

(33565) 18719/11 + ADDs 1–2 COM(11) 884	Draft Council Regulation establishing for the period 2014–20 the Programme *Europe for Citizens*

Legal base	Article 352; unanimity; EP consent
Department	Culture, Media and Sport
Basis of consideration	Minister's letter of 19 November 2013
Previous Committee Reports	HC 83-xx (2013–14), chapter 8 (6 November 2013); HC 86-i (2012–13), chapter 6 (9 May 2012); HC 428-xlix (2010–12), chapter 4 (1 February 2012)
Discussion in Council	No date set
Committee's assessment	Legally and politically important
Committee's decision	Not cleared; recommended for debate in European Committee C

Background and previous scrutiny

1.1 The draft Regulation would establish a "Europe for Citizens" Programme with a budget of €229 million for the period 2014–20. It would ensure continuity of funding for a range of activities already supported by the EU under the current Europe for Citizens Programme (2007–13), but would focus on two main "strands." The first, entitled "Remembrance and European Citizenship", would support initiatives associated with remembrance (for example, the causes and consequences of totalitarianism in recent European history) and European identity. The second, "Democratic engagement and civic participation", would seek to develop citizens' understanding of, and opportunities for involvement in, the EU policy-making process, and to encourage volunteering. Our earlier Reports provide an overview of the content of the draft Regulation and the Government's position.[1]

1.2 As the legal base for the draft Regulation is Article 352 of the Treaty on the Functioning of the European Union (TFEU), it is subject to section 8 of the European Union Act 2011 and requires an Act of Parliament before the Government may agree to its formal adoption by the Council of Ministers, unless one of the statutory exemptions in section 8(6) of the Act applies. The Government has confirmed that none of the exemptions applies and that an Act of Parliament is needed.

1.3 In his letter of 31 October 2013, the Minister for Culture, Communications and Creative Industries (Mr Ed Vaizey) informed us that the Government had succeeded in securing a reduction in the budget for the Programme (down from €229 million in the Commission's original proposal to €185 million) and indicated that the draft Regulation

1 See headnote.

had been "agreed" by the Council and Commission and sent to the European Parliament for its consent. Given that, under the terms of the European Union Act 2011, the Government may not formally agree to be bound by the draft Regulation until it has complied with the requirements set out in section 8 of the Act, and that the necessary legislation (the European Union (Approvals) Bill) has yet to be endorsed by both Houses of Parliament, we asked the Minister to explain the nature of the "agreement" reached by the Commission and Council. We also asked him to confirm that the Government would not be in a position formally to approve the draft Regulation in the Council of Ministers until the European Union (Approvals) Bill had been enacted.

The Minister's letter of 19 November 2013

1.4 The Minister (Mr Ed Vaizey) clarifies that the agreement referred to in his letter was that reached by COREPER in March 2013 on the substance of the draft Regulation, with the exception of the budget allocation, which has since been agreed following the conclusion of negotiations on the EU's Multiannual Financial Framework for 2014-20. He notes that the Commission and Council both support the reduced budget for the Programme and expects the European Parliament to give its consent shortly so that the draft Regulation can be considered for final approval at a future Council meeting.

1.5 Turning to the requirements of the European Union Act, the Minister adds:

> "I can of course confirm that the requirements of section 8 of the 2011 European Union Act must be satisfied before a Minister can agree to, or otherwise support, the adoption of a measure based on Article 352 TFEU in Council. The obligation is on Ministers to ensure that they have secured the necessary approval before they vote in favour or otherwise approve a proposed measure based on Article 352 TFEU in full or in part. This has been made clear to our EU colleagues throughout the negotiations."

1.6 He concludes:

> "Whether Ministers are able to approve (or otherwise support) this draft Regulation will depend on whether the European Union (Approvals) Bill is passed by Parliament."

Conclusion

1.7 **We thank the Minister for his prompt response. We note that the agreement referred to in his previous letter concerned a working-level agreement on the content of the draft Regulation, rather than formal approval by the Council of Ministers. We welcome the Minister's assurance that formal agreement will depend on the successful passage of the European Union (Approvals) Bill through Parliament.**

1.8 **Whilst welcoming the reduction in the budget agreed for the Programme, we question the justification for EU expenditure in this area and recommend that the draft Regulation should be debated in European Committee C.**

2 Commission Work Programme 2014

(35453) 15521/13 + ADD 1 COM(13) 739	Commission Communication: *Commission Work Programme 2014*

Legal base	—
Document originated	22 October 2013
Deposited in Parliament	31 October 2013
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 15 November
Previous Committee Report	None; but see (34122) 15691/12: HC 86-xxi (2012–13), chapter 1 (28 November 2012)
Discussion in Council	19 November General Affairs Council
Committee's assessment	Politically important
Committee's decision	For debate on the floor of the House before the Christmas recess

Background

2.1 Each autumn the Commission publishes its Work Programme (CWP), setting out its priorities for the coming year. This gives an indication of the legislative proposals, initiatives and communications that will be pursued in 2014. The Addendum to the Communication contains five annexes. These include:

- Annex I: a list of 26 initiatives which the Commission intends to deliver before the European Parliament elections in May 2014;
- Annex II: 29 new legislative and non-legislative initiatives that the Commission intends to take forward in the same timeframe;
- Annex III: REFIT actions — recasting, simplifying and evaluating the effectiveness of extant legislation;
- Annex IV: pending proposals that are to be withdrawn; and
- Annex V: legislative measures that will become applicable in 2014.

2.2 The 2014 CWP reflects on the past five years in which the current Commission, which comes to an end in the autumn of 2014, has sought to deal with the ramifications of the global financial crisis. The Commission states that there have been notable successes: the safeguarding and strengthening of the euro; a reinforced system of economic governance; new financial supervision and regulation; the foundations of an EU Banking Union; work on completing the Single Market; and political agreement of the EU Budget. It also says that the remaining challenges of youth unemployment, inequality, financing of SMEs, promotion of citizens' rights, among others, are "formidable". The Commission intends to

concentrate on meeting these challenges and "elaborating a path towards a deep and genuine Economic and Monetary Union".

Commission Communication

2.3 Building on President Barroso's State of the Union Address on 11 September 2013, the CWP translates his political commitments into formal proposals. In introducing the programme, the Commission Communication stresses that this will be a "year for completing work on the many growth-enhancing proposals pending in the legislative process and for accelerating implementation on the ground".

2.4 The Commission first sets out the key challenges for 2014. Initially the focus will be on working with the European Parliament and the Council to complete negotiations on proposals that have a realistic chance of adoption before the EP elections. In parallel, the Commission will prioritise the "smooth and timely start for MFF programmes ... [which] will provide a real boost to the European economy"; Member States, the Commission continues, need to put in place the structures, procedures and programmes at a national level to ensure they are delivered on the ground.

2.5 The Commission will continue to take forward work in a number of areas. It will promote the Europe 2020 goals through the European Semester; consolidate the progress made in economic governance; continue to report on progress in economic, social and territorial cohesion; take forward the annual enlargement package; and continue work on the European Neighbourhood policy. Negotiations will continue on a series of key international agreements on trade and climate change.

2.6 With the prospect of a new Commission in the autumn of 2014, this CWP has a lighter than usual programme of new initiatives. The Commission says it will limit the extent of new legislative proposals to "legal obligations, technical updates and specific urgencies", including fulfilling international commitments and completing work foreseen in the 2013 CWP. Some of the non-legislative initiatives will lay the groundwork for future Commission activity after autumn 2014. The recent Regulatory Fitness and Performance Programme (REFIT) exercise, a programme of legislative reform, will be a major theme in 2014 (see Annex 3).

2.7 The focus of the 2014 Work Programme is on four main areas:

- Economic and Monetary Union;
- smart, sustainable and inclusive growth;
- justice and security; and
- external action.

Economic and Monetary Union

2.8 The Commission states that progress towards deep and genuine Economic and Monetary Union underpins much of its agenda. Latvia will soon become the 18th member of the eurozone. Work continues on economic governance and completing the Banking

Union but there is also a shift in focus to the social dimension of EMU and its importance for a more cohesive European society. The Commission sees this as "the best way to earn the confidence of citizens".

2.9 The Commission looks ahead to the Annual Growth Survey, which will launch the next Economic Semester. 2014 is the second year of implementation of the 'two-pack' regulations in eurozone Member States, which seek to achieve greater coordination of national budgets and support the euro area's fiscal objectives. Cohesion policy programmes will "be geared to supporting the implementation of the country-specific recommendations".

2.10 The Commission will prioritise banking sector reform and a sound financial system. It wants to see implementation of the Single Supervisory Mechanism and will seek agreement on the Single Resolution Mechanism as well as continuing the overhaul of financial regulation and supervision. It counts implementation of all G20 commitments as a prerequisite for sustainable recovery and stability. The Commission also states that it will prioritise achieving access to finance for SMEs.

2.11 To further support the EU economy, the Commission states that it will "intensify the fight against undeclared work, tax fraud and tax evasion ... support efforts to ensure a sound and efficient fiscal platform for public services" and look at the issue of tax policy.

Smart, sustainable and inclusive growth

2.12 A number of initiatives aim to create sustainable growth, jobs and stronger social cohesion. The new MFF programmes cover a wide range of measures that, once operational in 2014, will contribute to this goal.

2.13 The Commission states that finalising the new partnership agreements and corresponding programmes of the European Structural and Investment Funds and maximising their potential are critical to the recovery, as is the Innovation Investment Package. The reformed CAP, it states, will help to generate jobs in rural areas and contribute to the green economy.

2.14 Youth unemployment must be tackled. The Commission calls on Member States to implement the Youth Guarantee in order to kick-start job creation and improve the transition from school to work; to invest in education and skills; to remove obstacles to access to and free movement of regulated professional services; and to look to the potential of key growth sectors such as ICT and the green economy. This will also contribute to increasing labour mobility and mitigating social exclusion and inequality, although they remain a challenge.

2.15 To remain competitive in the world, the Commission states, the EU must fully implement the Horizon 2020 programme (on investment in innovation and research). The Commission will reflect on strategic priorities to address current challenges, and work to support growth and ensure a level playing field with global competitors.

2.16 All this, the Commission states, has to be backed by a well functioning single market and fair competition. Adoption of key measures under the Single Market Act II will boost strategic sectors. It also draws attention to the REFIT programme, as an important

contribution to promoting a business-friendly environment, and work on network infrastructure (including the Connecting Europe Facility) and deployment of digital services. Measures to promote a fully integrated energy market, more efficient transport networks, a single market in telecommunications, greater resource efficiency and a new framework for climate and energy are also discussed.

Justice and security

2.17 The Commission gives the following context:

> "The EU must protect citizens and safeguard their rights. To this end, the effective application of EU rules and the reinforcement of cooperation between national authorities in the areas of safety and justice are essential."

2.18 The comments that follow encompass a wide-ranging series of measures. These include helping to fight crime, corruption and terrorism; ensuring respect of fundamental rights; stronger measures to prevent loss of life at sea; protection of EU borders; targeting human trafficking; and enhanced cooperation with third countries. The CWP also comments on the need to safeguard health and food and product safety, including safety standards for nuclear energy.

2.19 To take full advantage of those rights provided in the EU, effective justice systems are needed, the Commission says. People and business need "easy access to justice, on equal terms in all countries, notably in cases of cross-border litigation". It will take forward work on the European Public Prosecutor's Office and on further improvements to the OLAF Regulation. The Commission will also set out its views on how justice and home affairs policies should further evolve as the Stockholm programme ends and police and judicial cooperation in criminal matters become fully integrated into the EU's system of law.

2.20 The Commission will propose a framework that would encode a consistent response "based on objectivity and the principle of equality between Member States" to situations where the Commission is called on to intervene in a Member State following a "serious, systematic risk to the rule of law".

External action

2.21 The Commission states that the EU will promote peace, stability and security both at its borders and outside them. Through the enlargement agenda it will ensure that fundamental values and democracy extend into the near neighbourhood, including the Western Balkans and Turkey. The Communication notes particularly the High Representative's work to facilitate a breakthrough in relations between Serbia and Kosovo. Looking further abroad, the Neighbourhood Policy pursues the same objectives through the prospect of signature of Association Agreements with Ukraine, Moldova, and Georgia, as well as looking to the South.

2.22 The EU, the CWP states, is responding to a number of global challenges. The External Action Service, use of Taskforces and strategic initiatives such as the Maritime Security Strategy form part of the EU's contribution to promoting peace and security throughout the world. The Commission has "underlined the crucial contribution of the EU to tackling

crises" and calls for further unified action such as in the ongoing situation in Syria. As the world's largest donor of development assistance and humanitarian aid, the CWP comments, the EU is a key player in the global development negotiations.

2.23 Strong external economic relations will help to reinforce the EU as a leader in world trade. The Commission sees its role in this as maintaining the pace of negotiations on the trade agenda and working towards agreement on trade facilitation at the 9th WTO Ministerial Conference in December.

2.24 The EU also plays a "vital role" in global economic and financial governance, promoting sustainable development, fighting climate change and highlighting the importance of the fight against tax evasion and banking secrecy.

2.25 The EU will work towards a single defence market "with a view to developing a European defence industrial base". The Commission has also proposed further coordination of consular services. It believes that through working in a unified way the EU can ensure consistency between the internal and external dimensions of its policies.

The Government's view

2.26 In his Explanatory Memorandum of 15 November, the Minister for Europe (Mr David Lidington) sets out the Government's views on the most significant of the Work Programme's policy initiatives as well as providing an analysis of the proposed REFIT actions. The Minister stresses that these initial views could change when, in 2014, the Commission produces substantive proposals and their implications and form become clearer.

2.27 Overall, the Minister welcomes the strategic focus of this CWP with promotion of jobs and growth at its heart and references to competitiveness and innovation. He particularly welcomes the acknowledgement that more must be done to fulfil the ambitions for the digital economy and of completing the Single Market in services which, he says, are UK priority areas. More emphasis should be given, however, to the proposed Free Trade Agreement with the United States.

Economic and Monetary Union

2.28 The Government sets out the UK's approach to this complex area of policy as follows:

> "Among dossiers currently being negotiated, the Government's key priority is to ensure that the Single Market is protected with a level playing field for all EU banks. The UK will not participate in the **Single Resolution Mechanism** (SRM). Concerns have been expressed by Parliament over this proposal, including over the use of a Single Market legal base for a measure not designed to apply to all Member States. The Government is continuing to consider the strength of the rationale presented by the Commission for its choice of Treaty base and the suitability of the Treaty base for the necessary content of the proposal and will continue to engage actively in negotiations to mitigate risks to the integrity of the Single Market.

"The Proposal establishing a **framework for the recovery and resolution of credit institutions and investment firms** remains, broadly, consistent with UK priorities to implement a credible bail-in tool. The **financial transaction tax (FTT)** however does not. Government lobbying here continues to focus on narrowing the scope of the FTT to an issuance-principle based tax with appropriate exemptions including an introduction of a market-maker exemption. The Government continues to believe that the FTT proposal would conflict with the UK's priority of continuing the economic recovery, and be damaging to growth and employment.

"Our focus on the **Directive on Deposit Guarantee Schemes (DGS)** continues to be that it does not undermine the Bank Recovery and Resolution Directive (BRRD). The Government also continues to make progress to establish a well designed transparency framework in trilogue negotiations for the **Directive on markets in financial instruments (MIFID)**. We are continuing to negotiate carefully the **Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** to ensure our competence and subsidiarity red lines are met.

"Government priorities to open up competition in the financial services industry and support small business are being met by the **Directive on payment services in the internal market** and the proposal for a **Regulation on interchange fees for card-based payment transactions interchange fee regulation (payments package)**. We remain watchful in negotiations however for unintended impacts that could conflict with that objective.

"Looking forward to the **follow-up to the Green Paper on long-term financing of the EU economy** the Government's main objective will be to increase the supply of capital to long-term investments. We will lobby for the paper to have a de-regulatory focus, ensuring SME access to finance, developing private placements markets, and also helpful narrative to ensuring other financial services measures are also pro-growth."

Smart, sustainable and inclusive growth

2.29 The Government sets out views on labour movement initiatives. It remains firm that the Directive on the posting of workers must strike a balance between protecting posted workers' rights and not hindering the effective functioning of the Single Market. On Freedom of Movement for Workers, the Government says that it will continue to resist attempts to expand the scope to extend existing free movement rights. It has "reservations" about the labour mobility package, among them concern about any potential increase in the total cost of benefits.

2.30 The Government expresses concerns about the "risk of regulatory burdens on business and a lack of clarity about how [the European Accessibility Act] will relate to existing requirements". It would favour a non-regulatory approach to making goods and services more accessible for disabled and older people.

2.31 The Government is positive about the Commission's efforts towards the creation of a digital single market. It comments that the telecoms package is broadly in line with UK

priorities but that the impact assessment looks only at the gains, and not at the costs of the overall package. It also supports the e-identification and signatures Regulation and says it will actively participate in the debate around the proposal to review the copyright *acquis*. Finally, the Minister writes, "We will ensure that any changes are sustained by sound evidence and are in the interest of our stakeholders".

2.32 The Government covers a number of initiatives in brief. The fourth Railway Package will have a first reading in the EP Plenary is scheduled for February 2014. The Minister also comments on trilogue negotiations on the Tobacco Products Directive which are ongoing.

2.33 The Minister writes positively about the expected framework on climate and energy policies covering the period from 2020 to 2030; saying it could "help secure Government objectives". These include promoting an ambitious global response to climate change; enhancing energy security and economic growth through facilitating investments in energy infrastructure; and securing a more integrated EU energy market. Work will be needed to mitigate the risk of requirements that could increase the cost of decarbonisation or diverge from UK policy. The Commission is due to publish a White Paper in January 2014, and a debate on the framework is scheduled for March 2014. The Government awaits the consultation on new Energy and Environmental Guidelines.

2.34 The Minister writes that the Government will use its experiment to shape the proposed Commission Communication on job creation in the green economy and will lobby for the removal of future punitive measures.

2.35 The Government comments on a number of policy areas where the Commission seeks to review, reform or harmonise measures. The Minister welcomes the state aid modernisation package, essentially a review and revision of the various state aid frameworks, the aim of which is to facilitate growth measures and allow faster decisions. The Government would support action to review and remove barriers to trade "by strengthening existing legislation to reflect the developing markets" if it "does not bring additional or unnecessary burdens on business" and consistent application of the Services Directive across Member States. The Government comments in detail on reform of insolvency laws and, while it feels a "strong case" would have to be made to justify harmonisation rather than convergence, continues to welcome such attempts at reform.

2.36 The Minister refers to the Commission's plans to report on Member State implementation of the third energy package and the actions contained in the 2012 Communication on the internal energy market as well as plans to launch a retail market. He says that the UK supports monitoring and reporting of compliance and has already implemented the package. The UK, likewise, already has "one of the most liberalised retail markets in the EU", so although the focus of the Commission retail market plans is not yet known, the UK is already well positioned.

2.37 The Government broadly welcomes the resources efficiency and waste initiative. The Minister writes, however, that "before legislative changes are proposed in spring 2014, the Government is influencing the Commission to avoid new burdens on business and local authorities."

Justice and security

2.38 The Government does not support adoption of either the draft European Public Prosecutor's Office (EPPO) or the proposal for further reform of the European Anti-Fraud Office (OLAF)— views we have reported in full recently in our Fifteenth Report.[2] The Minister says that the UK will "work with other Member States to seek to force a rethink on the proposal".

2.39 The package of Data Protection legislation comprises of a draft Regulation and draft Directive. The Government believes there is work still to be done on these proposals and that has concerns about the "blurred lines between the two proposals" and says it will "work to address this".

2.40 The Government will "continue to shape the [network and information security] proposal to UK interests." While it approves of the aim of improving levels of network and information security, the Government raises serious concerns about several of the requirements, such as the "mandatory requirement to notify security breaches", and the burden this could place on businesses.

2.41 The Government anticipates the Commission Communication on future priorities on Justice and Home Affairs and hopes that this will focus on practical cooperation rather than a raft of new legislative measures. It wants the Commission proposals to take into account the cost to and burden on the private and public sector; give responsibility for monitoring the application of the guidance on cooperation to the Council; and include a process for repealing defunct or obsolete measures.

2.42 The Government is "committed to dialogue" on the issues of the rule of law in the EU but feels it would be better achieved through dialogue between Government and between judiciaries, rather than through any extension of EU competence.

Subsidiarity

2.43 The Government addresses concerns about subsidiarity in relation to a limited number of proposals. It has "strong concerns", which the Committee shares, about the draft EPPO proposal, noting that "the Commission has failed to provide robust evidence to justify [its] creation". It will remain "mindful" of subsidiarity concerns in relation to the Data Protection package — namely with regard to EU regulation of personal data processing within the UK — and the Freedom of Movement for Workers negotiations, as well as further legislation on justice and home affairs areas which it believes to be unnecessary, preferring to focus on better practical cooperation. The Labour Mobility Package could impinge on national welfare systems, which, it reminds the Committee, is a Member State competence. The Government does not think there are adequate grounds to justify the European Accessibility Act and would prefer a non-regulatory approach. Lastly, the Minister says that a "strong argument would be needed from the Commission that harmonisation of insolvency laws is necessary" were it to seek to legislate on business failure and insolvency. As with the legislative proposals, the Minister comments that

2 *See* HC 83-xv (2013–14), chapters 1 and 3 (17 September 2013)

possible subsidiarity concerns will be considered in greater depth as and when proposals are put forward — at which point they would be subject to the usual scrutiny process.

External action

2.44 The Government broadly agrees with the Commission's external action focus. The UK "will continue to be at the heart of the EU's foreign policy decision making" and will work with the EEAS, Commission and Member States to ensure UK interest and objectives are met. It praises the role of the EU in the progress made on relations between Serbia and Kosovo, the opening of the FTA negotiations with the US and, most significantly, the response to the crisis in Syria where, it says, the EU still has reserves of expertise and resources which can be brought to bear in providing humanitarian assistance. It supports a "single, compelling goal framework" for the post-2015 development agenda but cautions against committing too early to a detailed plan. Likewise, it welcomes the EU Maritime Strategy. It takes a cautious approach to Taskforces; they must have clear goals and a clear risk management strategy if they are to be effective.

2.45 The Minister expresses some concerns about Commission competence creep in the areas of consular protection and the European defence market. On the former he says that, while many Member States are seeking to strengthen EU Delegation coordination in consular services, the UK remains of the opinion that consular protection must remain a Member State prerogative. On the latter, he welcomes an open and competitive market but with respect for legitimate national security concerns.

The Regulation on political parties

2.46 The Government is considering this Regulation, which aims to regulate access to, transparency, and control of EU political funding, but remains to be convinced that it will narrow the perceived gap between national and European politics and or that it will be consistent with the UK's legal framework for elections.

Devolved Administrations

2.47 The Government has consulted the Devolved Administrations and says they have expressed an interest in "the entirety of the CWP in so far as it relates to devolved responsibilities ... and they will wish to engage in more detail with the Commission and UK Departments on individual policy dossiers as they emerge". The Minister sets out in some detail those areas in which each of the Devolved Administrations has taken a particular interest.

Conclusion

2.48 **The Commission Work Programme provides a comprehensive look ahead at the Commission's priorities for the next 12 months. We note the interest of the Devolved Administrations in the Programme. As in previous years, we set out in full a list of the Commission's new initiatives at Annex 2 to this Chapter to assist Departmental Select Committees in prioritising which proposals they may wish to examine. At Annex 3 we set out the list of REFIT measures. In our forthcoming Report *Reforming the European***

***Scrutiny system in the House of Commons*, we will make recommendations about the future treatment of the Work Programme.**

2.49 **Following the success of last year's debate, we again recommend that the Commission Work Programme be debated on the floor of the House to give Members an opportunity to consider in detail the legislative direction of the EU. The 2013 CWP debate saw contributions from a number of Members and Departmental Committee Chairs. We hope that members of Departmental Select Committees will again this year use the debate as a starting point in their 'upstream scrutiny' of EU proposals. For that reason, we recommend that the Government schedule the debate before the Christmas recess and the commencement of the new Work Programme in January 2014.**

Annex 1: Initiatives to be adopted

LEAD DEPT	TITLE OF MEASURE	TYPE OF INITIATIVE
HMT	Single Resolution Mechanism	Legislative
HMT	Framework for bank recovery and resolution	Legislative
HMT	Deposit Guarantee Schemes	Legislative
HMT	MIFID	Legislative
HMT	Retail Banking (SMA II)	Legislative
HMT	Long-term investment funds (SMA II)	Legislative
HMT	Anti-Money Laundering	Legislative
DWP	Public Employment Services	Legislative
BIS	Posting of workers (SMA I)	Legislative
HO	Free Movement of Workers	Legislative
BIS	Network and information security	Legislative
DCMS	Telecoms package	Legislative
HMT	Payments package (SMA II)	Legislative
BIS	E-identification and signatures (SMA I)	Legislative
DfT	4th railway package (SMA II)	Legislative
DfT/ DECC	ETS Aviation	Legislative
BIS	Actions for damages	Legislative
CO	Public procurement (SMA I)	Legislative
CO	E-invoicing in public procurement (SMA II)	Legislative
BIS	Reform of insolvency rules (SMA II)	Legislative
MoJ	Data Protection package	Legislative
HO	European Public Prosecutors Office	Legislative
HMT	Administrative cooperation Directive	Legislative
HMT	Financial Transaction Tax	Legislative
DH	Tobacco products Directive	Legislative
FCO	Regulation on political parties	Legislative

Annex 2: New initiatives

LEAD DEPT	TITLE OF MEASURE	TYPE OF INITIATIVE
Defra	Review of EU political and legal framework for organic production	Legislative/Non-legislative
Defra	Review of regime for agriculture in the outermost regions (POSEI)	Legislative/Non-legislative
DECC	2030 framework for climate and energy policies	Legislative/Non-legislative
DECC	Framework for safe and secure unconventional hydrocarbon extraction	Legislative/Non-legislative
BIS	State aid modernization in key sectors	Non-legislative
BIS	State aid modernization: General Block Exemption Regulation	Non-legislative
BIS	Review of competition rules for technology transfer agreements	Non-legislative
DfID	Follow-up towards the post-2015 development framework	Non-legislative
DWP	Labour mobility package	Legislative/Non-legislative
BIS	Communication on job creation in the 'green economy'	Non-legislative
DECC	State of implementation of the internal energy market and Action Plan to implement the internal energy market at retail level	Non-legislative
BIS	Industrial policy package	Non-legislative
MoD	Action plan for the defence industry	Non-legislative
Defra	Resource efficiency and waste	Legislative
DCMS (GEO)	Tackling the gender pay gap	Non-legislative
MoJ	EU Accession to the ECHR — internal rules	Legislative
FCO	EU Maritime Security Strategy	Non-legislative
HO	Countering violent extremism	Non-legislative
DfID	Preparing an EU position on the post-Hyogo framework	Non-legislative
HO / MoJ	Future priorities in the areas of justice and home affairs	Non-legislative
DWP	European Accessibility Act	Legislative/Non-legislative
BIS	A new approach to business failure and insolvency	Legislative/Non-legislative
HMT	Follow-up to the Green Paper on long-term financing of the EU economy	Legislative/Non-legislative
BIS (IPO)	Review of the copyright acquis	Legislative/Non-legislative
HMT	Framework for crisis management and resolution for financial institutions other than banks	Legislative
HMT	OLAF Reform	Legislative
BIS	Research and innovation as new sources of growth	Non-legislative
MoJ	The rule of law in the European Union	Non-legislative
HMT	Towards a definitive VAT system	Non-legislative

Annex 3: REFIT actions

LEAD DEPT	TITLE OF MEASURE	TYPE OF INITIATIVE
DWP/ BIS	Recast and merger of three Directives in the area of information and consultation of workers	Legislative (Recast)
FSA	Revision of Food Hygiene legislation	Legislative (Simplification, Replacement)
Defra	Simplification of the veterinary medicines legislation	Legislative (Simplification)
ONS	Framework Regulation for Integrating Business Statistics (FRIBS)	Legislative
ONS/ DWP	Framework Regulation for integrating social statistics	Legislative
Defra	Reform of the Farm Survey System	Legislative
BIS	Recast of eight Directives in company law	Legislative (Codification)
Defra	Revision and simplification of State Aid rules in the agricultural sector	Legislative (Revision)
Defra	Revision and simplification of the legal framework for organic farming	Legislative (Revision)
BIS	Codification of twenty-six Council Regulations following the adoption of two enabling regulations relating to common commercial policy	Legislative (Codification)
Defra	Export for Recovery of non-hazardous waste Regulation 1418/2007	Legislative (Simplification)
DfT	Simplification of provisions on access to the international road haulage market	Legislative (Simplification)
Defra	Fishing Authorisation Regulation	Legislative (Recast)
Defra	Technical measures for the protection of marine organisms	Legislative
HSE	Repeal of Directive 1999/45/EC on the classification, packaging and labelling of dangerous preparations:	Legislative (Repeal)
FSA	Repeal of Council directive on assistance to the Commission and cooperation by the Member States in the scientific examination of questions relating to food	Legislative (Repeal)
BIS	Repeal of the Regulation on Steel Statistics	Legislative (Repeal)
HMT	Repeal of a Council Decision concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information	Legislative (Repeal)
DfT	Repeal of Directive 2007/38/EC on the retrofitting of mirrors to heavy goods vehicles	Legislative (Repeal)
DfT	Repeal of Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles	Legislative (Repeal)
DECC	Repeal of the Council decision on the setting of a Community target for a reduction in the consumption of primary sources of energy in the event of difficulties in the supply of crude oil and petroleum products	Legislative (Repeal)

3 Electronic procurement and invoicing in public administration

(a) (35175) 12131/13 COM(13) 453	Commission Communication: *End-to-end e-procurement to modernise public administration*
(b) (35174) 12104/13 + ADDs 1–3 COM(13) 449	Draft Directive on electronic invoicing in public procurement

Legal base	(a) — (b) Article 114 TFEU; co-decision: QMV
Department	Cabinet Office
Basis of consideration	Minister's letter of 18 November 2013
Previous Committee Report	HC 83-xvi (2013–14), chapter 2 (9 October 2013)
Discussion in Council	2 December 2013
Committee's assessment	Politically important
Committee's decision	See para 3.12 below

Background

3.1 Towards the end of 2011, the Commission put forward proposals[3] to modernise the EU Public Procurement Directives (2004/17/EC and 2004/18/EC), including provisions which would make electronic communication mandatory for the publication of notices announcing public procurement tenders, the publication of related documents, and the submission of tenders. Following a Communication[4] in April 2012 which sought to provide a wider view of the benefits of e-procurement, it then put forward in June 2013 these two further documents.

3.2 Document (a) is a Communication, which sets out the current state of implementation in the public sector on "end-to-end e-procurement" (covering not only the three steps referred to above, but payment as well), and seeks to identify the benefits. It concludes that, although the proposals to make e-notification, e-access and e-submission mandatory will be important, further steps are now needed. These include a legislative proposal (document (b)), which would require the European Committee for Standardisation (CEN) to draw up a new European standard, setting out minimum requirements for the content ("semantic data model") of the core electronic invoice. The Directive would apply to invoices issued

3 See (33585) 18964/11: HC 428-lii (2010–12), chapter 2 (29 February 2012), HC 86-xxi (2012–13), chapter 5 (28 November 2012) and HC 83-xii (2013–14), chapter 12 (17 July 2013) and (33586) 18966/11: see HC 428-lii (2010–12), chapter 3 (29 February 2012), HC 86-xxi (2012–13), chapter 4 (28 November 2012) and HC 83-xii (2013–14), chapter 12 (17 July 2013)

4 See (33867) 9299/12: HC 86-vi (2012–13), chapter 6 (27 June 2012).

under contracts awarded in accordance with the measures which will replace the Public Procurement Directives, and authorities across the EU would have to accept e-invoices meeting those requirements.

3.3 There would be a number of supporting non-legislative measures, including further work by the CEN to develop a new European e-invoicing standard, and the Commission also highlights the need for national action plans to establish intermediate targets; to identify the most successful strategies; to promote the reduction of administrative burdens, and the participation of SMEs and cross-border suppliers; to foster the use of e-certificates attesting a supplier's suitability to bid; to monitor procurement spend and key performance indicators; and to address internal market objectives.

3.4 As we noted in our Report of 9 October 2013, the Government agrees that e-procurement can have significant benefits, and that these are potentially greatest with full end-to-end electronic processes. It says that, as a result of the initiatives which have been taken, the UK is already relatively well-placed to achieve high levels of e-procurement, although further work will be needed to increase take-up. The Government also accepts that the coordination of rules governing procurement by public bodies and utilities under the proposed Directive would be consistent with the principle of subsidiarity, and that public sector e-invoicing should be encouraged. It suggests that the UK's approach to interoperability — which expects authorities to accept e-invoices, whilst encouraging, but not obliging, suppliers to submit them — is similar to that proposed by the Commission, but points out that there is a raft of existing data standards across the EU, and that it is not axiomatic that the best means of achieving interoperability is to add another one. It also cautions that UK public bodies will increasingly adopt e-invoicing over the next few years, before the current draft Directive has been adopted, and that this measure should not lead to incompatibilities with the e-invoicing already in place.

3.5 In addition, the Government said that:

- full interoperability covers data content, format and transmission, and requiring authorities to accept an electronic invoice which complies only with the content standard could create potential issues if it was not compatible with format and transmission standards and protocols used by authorities;
- although the draft directive requires that the new standard guarantees personal data protection, this depends largely on the behaviour and characteristics of persons and systems involved, and any data protection requirements should be proportionate to the actual risks; and
- the proposal does not provide for specific remedies for economic operators for breaches by authorities and utilities, and, when it is transposed in the UK, consideration will need to be given to the extent to which provisions will be enforced.

3.6 We commented that it seemed sensible to extend a mandatory approach to e-invoicing by public authorities, and we noted that the Government agreed that this could provide significant benefits, with the UK being well placed in this area. At the same time, however, the Government had also highlighted a number of issues which it wished to explore

further, and, although we thought it unlikely that these would require further consideration by the House, we decided to hold the documents under scrutiny, pending further information.

3.7 We also expressed our disquiet at the timing of the Explanatory Memoranda, having regard to the fact that the Subsidiarity Protocol applies to the draft Directive. Although we accepted the Government's view that the proposal does not in fact give rise to any subsidiarity concerns, we noted that, although the documents were deposited on 11 July, the Memoranda were not signed until 11 September. As this was immediately before the start of the three week Conference Recess, it would have made it impossible for the House to have provided a Reasoned Opinion before the deadline of 26 September, had it wished to do so. We added that it was disturbing that the Cabinet Office, of all Departments, should have allowed this to happen, and we asked the Government to explain why the Explanatory Memoranda could not have been submitted in good time to allow this aspect of Parliamentary scrutiny to be properly discharged.

Minister's letter of 18 November 2013

3.8 We have received a letter of 18 November 2013 from the Minister for Civil Society (Nick Hurd). On this last point, he apologises that the delayed submission of the Explanatory Memoranda did not give us an effective chance to pursue a debate on a subsidiarity Reasoned Opinion within the eight-week deadline. He explains that the documents were accompanied by a voluminous impact assessment from the Commission, together with other supporting documents, and that it had also issued two other documents on similar subjects at more or less the same time, all requiring considered technical examination and explanation, at a time which coincided with the summer holiday season and Parliamentary recesses.

3.9 The Minister says that his officials were aware that Member States' parliaments are entitled to raise a Reasoned Opinion if they consider that a legislative proposal breaches the principle of subsidiarity, and that this is an important right in the European legislative system. However, they had identified no element in the draft e-invoicing proposal which would give potential subsidiarity concerns, and, as they were aware of recent criticisms from the Scrutiny Committees of the quality of some recent Explanatory Memoranda, they wished to ensure that the subject matter in this case was effectively and fully addressed. Nevertheless, despite what he describes as this possible mitigation, he fully agrees that, even if this had left some loose-ends requiring additional clarification or information, it would have been much better if these Memoranda (and in particular that on the e-invoicing proposal) had been available in good time for our return from recess at the beginning of September, which would have allowed us to have pursued any subsidiarity concerns if we had disagreed with the view that none arose in this case. He says that he will ensure that the importance of timely Explanatory Memoranda is again brought to the fore, and that he wishes to see comprehensive and complete Memoranda achieved consistently with the required timetable.

3.10 As regards the substance of the draft Directive, the Minister says that a number of Member States have raised similar issues to those identified by the UK, and that the Government has worked to achieve a number of improvements in the text, which increase

the likelihood that it will help to encourage interoperability, and reduce the risk of inconsistency or anomalies with existing e-invoicing solutions. More specifically, he says that:

- the Directive is expected to clarify that the data elements covered by the standard invoice should be consistent with those contained in the VAT directive, and that, whilst it will cover the core elements of an invoice, the parties will not be precluded from including other elements as well;

- the list of existing e-invoicing specifications and standards which CEN should take into account in developing the European standard should be expanded, including those which are "widely used in the business community", and with a requirement that the European standard should be compatible with relevant international standards;

- although the original draft directive recognised that full interoperability involves data formats ("syntax") and transmission as well as the underpinning data standards, it concentrated only on the last of these, but the Commission has now suggested that CEN should also be invited to identify for approval a limited number of existing syntaxes of proven usefulness: authorities and utilities would then only be obliged to accept e-invoices which both met the semantic data standard and one of the syntaxes, thus reducing the potential number of syntaxes which they might have to accept, and helping to ensure that the standard is consistent with existing good practice;

- the Commission has now recognises that a data standard cannot in itself "guarantee" protection of personal data as the original proposal suggested, and the Minister expects this to be amended so as to "*have regard to the need for personal data protection*" or similar wording, which he describes as a satisfactory improvement;

- the draft directive did not propose specific remedies available to economic operators if authorities and utilities fail to accept relevant e-invoices, and none has been suggested during negotiations: however, although the Minister says that he would not wish to gold-plate the UK's implementation with onerous enforcement rules, suppliers should have effective avenues if e-invoice recipients fail to meet their obligations to accept them, and the Cabinet Office will consider further whether specific additional enforcement or remedies will be appropriate, or whether pre-existing legal rights and remedies will be sufficient.

3.11 The Minister concludes by asking if we would now be prepared to clear the document, or grant a scrutiny waiver, in order to allow the Government to accept a general approach in the Council on 2 December.

Conclusion

3.12 **As we have previously noted, the Government supports the main thrust of this proposal, its concerns having centred around certain detailed points to which we drew attention on our Report of 9 October. We note that it believes that the text now on offer**

contains a number of improvements which address those concerns, and, whilst we would be reluctant to release the documents from scrutiny, we would be prepared to grant a waiver under paragraph 3(b) of the Scrutiny Reserve Resolution, in order to allow the UK to agree a general approach at the Council next week, if it is minded to do so. We would, however, be grateful if the Government could continue to keep us informed of further developments.

3.13 **We have also noted the Minister's apology for the late submission of the Explanatory Memoranda for these documents, but, whilst we were grateful for this, there are three points in his letter on which we would like to comment further. First, whilst we would certainly not wish to discourage Departments from providing as much information as possible, it would not simply have been "better" had we received these in "good time" after the summer recess: this was essential in order for us to meet the deadline for the submission of a Reasoned Opinion under the Subsidiarity Protocol, had this been necessary. Secondly, whilst Cabinet Office officials may well have been right in concluding there were no potential subsidiarity concerns in this instance, whether or not a Reasoned Opinion should be issued is ultimately a matter for the House, which should be given adequate time to consider this. Thirdly, whilst the Minister prays in aid the summer holiday season and the Parliamentary recess, these factors were recognised by the Commission, which in effect provided an extension of 31 days to the normal 8 week deadline by excluding August from the timetable laid down. This should therefore have provided ample time to provide the necessary Explanatory Memoranda.**

3.14 **Consequently, despite what the Minister describes as possibly mitigating circumstances, we are bound to conclude that his Department's performance on this occasion fell well below par, and we will be looking closely at any future Explanatory Memoranda from the Cabinet Office to ensure that the undertakings he has given about their timely submission are fully met.**

4 Damages in competition law

(35084) 11381/13 + ADDs 1–3 COM(13) 404	Draft Directive on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union

Legal base	Article 103 TFEU; QMV; consultation Article 114 TFEU; QMV; co-decision
Document originated	11 June 2013
Deposited in Parliament	25 June 2013
Department	Business, Innovation and Skills
Basis of consideration	EM of 9 July 2013
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Legally important
Committee's decision	Not cleared; further information requested

The document

4.1 The aim of the proposed Directive is to help consumers and businesses claim damages in national courts for breaches of competition law and to ensure equivalent protection throughout Member States. The breaches of competition law concerned are agreements or practices intended to abuse a dominant position.

4.2 In particular the proposed Directive provides that Member States must ensure that in actions for damages:

- those who have suffered loss should be entitled to full compensation for all of the loss suffered;
- national courts are provided with the power to order disclosure of documents from parties which are relevant to a claim and are not subject to legal professional privilege;
- there is no disclosure of either leniency statements or settlement submissions. These documents relate to regimes which enable whistleblowers to receive leniency in exchange for the evidence about a cartel (an agreement involving two or more businesses which affects competition, for example through price-fixing). However, material that was prepared for a competition authority as part of their investigation can be disclosed after it has concluded the investigation. In addition, protection is granted for businesses which are granted leniency so that they are not normally liable to pay damages for those who are not direct or indirect purchasers;
- final decisions that are made by national competition authorities, or by a review of a court, cannot be overturned by the courts during any claim for damages;

- a limitation period (the time limit for which actions may be brought) shall be at least five years and can be suspended in certain circumstances, for example when a competition authority is investigating the matter;

- joint and several liability shall be permitted so that where a number of businesses have caused harm, one can be held liable for all of the harm but then can claim a contribution from the other businesses;

- a defendant may invoke the passing on defence. This allows defendants to claim that claimants did not suffer any loss as they passed relevant costs on to other parties. Indirect purchasers can also bring an action if they can show they suffered a loss as a result of a direct purchaser being over charged; and

- there is a presumption of loss in cartel cases. Member States have discretion as to the amount of the presumed loss and defendants may prove that there was no loss or it was smaller.

4.3 There has been previous EU work in this area, particularly the 2005 Green Paper, the 2008 White Paper and the 2011 draft Guidance Paper on the quantification of antitrust harm.

4.4 If the Directive is adopted, Member States shall have a period of two years to implement it and will have to notify the Commission as to which parts have been implemented into national law. The Commission will review the Directive no more than five years after implementation.

Legal and procedural issues

Legal basis

4.5 The current proposal is based on both Articles 103 and 114 of TFEU, because it pursues two goals, namely (a) to give effect to the principles set out in Articles 101 and 102 TFEU and (b) to ensure a more level playing field for undertakings operating in the internal market, and to make it easier for citizens and businesses to make use of the rights they derive from the internal market.

4.6 Regarding the first objective, the Commission says that the Court of Justice has clarified that the full effectiveness of EU competition rules and, in particular, the practical effect of the prohibitions they contain, would be put at risk if it were not open to any person to claim damages for loss caused to him/her by a contract or conduct liable to restrict or distort competition. It considered that damages actions strengthen the working of the EU competition rules and can thus make a significant contribution to maintaining effective competition in the EU.[5] In seeking to improve the conditions under which injured parties can claim damages and to optimise the interaction between the public and private enforcement of Articles 101 and 102 TFEU, the present proposal is intended to give effect

5 See Case C-453/99, *Courage and Crehan*, [2001] ECR I-6297; Joined Cases C-295/04 to C-298/04, *Manfredi*, [2006] ECR I-6619; Case C-360/09, *Pfleiderer AG v Bundeskartellamt*, [2011] ECR I-5161; and Case C-199/11 *European Community v. Otis NV and others*, [2012] ECR I-0000.

to these provisions. This means that the proposed Directive must be based on Article 103 TFEU, according to the Commission.

4.7 However, the aim of the proposed Directive goes wider than giving effect to Articles 101 and 102 TFEU. The current divergence of national rules governing damages actions for infringements of the EU competition rules, including the interaction of such actions with the public enforcement of those rules, has created a markedly uneven playing field in the internal market, the Commission says. These marked differences were already described in the 2008 White Paper and its accompanying Impact Assessment. Since then, they have increased.

4.8 One example of divergence is the different national rules applying to access to evidence. With the exception of a few Member States, the lack of adequate rules on the disclosure of documents in proceedings before a national court means that victims of a competition law infringement, who are seeking compensation for the harm suffered, have no effective access to evidence. Other examples concern national rules on passing-on (where existing differences have major implications for the ability of direct/indirect purchasers to effectively claim damages and, in turn, for the defendant's chances of avoiding compensation for harm caused), the probative value of the decisions of national competition authorities in subsequent damages actions, and national rules that are relevant to the quantification of antitrust harm (e.g. the existence of a presumption of harm).

4.9 Because of this diversity of national legislation, the rules applicable in some Member States are considered by claimants to be much more suitable for bringing an antitrust damages action in those Member States rather than in others. These differences lead to inequalities and uncertainty concerning the conditions under which injured parties, both citizens and businesses, can exercise the right to compensation they derive from the Treaty, and affect the effectiveness of such right. Where the jurisdictional rules allow a claimant to bring its action in one of those favourable Member States and where that claimant has the necessary resources and incentives to do so, it is thus far more likely to effectively exercise its EU right to compensation than when it cannot do so. As injured parties with smaller claims and/or fewer resources tend to choose the forum of their Member State of establishment to claim damages (one reason being that consumers and smaller businesses in particular cannot afford to choose a more favourable jurisdiction), the result of the discrepancies between national rules may be an uneven playing field as regards actions for damages and may affect competition on the markets in which these injured parties operate.

4.10 Similarly, these marked differences mean that undertakings established and operating in different Member States are exposed to significantly different levels of risk of being held liable for infringements of competition law. This uneven enforcement of the EU right of compensation may result in a competitive advantage for undertakings that have breached Articles 101 or 102 of the Treaty, but which do not have their headquarters or are not active in one of the 'favourable' Member States. Conversely, uneven enforcement is a disincentive to the exercise of the rights of establishment and provision of goods or services in those Member States where the right to compensation is more effectively enforced. The differences in the liability regimes may thus negatively affect competition and run a risk of appreciably distorting the proper functioning of the internal market.

4.11 For these reasons the Commission argues that a second, internal market legal base is required, namely Article 114 TFEU.

The Government's view

4.12 The Minister for Employment Relations and Consumer Affairs at the Department for Business, Innovation and Skills (Jo Swinson) deposited an Explanatory Memorandum on the proposal, dated 9 July. In it she sets out the Government's views under the following headings.

Impact on United Kingdom Law

4.13 Existing national law is largely compatible with the proposed Directive. National law may also be amended as a result of the draft Consumer Rights Bill, which contains provisions in respect of actions for damages. The Government proposals within the draft Consumer Rights Bill are compatible with the proposed Directive. There will, however, be a need for amending legislation to give effect to Article 6 (disclosure of leniency documents), Article 16 (presumption of loss in cartel cases) and Article 17 (suspension of limitation periods where parties are trying to settle a dispute).

Subsidiarity

4.14 Competition rules necessary for the functioning of the internal market constitute an area of EU exclusive competence. However, the harmonization of laws under Article 114 TFEU is an area of shared competence.

4.15 The Commission believes that EU action through the proposed Directive is the most appropriate mechanism because:

- an effective public enforcement regime could be jeopardised by a lack of action at EU level if Member States decide on an ad-hoc basis whether or not to disclose leniency documents;
- there is still a lack of an effective redress regime for breaches of EU competition law; and
- there is a marked difference between the actual levels of actual redress that consumers are able to obtain in Member States.

4.16 The Government is content with these conclusions and considers the objective is best achieved at a European level to ensure consistency amongst Member States. In particular, the Government considers that it is appropriate for the Directive to apply in the limited circumstances to national competition law. It would be impractical for a court to separate aspects of the same claim into national and EU competition law so as to apply different rules on damages to each aspect. This would also result in uncertainty.

Policy implications

4.17 The Government broadly agrees with the Commission's proposed Directive, and much of the work is similar in nature to the recently published draft Consumer Rights Bill. The Commission's overall aim of ensuring that consumers have the ability to obtain effective redress for infringement of competition law is identical to Government policy.

Full Compensation

4.18 The Government supports the principle that consumers should be able to claim full redress where a defendant has caused them harm, but that the proposed Directive does not allow for the claiming of exemplary damages. The Government already allows for consumers to claim full redress under Section 47A of the Competition Act 1998.

Disclosure of documents

4.19 The proposed Directive requires that Member States allow national courts to order the disclosure of evidence if the claimants present reasonable evidence that the defendant has caused them harm. The Competition Appeals Tribunal already has this power.

Disclosure of leniency statements or settlement submissions

4.20 The proposed Directive prohibits Member States from allowing courts to order the disclosure of leniency corporate statements and settlement submissions. In antitrust cases, businesses applying for leniency (the whistleblower regime) are a key part of competition authorities being able to investigate the alleged infringement.

4.21 In 2011 the Court of the Justice of the European Union (ECJ) ruled[6] that the provisions in EU law which allow for the sharing of information between Member States in relation to competition cases should not automatically mean that those affected by the breach of competition could not view the documents. Until that decision, any business that had informed authorities of a cartel had been able to protect its documents under the leniency regime. This ruling threw that protection into doubt: any files that were shared across the EU could be ordered to be disclosed by a national court to those who had been affected by the cartel. Since the *Pfleiderer* case, it has been within the discretion of Member States to decide on a case by case basis whether leniency documents should be disclosed, which has invariably led to Member States requesting guidance from the Commission.

4.22 However, the Government thinks the Commission should also consider whether or not the withholding of documents harms the case of the claimants. In damages claims where an infringement decision has already been made, no proof of liability is required. In some instances, there is enough evidence in the final ruling of the competition authorities for the level of redress to be calculated. However, there are instances when leniency documents assist claimants in calculating the level of redress. In the Government's view the Commission should consider whether withholding the disclosure of leniency documents harms the ability of consumers and businesses to claim redress. This has been

6 Case C-360/09 *Pfleiderer AG v Bundeskartellamt*, judgment of 14 June 2011.

the subject of a recent ruling by the ECJ in June 2013,[7] where it ruled that the public interest had to be taken into account when considering whether or not to disclose leniency documents.

4.23 Conversely, if leniency documents are disclosed it may discourage businesses from using the leniency regime and therefore weaken a key part of how infringements are uncovered.

Final decisions on a breach of law cannot be overturned during a claim for damages

4.24 The Government agrees with this principle. A claim for damages should not lead to a review of the final decision, and this has been a provision in UK law since the Enterprise Act 2002.

Limitation period shall be at least five years

4.25 The limitation period in the UK at present is two years in claims for damages in competition cases. However, this is an anomaly as the normal limitation period for comparable actions is six years for England, Wales and Northern Ireland and a prescription period of five years for Scotland. There is a provision within the draft Consumer Rights Bill to harmonise the limitation or prescription periods within the respective legal jurisdictions: a five year prescription period in Scotland or six year limitation period in England, Wales and Northern Ireland. However, the Government recognises the need for consistency between the proposals on limitation in the draft Consumer Rights Bill and the proposed Directive.

4.26 The proposed Directive requires Member States to create rules clarifying when the limitation period will start and when it can be suspended, within the following parameters:

- the limitation period cannot start unless the claimant knows, or can reasonably be expected to know of the actual infringement; and
- the limitation period will be suspended if a competition authority investigates an alleged infringement or parties seek to settle the proceedings.

4.27 Parties in the UK would normally be expected to agree to the suspension of the limitation period where they were seeking to settle proceedings.

Joint and Several liability

4.28 The proposed Directive permits Joint and Several liability, which allows for a defendant to be liable to compensate for the harm in full. That defendant may then claim contributions from other infringing parties, and that amount shall be determined by "light of their relative responsibility." The proposed Directive also provides that defendants who have been granted immunity as a result of a leniency application should normally only be liable for the harm caused to its direct or indirect purchasers.

7 Case C-536/11, *Bundeswettbewerbsbehörde v Donau Chemie AG et al*, judgement of 6 June 2013.

4.29 The Government believes that action at EU level is appropriate as leniency documents can be disclosed across Member States; therefore it is neither consistent nor effective to have different regimes across Member States. The Government considers that any legislation in this area should be tightly focused, and that those who apply for leniency should be no worse off than those who do not apply for leniency. Secondly, this regime should not necessarily offer those who have been granted leniency extra protection from making redress to those who have suffered loss. The exception is that the Government believes that those who apply under the leniency regime should have protection from having to pay all the damages relating to the cartel. The proposed Directive meets these criteria.

Passing-on defence

4.30 The proposed Directive permits the passing-on defence, which allows defendants to argue that claimants "passed on" some of the alleged loss down the supply chain. The Government is not convinced there is a strong case for new legislation addressing the passing-on defence. Whilst it accepts that there might be some small benefit from legislating in terms of certainty, it thinks this issue would be better addressed through case law.

Indirect purchasers

4.31 The proposed Directive allows for indirect purchasers to claim damages against a defendant as long as they can prove:

- the defendant has committed an infringement of competition law;
- the infringement resulted in a direct overcharge for the direct purchaser; and
- the indirect purchaser purchases goods or services that were the subject of the infringement.

4.32 The UK does not prohibit indirect claims and there is no policy objection to this.

Quantification of harm

4.33 The proposed Directive requires that for cartel infringements it shall be "presumed that the infringement caused harm." The proposed Directive also requires Member States to grant the power to courts so they can "estimate the amount of harm."

4.34 The Government does not believe that it should be presumed that a cartel infringement caused harm, nor that courts should have the power to estimate the level of harm. By contrast, it believes, and it is a long standing principle in domestic law, that it is the responsibility of claimants to prove the level of loss. The defendant would need substantial economic evidence to rebut such a presumption and it would lead to an unnatural bias in the regime. The Government also believes that there would be significant difficulties in introducing such a presumption in cases where there may be more than one layer of purchaser, for example a supplier, a business selling the good and a consumer.

Consultation

4.35 The proposed Directive follows a 2005 Green Paper and a 2008 White Paper. Both papers were responded to by the Office of Fair Trading and by stakeholders.

4.36 The UK Government ran a consultation on UK's private actions regime between April and July 2012. The Government issued its response in January 2013, and the proposals are bought forward in the draft Consumer Rights Bill which was published in June 2013.

Financial implications

4.37 There are no financial implications.

Conclusion

4.38 **We thank the Minister for her helpful Explanatory Memorandum.**

4.39 **We note the Government's broad support for the proposal, which is largely consistent with existing and draft national competition law, but also its concerns about:**

- **the disclosure of whistleblower (leniency) documents;**
- **enshrining a passing-on defence in EU legislation;**
- **the presumption of harm as a consequence of cartel infringements; and**
- **giving the courts power to estimate the level of harm.**

4.40 **The Minister's officials have informally indicated that this proposal may be subject to political agreement in the Council next Monday, but that there remains a difference of opinion on whether there should be one or two legal bases. When reviewing the draft proposal we concluded that Article 114 TFEU was a pre-requisite legal base for some of the objectives of the proposal, and we found the Commission's justification for the additional base to be well founded. Were Article 103 TFEU to be the sole legal base, we would wish to review the draft proposal again. In these circumstances we are unable to clear the proposal from scrutiny.**

4.41 **We also suggest that a difference of opinion on an aspect of the negotiations as fundamental as the legal base should indicate to the Government that it is too early for political agreement, and we trust that this will be the outcome of Monday's meeting.**

4.42 **We ask the Minister to write to us with an update on the progress achieved to date in the negotiations as soon as possible after the Council meeting next Monday.**

4.43 **In the meantime the proposal remains under scrutiny.**

5 Fisheries: catch quotas and effort limitation for 2014

(35462) 15299/13 COM(13) 753	Draft Council Regulation fixing for 2014 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in EU waters and, for EU vessels, in certain non-EU waters

Legal base	Article 43(3)TFEU; QMV
Document originated	30 October 2013
Deposited in parliament	4 November 2013
Department	Environment, Food and Rural Affairs
Basis of consideration	EM of 19 November 2013
Previous Committee Report	None
Discussed in Council	16–17 December 2013
Committee's assessment	Politically important
Committee's decision	See para 5.8 below

Background

5.1 The EU Total Allowable Catches (TACs) for particular fish stocks in the following calendar year are based on scientific advice, and then have to be agreed by the Fisheries Council following a proposal from the Commission. Since agreement is needed before the start of the calendar year to which the proposal applies, this has habitually presented scrutiny difficulties, in that the requirement to take into account the scientific advice means that official texts have often been available too late to be considered properly beforehand: and this has been a particular problem for those stocks which are jointly managed with third countries, since the EU share has to be negotiated with the countries concerned.

The current proposal

5.2 In view of this, the Commission has for the last two years adopted a two-stage approach, with a proposal relating to the EU's "internal" stocks being put forward in advance of one for those stocks which have to be negotiated internationally. However, although this initiative was welcomed in principle, in practice both proposals have been agreed together at the December Council. In view of this, the Commission has reverted to its previous practice of making a single proposal covering all relevant stocks, even though no figures are yet available for those (including a number of importance to the UK in the North Sea) which are jointly managed with third countries, notably Norway, or subject to management by regional fisheries organisations.

5.3 A table showing the TACs proposed for the stocks of principal interest to the UK is at Annex A, and, according to the Commission, reflect both the scientific advice, and the EU's commitment — first articulated following the 2002 Johannesburg World Summit on Sustainable Development, and now incorporated in the reformed Common Fisheries Policy — to bring the stocks to levels which will achieve maximum sustainable yields by 2015 (or 2020 at the latest). In cases where the necessary data are limited, the Commission

has adopted a precautionary approach, involving a TAC reduction of 20%, and, where appropriate, the TACs set are in line with the multi-annual managements plans which have been adopted for a number of key stocks.

The Government's view

5.4 In his Explanatory Memorandum of 19 November 2013, the Parliamentary Under-Secretary for Natural Environment and Fisheries (George Eustice) says that the Government's objectives are to obtain the best possible outcome for the UK consistent with following scientific advice, achieving maximum sustainable yields by 2015, where possible, and no later than 2020, and minimising discards (though he points out that proposals to reach maximum sustainable yields by 2015 could in a few cases significantly increase discards of by-catches in mixed fisheries).

5.5 After identifying the salient individual TAC proposals, he observes that the Commission has generally been more precautionary than the International Council for the Exploration of the Seas (ICES) in its treatment of stocks for which the data are limited, and that one of the UK's priorities will be to seek a consistent approach which takes account, on a case-by-case basis, of all relevant available data, including trends in fishing mortality, spawning stock biomass and discards. He also notes that the Commission proposes a 20% reduction in effort (days-at-sea) for most of the cod fisheries covered by the Cod Recovery Plan, and says that the UK will resist this, relying on the arrangement agreed last year in Council Regulation (EU) No. 1243/2012,[8] and that it will seek for the same approach to be applied for North Sea cod (although there is as yet no formal proposal, as this is a managed jointly with Norway). Finally, he observes that the proposals do not include any changes to the current arrangements which allow an additional allocation for vessels participating in trials for fully documented fisheries,[9] and says that the UK would like to further develop these by amending the current conditions, and extending the arrangements to additional North Sea stocks through the negotiations with Norway.

Conclusion

5.6 **As we have noted, the relevant negotiations in the Fisheries Council will take place on 16–17 December, and, although this document contains proposals on a significant number of stocks, it excludes a number of great importance to the UK which are managed jointly with Norway. The Minister has not indicated when the latter are likely to be available, but we assume this will not be much in advance of the Council.**

5.7 **In view of this, and the need — which we recognise — to establish the TACs in question before the start of 2014, the best we can do at this stage is to report the current position to the House, and to ensure that as many Members as possible have a chance to raise points with the Government before any decision is taken. In recent years, this has been achieved by the Government arranging a general debate on**

8 The formal adoption of this proposal has been delayed because of a legal challenge mounted by the European Parliament and Commission against the Council having adopted the Regulation, without involving the Parliament.

9 This is intended to test a catch-quota system where all catches would be landed and counted against quotas in order to avoid discards.

fisheries on the floor of the House (or, as was the case last year, in Westminster Hall), and we understand that it has been agreed that such a debate should be held this year, probably on 12 December (though the venue has yet to be established).

5.8 **We would welcome such a development, and, if that debate takes place, we would prepared to grant a waiver under paragraph 3(b) of the Scrutiny Reserve Resolution, in advance of next month's Council. However, we also think it right to hold the proposals under scrutiny, pending any further information which the Government can provide.**

Annex 1: EU TACs and UK quotas in 2014 (tonnes)	2013	2014	UK quota	% change
North Sea				
Cod	21,974	pm		
Haddock	34,681	pm		
Saithe	43,486	pm		
Whiting	17,039	pm		
Sole	13,790	pm		
Plaice	91,225	pm		
Hake	1,935	2,874	518	+49
Monkfish	8,703	6,920	5,666	-20
Megrim	1,937	2,083	2,006	+8
Dab and flounder	18,434	14,747	1,270	-20
Lemon sole	6,391	5,924	3,617	-7
Ling	2,428	pm		
Turbot and brill	4,642	4,642	717	0
Nephrops	17,350	15,038	13,024	-13
Northern prawn	3,058	pm		
Eastern Channel				
Cod	1,080	pm		
Plaice	6,400	5,322	1,548	-17
Sole	5,900	3,251	625	-45
Western Channel				
Cod	10,200	6,848	540	-33
Haddock	14,148	3,602	360	-75
Whiting	24,500	pm		
Hake	30,900	45,896	8,248	+49
Pollack	13,495	10,796	1,882	-20
Sole (English Channel)	894	832	490	-7
Sole (Bristol channel)	1,100	920	259	-16
Sole (Western approaches)	402	322	54	-20
Plaice (Bristol Channel)	369	443	104	-20
Plaice (Western approaches)	141	135	17	-4
Monkfish	29,144	29,144	5,241	0
Megrim	17,385	13,908	1,994	-20
Irish Sea				
Cod	285	228	97	-20
Haddock	1,189	951	455	-20
Whiting	84	67	35	-20
Plaice	1,627	pm		
Sole	140	95	21	-32
Nephrops	23,064	pm		
West of Scotland				
Cod	0	0	0	0
Whiting	292	234	134	-20
Haddock	4,211	3,998	3,214	-5

Monkfish	4,924	3,939	1,212	-20
Megrim	3,387	4,074	1,278	+20
Nephrops	16,690	pm		
Pelagic stocks				
North Sea herring	286,800	pm		
Irish Sea herring	4,993	5,251	3,884	+5
West of Scotland herring	27,480	28,067	16,959	+2
Blue whiting	110,845	pm		
Mackerel	272,319	pm		

6 Cultivation of genetically modified maize

(35528) 16120/13 COM(13) 758	Draft Council Decision regarding the placing on the market for cultivation, in accordance with Directive 2001/18/EC, of a maize product (*Zea mays* L.line 1507) genetically modified for resistance to certain lepidopteran pests

Legal base	Article 18(1) of Directive 2001/18/EC
Document originated	6 November 2013
Deposited in parliament	15 November 2013
Department	Environment, Food and Rural Affairs
Basis of consideration	EM of 25 November 2013
Previous Committee Report	None, but see footnote
Discussion in Council	January 2014
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

6.1 The deliberate release into the environment of genetically modified organisms (GMOs) is subject to Directive 2001/18/EC. This provides that, where a GMO is to be placed on the market, consent should initially be sought from the competent authority of the Member State concerned. If it is minded to recommend approval, it has to forward its assessment to the Commission, and thence to the other Member States: if no objections are received within a stated period, it may give written consent, but, if objections are raised, the matter has to be considered by the Regulatory Committee of Member States set up under the Directive, on the basis of a draft Commission Decision. If that does not achieve a qualified majority, it has to be referred to the Council (which must take a decision by qualified majority within three months), failing which the Commission may adopt the Decision.

6.2 On 25 February 2009, the Regulatory Committee considered a proposal to approve the cultivation within the EU of a maize line (*Zea mays* 1507) which had been genetically modified to be resistant to certain insects, but, as this failed to secure the requisite qualified majority, our predecessors were told that it was being referred to the Council under the procedure described above. Although an official text of the draft Council Decision had not

yet been received, this was expected to follow closely the draft proposal put to the Regulatory Committee, which the Government had made available, and our predecessors therefore used this as the basis for the Report they made to the House on 13 May 2009.[10]

6.3 That Report noted that the proposal would approve an application first made to the Spanish competent authority (CA) in 2001. The maize line in question had already been authorised for feed and food use, but, if the Decision were to be agreed, its cultivation would be permitted in all Member States, subject to a number of conditions, including the need to monitor the emergence of any tolerance on the part of both target insects and others, the planting of adjacent "refuge borders" (designed to reduce the exposure of non-target species to pollen from the genetically modified maize), and the use of the herbicide glusofinate.

6.4 After conducting an initial assessment, the Spanish authority had concluded that there was no scientific evidence to indicate any risk to human or animal health or the environment, and that consent should be given. That assessment was duly conveyed to the Commission and other Member States, following which the Department for Environment, Food and Rural Affairs (DEFRA) consulted the UK's statutory Advisory Committee on Releases to the Environment (ACRE), the Food Standards Agency, the Health and Safety Executive, the statutory conservation bodies and the GM Inspectorate. Their comments were subsequently reflected in the opinion submitted by the UK, which contained no safety objections and agreed to the issuing of the consent. However, as some Member States maintained objections, the Commission consulted the European Food Safety Authority (EFSA), which also concluded that there was no evidence to indicate that the placing of the line in question (and derived products) on the market was likely to cause adverse effects on human or animal health or the environment in the context of its proposed use.

6.5 In the light of this advice, the UK voted in favour of the proposal at the Regulatory Committee on 25 February 2009. However, the Government's Explanatory Memorandum noted that, although the proposed course of action was in line with the requirements of Directive 2001/18/EC, and its GM policy statement of 9 March 2004, the Scottish Government had been unable to support this. Also, although Wales had agreed to the UK voting position in this instance, the Welsh Assembly Government's policy was to take the most restrictive approach to GM crop cultivation consistent with UK and EU legislation.

6.6 Our predecessors commented that, as proposals involving genetically modified crops were the subject of considerable public interest, they had drawn to the attention of the House a number of applications relating to the use of *imported* genetically modified crops in food and feed, but, since these had not in the main raised any particular or novel issues, they had usually been cleared as not requiring further consideration. However, this proposal was different, in that it involved the *cultivation* of genetically modified crops within the EU, and hence gave rise to a number of additional considerations. Furthermore, there was the added dimension of the differences of view within the UK, together with the fact that the UK was one of the relatively small number of Member States which had not introduced legislation in this area, raising the question whether such a measure could be put in place sufficiently quickly if the consent for this maize line were to be granted (and

10 See (30621) —:HC 19-xvii (2008-09), chapter 1 (13 May 2009).

whether it would in that event be possible for the Scottish Government to prevent their cultivation in Scotland). In view of these considerations, the document was recommended for debate in European Committee, and this took place on 16 June 2009.

The current proposal

6.7 Although the Commission should then have put the proposal to the Council within three months of the decision taken by the Regulatory Committee, it did not in fact do this, largely (it would seem) as a result of the widespread political opposition from a number of Member States. As a result, the company which had developed the line in question (Pioneer Hi-Bred International) brought a case[11] against the Commission in the General Court of the European Union for its failure to take the necessary action, and the Court has subsequently ruled that the Commission was at fault for not having referred the issue to the Council within the relevant three month deadline prescribed. As a result, the Commission has now put to the Council this formal proposal, which is for all practical purposes identical to that rejected by the Regulatory Committee in February 2009.

The Government's view

6.8 In his Explanatory Memorandum of 25 November 2013, the Parliamentary Under-Secretary at the Department for Environment, Food and Rural Affairs (Lord de Mauley) says that this particular GM crop is of no practical interest for UK farmers as the pests it is designed to control are not an issue here. Consequently, it is not expected that the seeds in question would be marketed or grown in the UK, even if EU authorisation were to be granted.

6.9 Notwithstanding this, the Minister says that the UK Government is open to the commercial cultivation of GM crops, provided that human health and the environment are not compromised, and he notes that, in this case, both EFSA and ACRE have advised that this maize line is unlikely to have an adverse effect. He adds that, as decisions under Directive 2001/18 should be based on safety considerations, the UK Government is minded — as was the case with earlier Regulatory Committee vote in 2009 — towards voting in favour of the proposal, when it comes before the Council, in line with its published policy position. However, the UK position will not be finalised until DEFRA has consulted fully with the Devolved Administrations.

Conclusion

6.10 **As this proposal is identical to that which our predecessors reported to the House in May 2009, and which was subsequently debated in European Committee, it does not raise any new issues which require further consideration, particularly as we understand it is unlikely that the crop in question would be grown in the UK. However, in view of the obvious political interest in genetically modified crops, we think it right to draw the proposal to the attention of the House, and we are also holding it under scrutiny, pending further information on how the UK intends to vote in the light of the further**

11 T-164/10

discussion between the UK Government and the devolved administrations. We would also be interested to know, in the event that the Council does not agree the proposal, whether the Commission will exercise its powers to adopt the measure in its own right.

7 EU cooperation with Egypt in the field of Governance

(35106) — —	European Court of Auditors Special Report No. 4 2013 on EU Cooperation with Egypt in the Field of Governance

Legal base	Article 287(4) TFEU; —
Department	Foreign and Commonwealth Office
Basis of consideration	Minister's letter of 19 November 2013
Previous Committee Report	HC 83-xvi (2013–14), chapter 8 (9 October 2103)
Discussion in Council	To be determined
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested. Relevant to the debates in European Committee on the EU approach to the Syria crisis and its aftermath and future EU support for "good governance" in the Democratic Republic of Congo.

Background

7.1 Under Article 287(4) TFEU, the European Court of Auditors (ECA), via its Special Reports, carries out audits designed to assess how well EU funds have been managed so as to ensure economy, efficiency and effectiveness.[12]

European Court of Auditors Special Report No.4 2013

7.2 Both before and after the 2011 Uprising, Egypt was one of the main beneficiaries of assistance from the European Neighbourhood and Partnership Instrument (ENPI), which the EU uses to support its European Neighbourhood Policy (ENP). For 2007–13, Egypt received an allocation of approximately €1 billion. Approximately 60% is channelled through Sector Budget Support (SBS) to the Egyptian government, the rest through projects agreed with the Egyptian authorities. The EU has also made much smaller amounts available directly to Civil Society Organisations (CSOs), notably through the European Instrument for Democracy and Human Rights (EIDHR). The basic framework is the EU-Egypt ENP Action Plan.

12 See http://eca.europa.eu/portal/page/portal/eca_main_pages/home for full details of the ECA's work.

7.3 This ECA audit covered the period up to September 2012. It focused on two key areas: Human Rights and Democracy, and Public Finance Management (PFM) and the fight against corruption. It also examined how the EU managed the wider ENP cooperation framework with Egypt to achieve progress in these areas. The audit examined 25 projects and the three main SBS programmes. It found that, overall, the Commission and the EEAS had not been able to manage EU support to improve governance in Egypt effectively — in part due to the difficult conditions they faced but also due to various shortcomings in the way they managed the process and the various programmes. The background to and findings of the audit, with Government views, are set out in our Report agreed on 9 October.

7.4 In reporting this to the House on 9 October, the Committee noted that, as was all too clear, the ENP Action Plan is central to the EU-Egypt relationship. The Committee reiterated its rejection of the Minister's position — that, because this is all about politics and not about legal instruments, this process should be handled by the FAC alone, and promulgated via Council Conclusions — as tantamount to making a nonsense of the notion of proper prior parliamentary scrutiny of CFSP, and a retrograde step from the *status quo ante* the Lisbon Treaty, when all such Action Plans were adopted via a Council Decision.

7.5 As to this ECA report, it illustrated the classic difference between the perspective of the auditor — whose job is to find failings — and the practitioners, who bear the scars of wrestling with a "partner" whose world view is altogether different. This problem was likely to get bigger, e.g., in post-crisis Syria, in almost any "failing state" that threatens regional security, and in many other parts of the EU's "near neighbourhood". The key question was: were EU, and UK, interests served better by engaging, doing the best possible — in this case, with €1 billion — and recognising that the other partner's world view was likely to be so dissonant that the "more for more" approach was likely to be more honoured in the breach than in the observance?

7.6 We therefore considered this chapter of our Report relevant to the debate that we had already recommended on the Joint Commission/High Representative Communication on an EU comprehensive approach to Syria.[13] We returned the report under scrutiny, pending a further update from the Minister about the European External Action Service (EEAS) review and the EU's response to whatever further political developments ensue in the interim. We also drew this chapter of our Report to the attention of the Foreign Affairs Committee.[14]

The Minister's letter of 19 November 2013

7.7 The Minister for Europe (Mr David Lidington) first addresses the challenges posed to the enhanced "more-for-more/less-for-less" basis of EU assistance:

> "Egypt is undergoing a difficult political transition. As you know, the military removed the Muslim Brotherhood leader, former President Morsi, on 3 July, after

13 See: (35105) 11482/13: HC 83-xiii (2013–14), chapter 2 (4 September 2013). This debate will take place in European Committee B on 2 December,

14 See headnote: HC 83-xvi (2013–14), chapter 8 (9 October 2103).

mass protests against his government. The present situation is that an interim government was appointed which set out a political roadmap to elections in 2014. A 50 person Constitutional Assembly has been formed to review the constitution. We are watching the process carefully including through by staying in close contact with its chair. We have urged that the constitution should be inclusive and uphold human rights. We have also outlined our concerns about levels of violence in both public and private statements. For its long-term stability, we believe Egypt needs an inclusive political process leading to early and fair elections, which all parties are able to contest, and for all sides to refrain from violence.

"I found your points about the different perspectives of auditors and practitioners very interesting. I agree that they have different perspectives and that those differences can stand for a wider tension between the theoretical outline of a policy and its implementation. That tension is inevitable — perhaps more so in the diplomatic field than in other areas.

"This was why the Government recognised from the beginning of the Arab Spring that the process of political transition in the region would not be straightforward, and that states would face many challenges along the way. But we also believed, and continue to believe, that the EU needed to adapt its approach, to increase its offer of support to the region, while tying that support more closely to progress on reform. That was the approach that we advocated during the ENP policy review of 2011 and that was largely agreed.

"The Court of Auditors' report, which was focused on EU support to Egypt before the 2011 ENP policy review, endorsed the review's emphasis on promoting 'deep democracy', while calling for more focus on women's and minorities' rights. It acknowledged that neighbourhood partner states often have political cultures and societal values very different from EU states', and that there are difficulties in implementing 'more for more' in such contexts. However, it concluded that an approach which was clear about the EU's values, and its wish to incentivise states to protect human rights and introduce democratic processes, was the right one to pursue despite these challenges.

"We agree. The practical application of a policy like 'more-for-more' is more complex that the initial policy design, reflecting both the huge amount of change and uncertainty in the region and the need to respond to the specific characteristics of transition in each country. That means both that we need to have clear principles that guide our policy, and that those will need to be adapted to each country and situation that we face. I do not see that as a fundamental challenge to the policy, but as the reality of the world. Nor does it suggest to me that we should reassess our support for 'more-for-more' as a concept. The alternative of providing funding without goals or an ability to calibrate response depending on progress is not acceptable — it is the very situation so strongly critiqued by the Court of Auditors' response."

7.8 The Minister then turns to the review of EU assistance to Egypt:

> "The Foreign Affairs Council (FAC) agreed conclusions on 21 August on Egypt and asked the Commission to review its assistance accordingly. These were broadly in line with the UK's own bilateral position: to continue providing financial assistance in the socio-economic sector and to civil society, but to review security sector assistance. Baroness Ashton signed off the Commission/EEAS's internal review of financial assistance in September, and briefed the October FAC on its outcome and her recent visit to Cairo. We have updated parliament by Written Ministerial Statement on FAC outcomes in the usual way and will subject any future depositable documents issued to the usual scrutiny process.

7.9 With regard to the Committee's view on the proper basis for adopting EU Action Plans, the Minister says:

> "I have addressed your points about EU Action Plans in my letter of 6 November on EU-Burma, China and Lebanon. I reiterated that the UK position remains that Council Decisions are not the appropriate mechanism for adopting ENP Action Plans, which do not contain any legally binding obligations. On the Lebanon and Morocco Action Plans, for example, we believe that the Council is being asked to adopt EU positions that are essentially political and therefore should properly be adopted by way of Council Conclusions agreed by consensus. As set out in that letter, I will of course update you on any significant developments in this ongoing debate."

Conclusion

7.10 **We consider that this chapter of our Report is relevant not only to the forthcoming debate on the EU approach to the Syria crisis and its aftermath but also to the debate we have recently recommended on future EU support for "good governance" in the Democratic Republic of Congo.**[15]

7.11 **We do not regard the Minister's update on the review of further EU assistance to Egypt as adequate. We should like a proper summary of the Commission/EEAS internal review of financial assistance signed off by Baroness Ashton in September — including how it has incorporated the ECA's recommendations — and of the briefing she provided the October FAC on its outcome and of the recent visit to Cairo. We would like to receive this further information within the next ten days.**

7.12 **We address the question of the proper scrutiny of ENP Action Plans and similar EU documents in our inquiry into the scrutiny of European business in the House.**[16]

7.13 **We are also drawing this chapter of our Report to the attention of the Foreign Affairs Committee.**

7.14 **In the meantime, we shall retain the ECA report under scrutiny.**

15 (35381) —: HC 83-xxi (2013–14) Chapter 3 (20 November 2013).

16 Scrutiny inquiry: *Reforming the European Scrutiny System in the House of Commons* (HC 109–I).

8 Value added taxation

(35419) 15337/13 + ADDs 1–3 COM(13) 721	Draft Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards a standard VAT return

Legal base	Article 113 TFEU; consultation; unanimity
Document originated	23 October 2013
Deposited in Parliament	29 October 2013
Department	HM Treasury
Basis of consideration	EM of 7 November 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

8.1 The principal VAT Directive, Directive 2006/112/EC, requires all taxable persons to submit a declaration (a VAT return) with all the information needed to calculate the tax that has become chargeable and the deductions to be made, including, as required, the total value of the relevant transactions. However, Member States retain discretion over the content of the declaration, frequency of submission, payment, error correction and all other related processes.

The document

8.2 The Commission proposes this draft Directive to amend the principal VAT Directive to introduce a standard EU VAT return. Achieving a balance between simplification for EU business and the needs of all 28 tax authorities, for whom the VAT return is an important tool, is challenging. The Commission has therefore tried to produce a compromise solution in order to provide a certain amount of flexibility.

8.3 The draft Directive would provide for:

- a mandatory minimum of five specified boxes (plus two others for a transitional period until 2019) which a VAT return must have;
- a further 21 optional boxes (and so a maximum of 26 boxes in total) which a VAT return may have;
- other information requirements — in respect of certain territories or special schemes — to be standardised through the comitology procedure (based on QMV);

- introduction of standard rules, for example on frequency of submission, length of return periods (with monthly returns as the norm), timing of payments, error corrections and other associated procedures; and
- underpinning this, extensive use of the comitology procedure to determine much of the technical detail, definitions, procedures, error correction mechanisms and common electronic submission methods.

8.4 The Commission proposes an implementation date of December 2016. In an attempt to minimise the risks associated with any implementation, the Commission annexes to the draft Directive its Detailed Implementation Plan — a series of preparatory actions it intends to undertake.

8.5 The draft Directive is also accompanied, as is usual, by an impact assessment (and an executive summary of the assessment), which sets out the Commission's rationale and supporting evidence and some estimates of the potential costs savings. The key points are:

- the estimates are at a global level;
- 99% of businesses registered in the EU are small and medium enterprises (SMEs) and the anticipated reduction in administrative burdens would principally affect them;
- 30 million companies are obliged to submit VAT returns in the EU — 130 million returns are from micro enterprises;
- the estimated cost of submitting all returns is €30 billion (£25.5 billion) per annum;
- the estimated cost saving of the proposal is €15 billion (£12.7 billion) — €9 billion (£7.6 billion) on reduced administrative burdens and €6 billion (£5.1 billion) on removal of obstacles to cross-border trade;
- the cost saving is on the basis of 19 Member States reducing the current number of boxes downwards, to a maximum of 36 boxes, as opposed to the maximum of 26 boxes proposed (the impact assessment is based on an assumed model of 36 boxes and does not therefore fully reflect the legislative proposal);
- set up and switch over costs for business could range from €2.9 billion (£2.4 billion) to €4.25 billion (£3.6 billion);
- implementation costs to each Member State would be on average €30.5 million (£25.9 million); and
- Member States might also incur costs associated with loss of information, including changes to risk analysis tools and staff training.

The Government's view

8.6 The Exchequer Secretary to the Treasury (Mr David Gauke) says first that the Government considers that, in proposing to set defined parameters for VAT returns and in standardising submission and correction procedures, the proposal raises issues of

subsidiarity, particularly in relation to UK's risk analysis and taxpayer compliance activity. Noting that Article 113 TFEU states that indirect tax harmonisation should only take place "to the extent that such harmonisation is necessary to ensure the establishment and functioning of the internal market and to avoid distortion of competition", he explains the Government view thus:

- the Commission contends that Member States lack the initiative to act and have not so far shown willingness to make the necessary improvements, thus requiring the Commission's initiative;
- but the UK has a very simple VAT return, with only nine boxes, and other Member States could take a similar approach under the terms of existing EU law;
- the Government accepts there is a case for an EU framework for Member States to require taxpayers to submit VAT returns, for the effective functioning of the single market;
- it can also see that EU level action might be desirable where cross-border activity is concerned;
- but this proposal goes far wider;
- it will impact on all UK businesses, whether or not they engage in cross-border activity; and
- it will also impact more generally on UK risk analysis and taxpayer compliance activity.

8.7 Turning to the policy implications the Minister says that:

- the Government is committed to ensuring that there is no further transfer of sovereignty or powers to the EU over the course of this Parliament;
- it will therefore resist any elements of the proposal that it considers are not consistent with the principles of fiscal sovereignty, subsidiarity and proportionality;
- the Government recognises that the different VAT declarations in place across the single market can be a barrier for businesses which want to trade with other Member States and that these problems can be particularly acute for SMEs;
- its objective is to cut red tape for businesses and to encourage them to increase their cross-border trade, so the Government welcomes the Commission's focus on the issue;
- it is concerned, however, that the proposal does not deliver its stated objective and might perversely increase the burdens on UK businesses;
- there are also cost implications for the UK arising as a result of changes to the national VAT return, if the proposal were adopted as currently set out;

- furthermore, because of the range of options proposed, it could well be the case that no two Member State's VAT returns would be the same, thus reducing any benefits from a standardised VAT return;
- the Government also has concerns about the proposed use of comitology (subject to a QMV procedure) for agreement of much of the detail, which would undermine its position that tax matters should be decided by unanimity — it opposes such provisions;
- at the moment, therefore, the Government is not convinced that a legislative solution is the right way forward;
- it will continue to work with the Commission, other Member States and UK businesses to see if there are better ways to respond to business concerns;
- the proposal does not resolve the key problem of lack of availability of information about rules in other Member States that most concern UK businesses involved in cross-border trade within the EU; and
- UK businesses have indicated that clearer information about the VAT declarations and underlying rules in operation across the 28 Member States would make a real difference.

Conclusion

8.8 **We have considered the proposal for compliance with subsidiarity and conclude that the Commission has sufficiently demonstrated a strong internal market justification for EU-level action — principally to introduce a standard VAT return which can be submitted electronically by businesses throughout the EU. The proposed action is clearly in keeping with the predominant internal market purpose of the Article 113 TFEU legal base. We also consider that many of the Government's arguments, notably concerning the inclusion of non cross-border business in the proposal and its (as yet unquantified) impact on UK businesses, raise issues of proportionality rather than subsidiarity. Accordingly, we do not recommend that the House adopts a Reasoned Opinion on this proposal.**

8.9 **We note that as the draft Directive requires unanimous agreement in the Council, the UK is well placed to insist on a more acceptable text or even a non-legislative solution to cross-border problems. We look forward to hearing, at regular intervals, about progress in this regard. Meanwhile the document remains under scrutiny.**

9 Croatia's accession to the EU/Switzerland Agreement on the Free Movement of Persons

(a) (35455) 14367/13 COM(13) 674	Draft Council Decision on the signing of a Protocol to the Agreement between the European Community and its Member States, and the Swiss Confederation, on the free movement of persons, to take account of the accession of the Republic of Croatia to the European Union
(b) (35460) 14368/13 COM(13) 673	Draft Council Decision on the conclusion of a Protocol to the Agreement between the European Community and its Member States, and the Swiss Confederation, on the free movement of persons, to take account of the accession of the Republic of Croatia to the European Union

Legal base	(a) Articles 217, 218(5) and 218(8) TFEU; unanimity (b) Articles 217, 218(6)(a) and 218(8) TFEU; unanimity; EP consent
Documents originated	(Both) 1 October 2013
Deposited in Parliament	(a) 3 October 2013 (b) 4 October 2013
Department	Home Office
Basis of consideration	EM of 18 November 2013
Previous Committee Report	None
Discussion in Council	Agreement expected in December
Committee's assessment	Legally important
Committee's decision	Not cleared; further information requested

Background

9.1 In June 1999, the (then) European Community and its Member States signed an Agreement with Switzerland on the free movement of persons to enable EU and Swiss nationals to live and work in each others' territories (the Agreement). The Agreement entered into force on 1 June 2002. Croatia acceded to the European Union on 1 July 2013. Under the terms of its Accession Treaty, Croatia undertakes to accede to agreements concluded by the EU and Member States with third countries. In September 2012, the Council authorised the Commission to open negotiations with Switzerland with a view to concluding a Protocol providing for Croatia's accession to the Agreement. The Protocol resulting from these negotiations is annexed to the draft Council Decisions deposited for scrutiny.

The draft Council Decisions

9.2 Document (a) authorises signature of the Protocol and document (b) its conclusion on behalf of the EU and its Member States. Both draft Decisions cite Articles 217 and 218 of the Treaty on the Functioning of the European Union (TFEU) as their substantive legal bases. Article 217 TFEU empowers the EU to conclude association agreements with third countries "involving reciprocal rights and obligations, common action and special procedure." Article 218 TFEU provides for decisions on the signing and conclusion of such agreements (including, in this case, any Protocol to such agreements) to be agreed by the Council by unanimity. The European Parliament is also required to give its consent.

9.3 Once the Protocol has been approved, Croatia will become a Contracting Party to the Agreement, subject to transitional provisions which are set out in the body of the Protocol.

The Government's view

9.4 The Minister for Immigration (Mr Mark Harper) describes the Protocol as a "technical measure resulting from Croatian accession, which has no impact on the UK",[17] adding:

> "In practice, the proposal has the effect of updating the existing Association Agreement to include Croatia to reflect its accession to the EU. The amendment does not seek to amend the terms of the agreement beyond this, and will affect movement between Croatia and Switzerland. The free movement provisions for both Swiss and Croatian nationals in the UK will not be affected by this amendment."[18]

9.5 The Minister does, however, dispute the legal bases proposed by the Commission for both draft Decisions:

> "The extension of the EU-Switzerland Agreement to Croatia will allow nationals of a third country, Switzerland, to reside in the territory of a Member State, Croatia. Accordingly, it is our view that the EU will be exercising competence under Article 79(2)(b) TFEU.[19] For that reason, we consider the proposal to engage the UK's opt-in under Protocol 21 to the Treaties. We will proceed to take an opt-in decision on this basis. We will seek the citation of an Article 79(2)(b) TFEU legal base but assess that it is unlikely we will be successful in this regard due to the views of the Commission and other Member States."[20]

9.6 The Minister alludes to an earlier draft Council Decision amending the social security provisions of the same Agreement which we last considered in February 2012 and which remains under scrutiny.[21] In that case, the Commission proposed Article 48 TFEU (on social security coordination) as the substantive legal base for the draft Decision. As the amendments to the Agreement would have the effect of extending social security rights for

17 See para 20 of the Minister's Explanatory Memorandum.

18 See para 14 of the Minister's Explanatory Memorandum.

19 Article 79(2)(b) TFEU provides for the adoption of measures on "the definition of the rights of third country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States."

20 See para 9(i) of the Minister's Explanatory Memorandum.

21 See Council document 16231/11 (33298); HC 428-xliv (2010–12), chapter 7 (14 December 2011) and HC 428-xlix (2010–12), chapter 6 (1 February 2012).

Swiss migrants to the UK, the Government considered that Article 79(2)(b) TFEU should be cited instead, as this provision concerns the definition of the rights of legally resident third country nationals. Article 79 TFEU (unlike Article 48) is subject to the UK's Title V (justice and home affairs) opt-in. Despite the UK's objections, the draft Council Decision was adopted on an Article 48 TFEU legal base and the Government initiated proceedings to challenge its validity in the Court of Justice. Pending the Court's ruling on validity, and on the application of the UK's opt-in to EU measures which do not cite a Title V legal base, the draft Decision remains under scrutiny.

9.7 The Minister suggests that "similar principles are at stake" with regard to the draft Council Decisions providing for Croatia's accession to the Agreement. He continues:

> "If we are unsuccessful in attaining the citation of an Article 79(2)(b) legal base in respect of the current proposal and if the Government were to decide not to opt in we would need to consider whether to launch another ECJ challenge.
>
> "The Government will now consider whether to opt in to the proposal and must communicate this decision to the EU Council Secretariat by early December in order to allow the measures to apply from 1 January 2014."[22]

9.8 In the section of his Explanatory Memorandum dealing with the financial implications of the draft Decisions, the Minister states:

> "The proposed amendment does not present any financial implications, as there will be no legal challenge to the proposal from the UK and the right of free movement will not be extended to persons to whom it does not already apply."[23]

9.9 Turning to the timetable for reaching agreement in Council, he adds:

> "The agreement puts in place measures starting from 1 January 2014. Therefore the EU must agree its position in time for the EEAS and Switzerland to arrange signature before the end of the year. The last Council that could agree the point takes place on 17 December. Therefore approval is sought before the preparatory Coreper scheduled for **12 December**."[24]

Conclusion

9.10 **We note that the Government accepts that there is little prospect of securing a change to the legal base for the draft Council Decisions, but nevertheless intends to "take an opt-in decision" on the strength of its conviction that Article 79(2)(b) TFEU is the correct legal base. We do not accept that the UK's Title V (justice and home affairs) opt-in applies in the absence of a Title V legal base. Moreover, it is clear from the timetable set out in the Minister's Explanatory Memorandum that other Member States have no intention of applying the procedural requirements set out in the UK's**

22 See paras 18 and 19 of the Minister's Explanatory Memorandum.

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

24 See para 28 of the Minister's Explanatory Memorandum.

Title V opt-in Protocol (including the three-month opt-in period) before reaching a decision.

9.11 **We note that a unanimous decision of the Council is required to adopt the draft Decisions. The Government therefore has the power to veto the draft Decisions if it is unable to persuade other Member States to amend the legal base, or to abstain and challenge their validity post-adoption in the Court of Justice. We ask the Minister to clarify which course of action the Government intends to take and to explain the apparent contradiction in his Explanatory Memorandum which states (in paragraph 18) that the Government will "need to consider whether to launch another ECJ challenge" and (in paragraph 23) that "there will be no legal challenge to the proposal from the UK."**

9.12 **We note also that two earlier Protocols extending the EU/Switzerland Agreement to central and eastern European countries acceding to the EU in 2004 and 2007 were based on Treaty provisions equivalent to those cited in the current draft Decisions.[25] We ask the Minister to explain why he considers that a different legal base is justified for the latest Protocol on Croatian accession. Pending further information from the Minister, the draft Decisions remain under scrutiny.**

25 The relevant provisions are Articles 300(2) and (3) and 310 of the EC Treaty.

10 EU Readmission Agreement with Azerbaijan

(a) (35456) 15493/13 COM(13) 745	Draft Council Decision concerning the signature of the Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation
(b) (35457) 15494/13 COM(13) 744	Draft Council Decision concerning the conclusion of the Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorisation

Legal base	(a) Articles 79(3) and 218(5) TFEU;QMV (b) Articles 79(3) and 218(6)(a); QMV; EP consent
Document originated	(Both) 29 October 2013
Deposited in Parliament	(Both) 1 November 2013
Department	Home Office
Basis of consideration	EM of 12 November 2013
Previous Committee Report	None
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Not cleared; further information requested

Background

10.1 EU Readmission Agreements are intended to play an important role in tackling illegal immigration by establishing a contractual framework, based on reciprocal obligations, for the return and readmission of nationals of countries that are parties to the agreements, as well as third country nationals and stateless individuals who have transited the territory of one of the parties. EU Readmission Agreements are negotiated by the Commission on the basis of a negotiating mandate given to it by the Council and are concluded pursuant to Article 79(3) of the Treaty on the Functioning of the European Union (TFEU), which provides for the Union to "conclude agreements with third countries for the readmission to their countries of origin or provenance of third country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States."

10.2 The EU has so far signed or concluded around 16 readmission agreements with third (non-EU) countries.[26] These agreements are subject to the UK's Title V (justice and home affairs) opt-in and, as the process for reaching agreement is divided into three stages — approval of the negotiating mandate, signature of the draft agreement, and conclusion of the agreement — the UK has three opportunities to opt in. The most important stage is the

26 Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, the former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Turkey, Cape Verde and Armenia.

draft Decision to conclude the agreement as this is the point at which the EU and Member States are legally bound by the agreement. The UK has opted into all but two of the EU's readmission agreements (the exceptions are Cape Verde and Armenia).

10.3 Azerbaijan is one of six non-EU countries participating in the "Eastern Partnership" which seeks to establish a framework for developing deeper political ties and economic integration between the EU and Eastern partner countries. Mobility is an important element of the Eastern Partnership, with opportunities for mobility initially being developed through visa facilitation and readmission agreements, but with a longer term perspective of full visa liberalisation once the conditions for well-managed and secure mobility are in place.[27] In December 2011, the Council agreed a mandate to negotiate a readmission agreement with Azerbaijan, and negotiations began in March 2012.

The draft Council Decisions on the signature and conclusion of an EU Readmission Agreement with Azerbaijan

10.4 Document (a) is a draft Council Decision to sign an EU Readmission Agreement with Azerbaijan (it was initialled by the parties on 29 July 2013) and document (b) is a draft Council Decision to conclude the Agreement. The text of the Agreement is attached to both draft Decisions. Once the Council has adopted the draft Decision on signature, the Agreement is sent to the European Parliament for approval. The draft Decision to conclude the Agreement may only be adopted after the European Parliament has given its consent.

10.5 The content of the Agreement is similar to recently agreed EU Readmission Agreements with Turkey and Armenia.[28] It would create reciprocal obligations for Azerbaijan and participating EU Member States[29] and applies to individuals who do not (or no longer) fulfil the conditions for entry into, presence or residence in, Azerbaijan or any EU Member State bound by the Agreement. The Agreement establishes the readmission obligations for the participating countries (Sections I and II) as well as the procedures for submitting a request for readmission (Section III). So, for example, a requested State is bound to readmit its own nationals (including their spouses and unmarried minors), and to readmit third country nationals and stateless persons for whom it has issued a valid visa or residence permit or who have transited through its territory in order to make an illegal entry into the territory of the State requesting readmission.

10.6 The Agreement includes "transit principles" which apply to third country nationals or stateless persons who are in transit to their destination State (Section IV). It specifies that Azerbaijan or a participating EU Member State may refuse transit in the following circumstances:

- if there is a real risk that the person in transit would face torture, inhuman or degrading treatment or punishment, the death penalty, or persecution on grounds

27 See (33181) 14864/11; HC 428-xxxix (2010–12); chapter 5 (26 October 2011).

28 See (34040) 11720/12 and (34041) 11743/12; HC 86-viii (2012–13), chapter 2 (11 July 2012); (34450) 16909/12 and (34451) 16910/12; HC 86-xxvi (2012–13), chapter 10 (9 January 2013).

29 The participation of Ireland and the UK is subject to their Title V opt-in. Denmark does not participate in EU Readmission Agreements, but may seek to conclude a bilateral readmission agreement on similar terms.

of race, religion, nationality, membership of a particular social group or political conviction in the State of destination or another State of transit; or

- if the third country national or stateless person would be subject to criminal sanctions in the requested State or another State of transit; or
- on grounds of public health, national security, public order or other national interests of the requested State.

10.7 The Agreement sets out a number of data protection principles which apply in addition to any relevant domestic legislation and makes clear that the application of the Agreement as a whole is without prejudice to obligations arising under international law, including international refugee and human rights conventions (Section VI). The Agreement establishes a Joint Readmission Committee to monitor the application of its provisions and recommend any changes. It also includes provision for optional bilateral Implementing Protocols to establish more detailed rules on the practical implementation of the Agreement (Section VII).

The Government's view

10.8 The Minister for Immigration (Mr Mark Harper) notes that the deadline for determining whether or not to opt into the EU Readmission Agreement with Azerbaijan is 31 January 2014. In reaching a decision, the Government will consider the impact of the Agreement on immigration and the extent to which it would support UK policy objectives. He notes that there is little irregular migration from Azerbaijan to the UK and provides the following statistics:

2011

Total enforced removals — 2
Total Refused entry at port and subsequently departed — 4
Total voluntary departures — 13
Total asylum applications — 23

2012

Total enforced removals — 7
Total Refused entry at port and subsequently departed —13
Total voluntary departures — 19
Total asylum applications — 23

2013 (Q1 and Q2)

Total enforced removals — 1
Total Refused entry at port and subsequently departed — 1
Total voluntary departures — 7
Total asylum applications — 8

10.9 The Minister says that the UK has good existing returns arrangements with Azerbaijan, including a Memorandum of Understanding allowing the use of Baku as a transit route for immigration returns to Afghanistan. He adds:

> "Participation in the Agreement would be a means of demonstrating solidarity with other Member States regarding readmission of illegal migrants, but if the UK were not to participate, this would not prevent other Member States from benefiting from the Agreement."[30]

Conclusion

10.10 **We note that the recitals to the draft Council Decisions referring to the application of the Title V opt-in Protocol are phrased differently for the UK and Ireland. We ask the Minister to explain the reasons for the disparity in the wording used.**

10.11 **Turning to the substance and operational utility of the proposed EU Readmission Agreement, we note that the Government decided against opting into a similar agreement with Azerbaijan's close neighbour, Armenia, on the grounds that it offered "no clear benefits" for the UK, given the low levels of irregular migration to the UK, and that good bilateral returns arrangements were already in place. As similar factors would appear to apply in the case of Azerbaijan, we look forward to hearing whether the Government intends to opt in and the reasons for its decision. Meanwhile, the draft Council Decisions remain under scrutiny.**

11 Regulating collecting societies

(34097) 12669/12 + ADDs 1–2 COM(12) 372	Draft Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market

Legal base	Article 50(2)(g), 53 and 62 TFEU; co-decision; QMV
Department	Business, Innovation and Skills
Basis of consideration	Minister's letter of 12 November 2013
Previous Committee Reports	HC 83-iii (2013–14), chapter 3 (21 May 2013); HC 86-xvi (2012–13), chapter 4 (24 October 2012)
Discussion in Council	February 2014
Committee's assessment	Legally important
Committee's decision	Cleared

30 See paragraph 17 of the Minister's Explanatory Memorandum.

Background

11.1 The rights granted to a copyright owner (the rightsholder) are exclusive. This means that the rightsholder alone has control over certain uses of their works. Anyone wanting to use the works concerned would need the rightsholder's permission to do so. This can be obtained directly from the rightsholder; but more usually it is in the form of a licence from a collecting society.

11.2 The objective of the Directive is to put in place a legal framework for more efficient collective management of copyright by collecting societies. It aims to do so by providing rules for better governance and transparency and by facilitating multi-territorial licensing of rights managed by them. It proposes a core set of rules that apply to all collecting societies and an additional set that applies to collecting societies involved in multi-territorial licensing.

11.3 Our previous Reports set out the proposal, and the Government's approach to it, in greater detail. In our last Report was asked the Government to update us towards the end of the first-reading negotiations with the European Parliament.

Minister's letter of 12 November 2013

11.4 The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Lord Younger) writes to say that, although the Council and European Parliament negotiators have informally approved the proposals in a final draft Presidency text, this still needs to be adopted formally by Parliament and EU Ministers. Ambassadors voted on the text at Coreper on 13 November and the European Parliament's Legal Affairs Committee (JURI) on 26 November. The JURI committee has already made a public statement indicating that the final draft text is likely to be acceptable. The dossier therefore appears to be on course to meet the indicative timetable for adoption by the plenary of the European Parliament on 3 February 2014. Although the timing has yet to be agreed, the Minister anticipates that the Council will vote shortly afterwards.

11.5 Overall the Minister believes the final dossier will be a good outcome for the UK as it should rectify concerns about continental collecting societies, which may not have been paying British creators their fair share of licensing revenues, whilst requiring minimal additional regulation in the UK over the self-regulatory regime currently being put in place by the Government.

General provisions

11.6 The scope of the Directive has been widened in part to capture those entities that behave like and carry out the functions of a collective management organisation (CMO). This should create a more level playing field, help prevent distortions in the market and provide contingency against a CMO trying to change its legal form to escape regulation. This is likely to work in UK rightsholders' interests as they seek to claim monies from CMOs in other Member States, the Minister says.

Representation of rightsholders

11.7 The revised text includes measures designed to ensure that CMOs act in the best interests of the rightsholders they represent and do not impose any unnecessary obligations on them. For example, rightsholders should have the right to authorise a CMO of their choice to manage their rights; and to withdraw that authorisation either partially or completely, upon reasonable notice.

Distribution

11.8 Distribution is one of the most important issues for the protection of creators' interests. The revised text contains several measures designed to safeguard rightsholders, particularly in relation to undistributed funds. These include:

- a requirement that CMOs distribute and pay sums due no later than nine months after the end of the relevant financial year — three months quicker than originally proposed;
- a new requirement that undistributed sums be maintained in a separate account;
- strengthened transparency requirements, including obligations on CMOs to publish comprehensive information to rightsholders, their representatives and to the general public about unidentified material. This will help reunite creators with the rewards from licensing their work;
- a new requirement that CMOs formally declare monies as 'non-distributable' amounts after three years;
- a provision whereby the General Assembly of members may decide on the use of such funds, subject to a Member State's laws on the statute of limitation claims; notwithstanding a rightsholder's right to claim such funds retrospectively; and
- a new provision allowing Member States to consider a number of options to limit or determine the use of undistributable amounts: including use in a separate and independent way to fund social, cultural and educational activities for the benefit of rightsholders.

11.9 The provision for Member States to limit or determine the uses of non-distributable amounts is an important principle in relation to the protection of non-members' interests, according to the Minister: for example when a CMO is authorised to operate an extended collective licensing (ECL) scheme or where money is inadvertently collected on behalf of a non-member rights holder in the context of a collective licence. There are no grounds for the CMO or its General Assembly to claim title or decide what should happen with the undistributed amounts that belong to non-members. In the UK, this would be a matter for the Crown after the expiry of the statute of limitation period.

11.10 The Minister states that in the round these provisions should make it easier to recoup monies from CMOs elsewhere that distribute funds less frequently and to identity funds that are due. Should there be concerns about the way in which a Member State is handling undistributed funds, the Directive establishes both an expert group (on which the UK will

sit) and provision for information exchanges between the relevant competent authorities. This provides a route to curb any ongoing abuses.

Relations with users

11.11 In line with UK objectives, the final draft texts in Recital 18a and Article 15a that cover users' information requirements now achieve a reasonable balance between a CMO's need for timely, relevant information on rights usage on the one part and the need to avoid imposing disproportionate burdens on users, particularly small and medium sized enterprises. The information must be limited to what is reasonable, necessary and at the user's disposal and must take into account the specific situation of small and medium sized enterprises.

Multi-territorial licensing

11.12 The JURI committee has welcomed the revised proposals for multi-territorial licensing. The aim is to ensure that service providers such as Spotify and Amazon are able to obtain licenses from a small number of CMOs operating across EU borders, instead of having to deal with separate organisations potentially in each and every EU member state.

11.13 The UK has continuously sought for a technologically neutral approach to the licensing of online music rights required for radio and broadcasting programmes (Article 33), which is not fully achieved in the final text. When transposing the Directive, the UK will therefore need to consider carefully how best to align the derogation with UK domestic policy priorities.

Better regulation priorities

11.14 Throughout the negotiations the UK has maintained a strong line on its priority objective to reduce overall EU regulatory burdens, for example in relation to user information requirements (Article 15a) as outlined above.

11.15 A difficult balance had to be struck here on the issue of exempting micro-entities from specific supervision and transparency requirements. This was included in the original proposals but not in the final compromise text.

11.16 In general the Government would support such exemptions, but in this instance there are good reasons for not doing so. The licensing activities of CMOs also create burdens on business; CMO transactions in some sectors generate a disproportionate number of complaints from UK small and micro businesses, with associated costs to all parties involved. The issue of copyright licensing thus featured very highly in the red tape challenge launched by the Government in 2010, which sought to reduce the regulatory burden on business.

11.17 On balance, therefore, the Minister states, the possible advantages of a micro-business exemption to the handful of the UK's 15 or so CMOs that are micro businesses are outweighed by the benefits to UK small and micro licensees and by the benefits to UK creators from ensuring small non-UK CMOs do not slip through the regulatory net and underpay UK rights owners.

Conclusion

11.18 **We thank the Minister for his helpful update. Overall the Minister believes the final result will be a good outcome for the UK: it should rectify concerns about continental collecting societies, which may not have been paying British creators their fair share of licensing revenues, whilst requiring minimal additional regulation in the UK over the self-regulatory regime currently being put in place by the Government.**

11.19 **We agree with his assessment of progress made in the negotiations and now clear the document from scrutiny.**

12 Accession of the Yemen to the WTO

(35416) 15305/13 COM(13) 720	Draft Council Decision establishing the European Union position within the relevant instance of the World Trade Organisation on the accession of Yemen to the World Trade Organisation

Legal base	Articles 91, 100(2) and 207(4), in conjunction with Article 218(9) TFEU; QMV
Department	Business, Innovation and Skills
Basis of consideration	Minister's letter of 25 November 2013
Previous Committee Report	HC 83-xxi (2013–14) chapter 7 (20 November 2013)
Discussion in Council	See para 12.6 below
Committee's assessment	Legally important
Committee's decision	Cleared

Background

12.1 The process of World Trade Organisation (WTO) accession consists of two strands. First, individual WTO members agree bilateral arrangements with the acceding country regarding market access for industrial goods, agricultural trade, and services, the outcomes of these individual negotiations then being amalgamated into the Schedules of Commitments and the best offers granted to all WTO members on the 'Most-Favoured Nation' (MFN) principle. Secondly, there are discussions on the compatibility or otherwise of the trade policy regime of the acceding member with the multilateral agreements and obligations which constitute WTO membership. This process — which the Commission negotiates on behalf of the EU Member States — effectively sets out the terms and conditions of the acceding party's membership, and, once these have been agreed, a vote must be taken in the General Council of the WTO on allowing the new member to join.

12.2 The Commission has recently put forward this draft Council Decision proposing that, at a special meeting of the WTO General Council on 3–6 December 2013, the EU should

support the accession of Yemen, and, in our Report of 20 November 2013, we noted that the Government supports such a course, and regards the accession terms as reasonable, and as representing a balanced but ambitious package of market opening commitments.

12.3 However, the Government went on to observe that the UK is bound by commitments to admit services professionals from all existing WTO Members in accordance with its so-called 'Mode 4' commitments under the General Agreement in Trade in Services (GATS), and that these commitments will be extended to Yemen when it becomes a WTO Member. It also noted that this measure had been proposed under Article 207(6) TFEU, which is a non-Title V legal base, but, as EU legislation requiring Member States to open their markets to the provision of services by natural persons from third countries would impose JHA obligations on the UK, the Government's view was that the UK's JHA opt-in is engaged.

12.4 We said that this draft Decision was clearly to be welcomed on policy grounds, the main point of interest arising — as on a number of previous accessions — over the UK intention to exercise its Mode 4 opt-in rights under Title V TFEU in the absence of an appropriate legal base. We recalled that we had in those instances exchanged differing views with the Government over the legality of asserting opt-in rights in the absence of a Title V legal base, and that our view remained that such a base was necessary for the UK to exercise those rights. Consequently, we asked the Government to indicate whether a Title V legal base would accordingly be added to the Council Decision, and also whether the UK would opt into the Mode 4 provisions. Pending its response to these points, we said that we would hold the document under scrutiny.

Minister's letter of 25 November 2013

12.5 We have now received a letter of 25 November 2013 from the Minister for Trade and Investment at the Department for Business, Enterprise and Skills (Lord Green of Hurstpierpoint). He says that, even though this proposal does not cite a Title V legal base, the agreed Government position is that the UK's JHA opt-in is engaged, and that the EU should not bind the UK in an international agreement containing Mode 4 commitments unless the UK opts into those provisions. The Commission has a different interpretation of the opt-in Protocol, arguing that the opt-in does not apply in the absence of a Title V legal base. He does not expect that a Title V legal base will be added to the proposal, but says that the Government nonetheless intends to send a letter formally notifying the EU of our decision to opt in to the Mode 4 provisions of the proposal.

12.6 The Minister also points out that this proposal should have gone to the Culture and Education Council on 25 November, but, as this would have necessitated a scrutiny over-ride, the Presidency has agreed to a UK request to push this item back to the Competiveness Council on 2 December, in order to allow us time to consider his response. He therefore asks if we would now release this dossier from scrutiny, adding that the Government intends support the decision as Yemen will accede to the WTO at the Ministerial meeting which begins in Bali on 3 December, and that, if clearance is not possible, it will be necessary to override scrutiny.

Conclusion

12.7 **Although our view on the need for a Title V legal base has led us in previous instances of this sort to retain a document under scrutiny, we consider that this difference of opinion should not cause the Government to override scrutiny on this occasion. We therefore clear the document.**

13 Roma integration

(35137) 11738/13 COM(13) 460	Draft Council Recommendation on effective Roma integration measures in the Member States

Legal base	Articles 19(1) and 292 TFEU; unanimity; EP consent
Department	Communities and Local Government
Basis of consideration	Minister's letter of 19 November 2013
Previous Committee Report	HC 83-xiii (2013–14), chapter 8 (4 September 2013)
Discussion in Council	Expected to be adopted on 9 December 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Background and previous scrutiny

13.1 Roma —a generic term encompassing a variety of groups of people sharing broadly similar cultural characteristics, including Gypsies and Travellers — constitute the EU's largest ethnic minority (estimated at 6 million). 80% of the Roma population is sedentary and is disproportionately affected by unemployment, poverty, bad housing and poor health standards. The treatment of Roma has risen up the political agenda because of the accession to the EU in 2004 and 2007 of Member States with a significant Roma population.[31]

13.2 In 2011, Member States endorsed an EU Framework for National Roma Integration Strategies which invited them to develop their own strategies incorporating four common "Roma integration goals" covering access to education, employment, healthcare, and housing and other essential services.[32] The Commission considered that a specific framework for Roma was needed because EU equality legislation, while important, was insufficient to combat the "prejudice, intolerance, discrimination and social exclusion" which Roma encountered in their daily lives. The Commission also recognised, however, that the size of the Roma community as a proportion of the total population in each Member State varied significantly, and that the scale of the challenges which Member

31 Roma constitute more than 7% of the population of Bulgaria, Hungary, Romania and Slovakia.

32 See: 8727/11 (32664); HC 428-xxvi (2010–12), chapter 7 (11 May 2011).

States faced, as well as their starting points for tackling Roma exclusion, were likely to differ in magnitude.

13.3 The purpose of the draft Council Recommendation is to encourage ongoing political commitment to the four Roma integration goals by providing practical guidance to enhance the effectiveness of national Roma integration measures and strengthen the implementation of national strategies. It would introduce an annual reporting mechanism for Member States to inform the yearly progress reports produced by the Commission and, where appropriate, the development of Country Specific Recommendations as part of the European Semester. The Commission considers that further action at EU level is justified because the absence of a coordinated approach has resulted in increasing discrepancies in the laws and policies applied by Member States which could, in turn, result in migration to Member States with more favourable conditions. The draft Recommendation is not legally binding and is intended to complement existing EU anti-discrimination legislation, notably the Race Directive.[33] Our Thirteenth Report of 4 September 2013 provides a more detailed overview of the draft Recommendation and the Government's position.

13.4 Whilst accepting that it is appropriate for the Commission to monitor progress towards better Roma integration, the Government considers that the draft Recommendation is too prescriptive and fails to reflect the differences in situation of the Roma across the EU and the diversity of approaches taken by Member States to promote integration. It told us that it would seek to play an active and constructive role in negotiations and to achieve "a flexible Council Recommendation that takes account of the different situations in different Member States and gives maximum discretion on how to approach this issue."[34]

13.5 We noted that more effective policies to promote the social and economic integration of Roma communities could help to defuse the political tensions that have arisen in recent years as Roma have sought to exercise their free movement rights, but agreed with the Government that a prescriptive, top-down approach was not appropriate. We could see no reason why the Government should not succeed in achieving its negotiating objectives, given that unanimity within the Council would be required to endorse the draft Recommendation, but asked to be kept informed of the progress of negotiations.

The Minister's letter of 19 November 2013

13.6 The Minister for Communities (Stephen Williams) tells us that the Government has succeeded in securing "numerous changes" to the draft Council Recommendation and considers that the revised text is "flexible, proportionate and realistic." He invites us to clear the proposal from scrutiny so that the Government is in a position to support its adoption at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on 9 December. He highlights the following changes:

33 Council Directive 2000/43/EC; OJ L No. 180, 19.07.2000, pp. 22–26.

34 See the Explanatory Memorandum of 24 July 2013 submitted by the Parliamentary Under-Secretary of State (Mr Don Foster).

- a clear recognition that the social and economic situation of the Roma varies widely across the EU and affirmation that Roma integration is primarily the responsibility of Member States;
- the removal of prescriptive language in the key policy areas of education, health, employment and housing, as well as the inclusion of possible measures at national level that remain optional for Member States;
- flexibility for Member States to determine how to target EU funding according to national priorities;
- the removal of "top-down" targets which are at odds with the UK's approach of providing mainstream services through locally delivered, flexible provision; and
- more proportionate monitoring and reporting arrangements which are broadly in line with current practice in the UK.

13.7 The Minister concludes:

> "The Government wants all EU Member States, particularly those with large and disadvantaged Roma populations, to take effective action to integrate their Roma citizens. We believe that the latest text of the Roma Recommendation will assist with this, while avoiding the prescriptive top-down approach that was such a strong feature of the original Commission proposal. I therefore hope that the Committee will be able to clear the draft Council Recommendation from scrutiny in time for the EPSCO meeting on 9 December."

Conclusion

13.8 **We thank the Minister for his report on the outcome of negotiations. We agree with his analysis of the changes to the draft Council Recommendation and consider that the proposal strikes an appropriate balance between practical guidance on Roma integration measures and the need for a diversity of approaches to reflect the different challenges Member States face, as well as their different starting points for tackling Roma exclusion. We are now content to clear the draft Recommendation from scrutiny.**

14 Barcelona Convention

(35451) 15477/13 COM(13) 743	Draft Council Decision establishing the position to be taken at the Eighteenth Ordinary Meeting of the Contracting Parties of the Barcelona Convention for the Protection of the Environment and the Coastal Region of the Mediterranean, with regard to the proposal for amending Annexes II and III to the Protocol concerning Special Protected Areas and Biological Biodiversity in the Mediterranean and with regard to the proposal for adoption of a Regional Action Plan on Marine Litter

Legal base	Articles 192(1) and 218(9) TFEU; QMV
Document originated	29 October 2013
Deposited in Parliament	31 October 2013
Department	Environment, Food and Rural Affairs
Basis of consideration	EM of 14 November 2013
Previous Committee Report	None
Discussion in Council	See para 14.1
Committee's assessment	Legally important
Committee's decision	Cleared; further information requested

Background

14.1 The Barcelona Convention, together with a number of its Protocols, seeks to protect the marine environment and coastal region of the Mediterranean against pollution, and both the EU and a number of Member States with coast lines in the area[35] are parties to it. The Contracting Parties usually meet every two years, and this draft Council Decision addresses the position to be taken by the EU on two proposals due to be considered at the next such meeting from 3–6 December.

The current document

14.2 The first proposal relates to the Protocol concerning Specially Protected Areas and Biological Diversity, Annex II of which lists endangered and threatened species, whilst Annex III simply lists those which are regulated. The proposal would upgrade five coral species from Annex III to Annex II, and include six other species directly into Annex II. The second proposal relates to the Protocol for the Protection of the Mediterranean Sea against Pollution for Land Based Sources, and would provide for the adoption of a Regional Action Plan on Marine Litter.

35 Cyprus, Croatia, France, Greece, Italy, Malta, Slovenia and Spain.

The Government's view

14.3 The UK is not a Contracting Party, and has no direct geographical interest, but, in his Explanatory Memorandum of 14 November 2013, the Parliamentary Under Secretary of State for Farming, Food and Marine Environment (George Eustice), accepts that the protection of the coral reefs can be better achieved by the EU than by Member States acting individually, and considers that the proposed action would be in accordance with the principle of subsidiarity.

14.4 However, he says that the Government has concerns about the proposed Marine Litter Regional Action Plan, noting in particular that the recitals to the draft Decision could be read as suggesting that there are wide-ranging internal EU rules on litter, and that international action is necessary to implement these, whereas the Plan would cover matters (such as fishing for litter or beach litter clean-up) which are not subject to any existing EU rules, and would require Member States to take action to combat littering on the beach, which is best determined at the national and local level. He also points out that, even where some EU measures relating to marine pollution, such as the Marine Strategy Framework Directive, arguably relate specifically to litter, it is clearly stated that it is for individual Member States to determine what measures are needed to deal with the problem.

14.5 The Government therefore intends to clarify the EU mandate, so that it does not affect the existing division of competences between the EU and its Member States, and to make the UK's position clear ahead of the meeting of the Convention (and in the event that the EU proposes similarly to take action instead of Member States under other Regional Seas Conventions, such as that protecting the marine environment in the North-East Atlantic, (OSPAR)).

Conclusion

14.6 **As we have noted, the UK is not a party to the Barcelona Convention, has no direct geographical interest in its activities (except insofar as these might affect Gibraltar), and is in any case content with the measures proposed to protect coral species. The main point at issue therefore arises on the proposed provisions on marine litter, both in relation to the Mediterranean and their possible application in other areas. Consequently, whilst we are willing to leave the Government a free hand to address this issue, and are hence content to clear the document, we think it right to draw it to the attention of the House. We would also be interested to hear of any clarification which the Government manages to make to the EU mandate to reflect the existing division of competences between the EU and Member States.**

15 European Earth Observation Programme (Copernicus)

(a) (33547) 17072/11 COM(13) 831	Commission Communication: *European Earth Monitoring Programme (GMES) from 2014*
(b) (33888) 10035/12 COM(12) 218	Commission Communication on *the establishment of an Intergovernmental Agreement for the operations of the European Earth Monitoring Programme (GMES) from 2014 to 2020*
(c) (34965) 10275/13 COM(13) 312 + ADDs 1–2	Draft Regulation establishing the Copernicus Programme and repealing Regulation (EU) No. 911/2010 Commission Staff Working Documents

Legal base	(a) and (b): — (c)Article 189(2) TFEU; co-decision; QMV
Department	Environment, Food and Rural Affairs
Basis of consideration	Minister's letter of 19 November 2013
Previous Committee Reports	(a) HC 428-xlvii (2010–12), chapter 19 (18 January 2012) (b) HC 86-iv (2012–13), chapter 7 (14 June 2012) (c) HC 83-vii (2013–14), chapter 3 (26 June 2013)
To be discussed in Council	3 December 2013
Committee's assessment	Politically important
Committee's decision	(a) Cleared (decision reported on 18 January 2012) (b) and (c) Cleared

Background

15.1 We and our predecessors have reported from time to time on the evolution of the European Earth Observation Programme, otherwise known as GMES (Global Monitoring for Environment and Security), which was established in 1998 as a joint initiative by the Commission and European Space Agency (ESA). It seeks to provide, by means of data obtained by satellite or from in situ sensors (such as buoys and balloons), information for the use of those making, implementing and monitoring environmental policy within the EU, and to support civil protection and security efforts. This is achieved through six operational services (covering atmospheric, marine, land and climate change monitoring, and responses to emergencies and security), as well as developmental and support activities.

The current proposal

15.2 Until 2011, the GMES was funded through the EU Framework Programme for research and technological development, and by contributions from members of the ESA, the focus then being on development activities. Regulation (EU) No. 911/2010 continued this joint funding until the end of 2013, but also introduced a further contribution from the EU to provide the first element of operational funding. The Commission says that, as the Programme is now entering its full operational phase, a new Regulation is required, and it therefore put forward in May 2013 a proposal (document (c)), which would repeal Regulation (EU) No. 911/2010; change the name of the programme to "Copernicus"; and set out the financial and operational arrangements for the period 2014–20. In particular, the new Regulation would provide for a budget of up to €3.786 billion, to be financed under sub-heading 1a of the Multi-Annual Financial Framework (MFF), thereby departing from a suggestion put forward in Commission Communications in November 2011 (document (a)) and May 2012 (document (b)) — to which the UK had been strongly opposed — that the Programme should be financed by a specific fund established by an intergovernmental agreement between the EU Member States and managed by the Commission outside the MFF.

15.3 The proposal also seeks to set out the arrangements for the Programme's governance. Thus, it would give the Commission overall responsibility for defining its priorities and objectives and overseeing its implementation; require it to adopt each year an implementing act setting out a work programme, and to cooperate with Member States in improving the exchange of data and information; and enable it to entrust the operational activities to EU bodies[36] with expertise in relevant areas. In addition, the draft Regulation would enable the EU to enter into agreements with third countries; establish the ownership of assets developed under the Programme; and set out conditions for the availability of data from the Programme, the protection of EU and national security interests, and the protection of the EU financial interests against fraud, corruption and other illegal activities.

15.4 As we noted in our Report of 26 June 2013, the Government said that it was still analysing the text and discussing it with other Member States, but that its initial views were that it would be inconceivable for the UK to agree a new Regulation for a programme of this scale where the governance arrangements were unclear. In particular, the Regulation would need to set out details of the respective roles of the Commission and Member States; to outline clear allocations for the key elements of the Copernicus Programme (services, and the space component and in-situ components) against the €3,786 million provision, as well as providing a level of detail against each of those elements; and allocate the budget to different phases of the programme to improve transparency. The Government also noted that the Commission was proposing that a number of delegated powers should be conferred upon it, and said that it would be pressing it to ensure that these were justified and their scope appropriate, and that they were time limited, rather than for an indeterminate period as proposed. Finally, the Government pointed out that scientific research and space are areas of parallel competence, and that the UK will therefore in

36 Such as the European Environment Agency, FRONTEX, the European Maritime Safety Agency, and the European Union Satellite Centre.

principle retain competence in this area, but it added that it would scrutinise the proposal to ensure that EU was constrained to the scope of its competences and to this Regulation.

15.5 We commented that the development of a European Earth Observation Programme had been in progress since 1998, and that the need for new funding arrangements for 2014 onwards had already been recognised. To that extent, therefore, this proposal did not cover new ground, and would at least have the merit of being financed from within the Multi-annual Financial Framework. However, it was clear that there were nevertheless a number of important areas where the Government was concerned at the lack of detailed information about how the Programme would operate in practice, and consequently, in drawing the proposal to the attention of the House, we said that we were holding it under scrutiny, pending further information as to whether (and how) those concerns had been met.

Minister's letter of 19 November 2013

15.6 We have now received from the Parliamentary Under-Secretary at the Department for Environment, Food and Rural Affairs (Lord de Mauley) a letter of 19 November 2013, providing an update on the negotiations, with particular reference to the following areas of previous concern.

Governance

15.7 The Minister says that the current text now defines the role of the Copernicus Committee, part of which is to agree annual and long term programme plans, ensuring a clear role for Member States in shaping their direction and evolution. The Committee also has the power to appoint expert advisory groups for each of the Copernicus services to ensure that expert user views are taken into account when planning the evolution of the programme, and is able to meet in several configurations, so as (for example) to ensure that matters pertaining to security are handled appropriately.

15.8 The Minister also points out that the design of the Copernicus services is an important element in the delivery of the system, and that, given their complexity, it was not practical to define these in full detail in the Regulation itself. The UK has therefore sought an approach which would ensure sufficient Member State involvement in the final definition of the services, and this will now be achieved through the Implementing Acts with examination procedure.

15.9 He therefore concludes that the UK has achieved its original aim of strengthening the role of the Copernicus Committee, and its sub-configurations, and of ensuring appropriate Member State oversight of the delivery of the programme and of the definition of the Copernicus Services. He also says that this approach has the support of the Presidency, the Commission and other Member States.

Copernicus Space Component

15.10 The Minister says that, although the Commission will retain overall responsibility for ensuring that funds are spent effectively, delivery of the Space Component will be the responsibility of the ESA and the European Organisation for the Exploitation of

Meteorological Satellites. He adds that the Space Component requires long-term planning and budget stability, and that, whilst the Commission's original proposal did not specify precisely how much funding would be provided or the activities to be undertaken within the component, the negotiations have resulted in a clear budget breakdown between the services and the space component within the Regulation, with clear procedures for agreeing annual and long term work programmes for both components.

Data Policy

15.11 The Minister observes that the UK has sought to ensure that the Copernicus data policy is oriented as far as possible towards free and open use, and that robust procedures are put in place to ensure any security concerns from Member States are considered and addressed. He says that the current version of the Regulation reflects this aim, although he points out that amendments proposed by the European Parliament would introduce a review of the data policy once the programme has been operational for two years — a course which the UK could support so long as it relates to data policy, and not the key principles of free and open access, and with a preference for it taking place after three to five years, as the necessary evidence would not be available after only two.

Legal Competence

15.12 The Minister observes that scientific research and space are areas of parallel competence, and that the UK will retain competence. The Government will however continue to scrutinise the proposal to ensure that the EU remains within the scope of its own competences, bearing in mind that the legal basis of the Regulation is Article 189(2) of the Treaty on the Functioning of the European Union, which provides the Council and Parliament with the power to take necessary measures to draw up a European space policy (including the promotion of joint initiatives, support for research and technological development, and coordination of the efforts needed for the exploration and exploitation of space), but excludes any harmonisation of the laws and regulations of the Member States. He says that the proposed Regulation remains within the scope of this basis.

Financial Costs

15.13 The Minister confirms that the programme will be financed under the Multi-annual Financial Framework (MFF), with a maximum level of commitments of €3,786 million.

15.14 As regards timing, the Minister says that the negotiations are entering their final phase, with the European Parliament's position expected on 28 November, following which the proposal will go to the Competitiveness Council for agreement on a general approach on 3 December, with a view to entering into trilogue discussions immediately afterwards, leading to the ultimate adoption of the proposal in the first quarter of 2014 (ahead of the forthcoming European Parliament elections). In view of this, he expects negotiations to proceed at a rapid pace, and he has therefore asked for scrutiny clearance.

Conclusion

15.15 **We are grateful to the Minister for this update, and we note that the Government is satisfied that the text now on the table meets the UK's earlier concerns. Consequently, although we would like to be kept in touch with subsequent progress, we are now willing to clear the draft Regulation at document (c), as well as the Communication at document (b). The earlier of the two Communications (document (a)) was previously cleared by virtue of our Report of 18 January 2012.**

16 Vehicle type approval: sound levels of motor vehicles

(33551) 18633/11 + ADDs 1–2 COM(11) 856	Draft Regulation on the sound levels of motor vehicles

Legal base	Article 114 TFEU; co-decision; QMV
Department	Transport
Basis of consideration	Minister's letter of 22 November 2013
Previous Committee Reports	HC 83-iii (2013–14), chapter 10 (21 May 2013) and HC 428-xlvii (2010–12), chapter 10 (18 January 2012)
Discussion in Council	Probably November or December 2013
Committee's assessment	Politically important
Committee's decision	Cleared

Background

16.1 Noise limits for new motor vehicle limits are set by Directive 70/157/EEC, as amended, and the equivalent UNECE (United Nations Economic Commission for Europe) Regulation No. 51. Vehicle noise limits were last reduced in 1995, but the reductions did not have the expected effects in reducing environmental noise.

16.2 The aim of this draft Regulation is to reduce permissible noise levels of new motor vehicles. If adopted Directive 70/157/EEC and its amending Directives would be repealed. The proposal aims to reduce levels of traffic noise and consequently the number of people exposed to levels of noise which adversely affect their health. The Commission proposes maximum noise limits for road vehicles, ranging from cars through to heavy trucks and buses. The proposal excludes powered two wheelers, three wheelers and quadricycles — these are covered in separate legislation.

16.3 When we considered this draft Regulation in January 2012 we said that clearly the proposal has important implications for vehicle manufacturers, consumers and those affected by vehicle noise. But we noted some caveats mentioned in the Government's

preliminary assessment of the draft Regulation. So we asked, before considering the matter further, to have the Government's more considered view of any problems with the proposal. In May we heard that that the position the Government was taking was broadly that it supported the Commission's limit values for all vehicles, supported its timescale for light duty vehicles, but was seeking a longer timescale for heavy duty vehicles to bring it more in line with the longer product development and life-cycles of those vehicles. We noted more detailed comment on a number of points and looked forward to hearing in due course about developments in securing the Government's objectives. Meanwhile the document remained under scrutiny.[37]

The Minister's letter

16.4 The Minister of State, Department for Transport (Baroness Kramer) writes now to tell us that:

- since May significant progress has been made in Council working group consideration of the proposal;
- the Lithuanian Presidency has also held trilogue meetings with representatives of the European Parliament and a proposed compromise position has been reached;
- no date has yet been set for consideration of this by the Council; but
- she expects the Presidency to seek agreement at short notice this month or in December.

16.5 Turning to the substance of the compromise text the Minister first says that:

- despite pressure from the European Parliament and some Member States to relax the noise limit values, the proposed compromise keeps values broadly in line with those originally proposed by the Commission and supported by the Government;
- this should see a reduction of about 4dB(A) for each vehicle category;
- this was achieved following a compromise within the Council working group to reduce the noise limits in three stages rather than the two originally proposed by the Commission, the second and third stage limits being equivalent to the Commission proposal;
- these stages would apply to new vehicles from 2016, 2020 and 2024 respectively — the overall impact of this is to delay the introduction of the most stringent limits by about five years; and
- this would provide the necessary lead times for manufacturers of heavy duty vehicles which have long development cycles, although the first stage limits are somewhat unambitious since a high percentage of the UK car fleet already meets them.

37 See headnote.

16.6 Next the Minister tells us that:

- during negotiations the Government argued in favour of the Commission's proposal for non-mandatory fitment of noise generating devices ("acoustic vehicle alerting systems") on electric and hybrid electric vehicles, provided that these met internationally agreed standards;
- the European Parliament, however, supported mandatory fitting and in trilogue meetings their representatives made this a condition of accepting the proposed limit values and lead times;
- the Presidency proposed a compromise whereby optional fitment would be permitted for a transitional period of five years to allow work on harmonised technical standards to be finalised;
- after this period fitment would become mandatory, together with a driver operated on/off switch, for new vehicle types;
- during this transitional period the Commission would study the possibility of continuing to permit optional fitment on vehicles with active safety systems such as automatic emergency braking; and
- the Government believes that it should now accept this compromise in order to secure the European Parliament's agreement on the limit values.

16.7 The Minister then says that:

- the boundaries between the categories of vehicles in terms of, for example, power to mass ratio for light duty vehicles, engine power output for commercial vehicles, and the removal of categories of vehicles that will effectively no longer exist such as light duty commercial vehicles with low engine power, have now been revised along the lines requested by industry and supported by the Government;
- the Government successfully sought dispensations for specialist super sports cars, which have been included in a separate category, and for vehicles converted to make them wheelchair-accessible and for armoured vehicles; and
- dispensations have been separately agreed for multi-stage build vehicles, ambulances and hearses, within amendments to Directive 2007/46/EC on the type approval of motor vehicles.

16.8 Reminding us that the Commission proposed slightly different vehicle operating conditions from those contained in the proposed future test method (Method B) that was trialled against the current method (Method A) and that the Government sought to reverse the changes in order to maintain the link between the proposed limit values and the data on which the Commission based their decision, the Minister reports that:

- this position has been supported by the European Parliament and other Member States; and

- it is likely, however, that manufacturers will be permitted to use tyres with the legal minimum tread depth, rather than 80% tread depth, which is a slight, but acceptable, deviation from the position that the Government would have preferred.

16.9 In relation to concerns raised by UK bus manufacturers regarding double-deck buses custom built for city use, which are fitted with low power engines and have higher capacity than city buses used in the rest of Europe, the Minister explains that:

- because noise limits are set against engine power output, UK bus manufacturers felt they might be forced to compromise their designs by having to fit higher-powered engines simply to move the vehicle into a category with an achievable noise limit; and

- the concern was that fitting an unnecessarily high-powered engine would increase emissions of air quality pollutants and of CO2, and, because of the physically larger engine, might reduce passenger carrying capacity.

16.10 She reports that while the Government did not achieve specific limit values for these vehicles, the combination of the revised categories and longer lead time have reduced the burden on manufacturers, and the industry is now content.

16.11 The Minister says that:

- provisions have also been included in the compromise text to address anomalies for certain classes of vehicle using the same basic chassis and drive train where one is commercial and the other is for carrying passengers;

- in these cases, where a passenger variant is derived from a commercial vehicle, as is the case, for instance, with some minibuses, the limit values for the commercial vehicle would apply; and

- this reflects the difficulty of modifying a commercial vehicle to meet the stricter limits for passenger vehicles and is a satisfactory outcome.

16.12 The Minister then tells us that:

- the European Parliament proposed inclusion of provisions that would require manufacturers to provide a label at the point of sale informing consumers of the measured sound level of each vehicle;

- the UK and other Member States argued against this proposal;

- labelling is required for carbon emissions and incentives are in place to encourage consumers to purchase fuel efficient vehicles;

- no such incentives exist for vehicle noise and there is no evidence to show whether such labelling would influence the buying decision;

- there is also a risk that any such labelling requirements would distract the buyer from the existing fuel consumption and carbon dioxide information;

- noise data is already published online as part of the Department for Transport's fuel consumption data tool;
- in the trilogue discussions, the European Parliament's representatives accepted the proposed Presidency compromise of tasking the Commission to carry out a wider study into consumer information and to return with proposals if appropriate; and
- manufacturers would also be "encouraged" to put labels in the showroom and on promotional material.

16.13 The Minister also says that:

- the European Parliament also called for a study on the feasibility of a road classification scheme;
- this would be a complex and costly exercise and the benefits of such a scheme, if any, have not been established;
- during the trilogue meetings however, the European Parliament's representatives accepted the position put forward by the Presidency and supported by the Government; and
- this was that should not be contained in a Regulation on the type approval of vehicles and that if requirements are to be imposed at all that should be done in the context of the Environmental Noise Directive.

16.14 The Minister concludes that:

- the Government believes that the proposed compromise text represents a satisfactory outcome for the limit values and that significant dispensations to minimise burdens on small UK manufacturers have been achieved;
- the delay on mandatory fitting of noise generators for electric and hybrid-electric vehicles will give time to develop harmonised technical standards, so minimising the cost to industry;
- the proposed study, in addition, should result in proposals to permit those vehicles fitted with active safety systems to be exempt; and
- given the progress made the Government is therefore minded to support the adoption of this draft Regulation.

Conclusion

16.15 **We are grateful to the Minister for the information she gives us and, noting the improvements that have been secured to the text of the draft Regulation, now clear the document.**

17 EU Passenger Name Record (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 (a) 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 19 November 2013
Previous Committee Reports	HC 83-xix (2013–14), chapter 5 (30 October 2013); HC 83-xiii (2013–14), chapter 22 (4 September 2013)
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background and previous scrutiny

17.1 The draft Council Decisions authorise the EU to sign and conclude a new Passenger Name Record (PNR) Agreement with Canada which would replace an earlier 2005 Agreement and is intended to provide a more comprehensive framework for PNR data transfers, adhering to the principles set out in the Commission's 2010 Communication, *On the global approach to transfers of PNR data to third countries*.[38] Our Thirteenth and Twentieth Reports, agreed on 4 September and 30 October 2013, describe the main elements of the proposed Agreement with Canada and the Government's position.

17.2 PNR Agreements are subject to the UK's Title V (justice and home affairs) opt-in. The UK has already opted into PNR Agreements with Australia and the US. We asked the Government to tell us whether it intended to opt into the proposed Agreement with Canada and to set out the reasons for its opt-in decision.

38 See: (31960) 13954/10: HC 428-xi (2010–12), chapter 21 (15 December 2010).

The Minister's letter of 19 November 2013

17.3 The Security Minister (James Brokenshire) informs us that the Government has decided to opt into the draft Council Decisions to sign and conclude the EU-Canada PNR Agreement and expects them to be adopted as an "A" point (without further discussion) at the Justice and Home Affairs Council on 5/6 December. He sets out the Government's reasons for wishing to participate in the Agreement in the following terms:

> "The UK has recognised first-hand the benefits of PNR through its own border systems programme (formally e-Borders) which has already been used to arrest suspects wanted for serious offences such as murder, rape and kidnap. 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.
>
> "The agreement provides that Canada shall ensure that its competent authority processes PNR 'strictly' for the prevention, detection, investigation and prosecution of terrorism and other serious crime that is transnational in nature. Such processing constitutes a legitimate objective for the purposes of Article 52 of the Charter of Fundamental Rights of the European Union. PNR data has a clear value in combating these types of crime, which goes to the necessity of the measure to protect the public.
>
> "The agreement is strictly limited to the transfer of PNR for the purposes of preventing and combating terrorism and other serious transnational crime. It is therefore not directly applicable to the control of immigration but could be used to help fight people trafficking.
>
> "We are in regular contact with the airline carriers, on whom the burden for provision of PNR data rests. They are required by Canada to provide such data already; this agreement will provide the legal coverage they need to do so. The arrangements envisaged are already in operation in practice and the proposed agreement will not have undue impact on the carriers' existing systems."

17.4 The Minister invites us to consider clearing the draft Decisions from scrutiny so that the Government is in a position to support their adoption at the December Justice and Home Affairs Council.

Conclusion

17.5 **We thank the Minister for his letter and his explanation of the Government's reasons for opting into the draft Decisions. We debated the Government's decision to opt into the PNR Agreement with the United States of America — the most contentious of the recent batch of EU PNR Agreements because of the lengthy data retention period — in January 2012. We note that the Agreement with Canada includes a shorter data retention period of five years and that the limitations imposed on the processing of sensitive data are in line with UK data protection standards. We are therefore content to clear the draft Council Decisions from scrutiny.**

18 Rights and Citizenship Programme 2014–20

(33390) 17273/11 + ADDs 1–2 COM(11) 758	Draft Regulation establishing for the period 2014 to 2020 the Rights and Citizenship Programme

Legal base	Articles 19(2), 21(2), 114, 168, 169 and 197 TFEU; co-decision; QMV
Department	Justice
Basis of consideration	Minister's letter of 20 November 2013
Previous Committee Reports	HC 86-iii (2012–13), chapter 9 (23 May 2012); HC 428-xlviii (2010–12), chapter 20 (25 January 2012); HC 428-xlv (2010–12), chapter 8 (20 December 2011)
Discussion in Council	No date set
Committee's assessment	Politically important
Committee's decision	Cleared

Background and previous scrutiny

18.1 The draft Regulation would establish a single EU funding programme — the Rights and Citizenship Programme (since re-named the Rights, Equality and Citizenship Programme) — for the period 2014–20, replacing three existing programmes which provide support for measures encouraging respect for fundamental rights and citizenship, tackling violence against women and children, and promoting non-discrimination, diversity and gender equality.[39] The Commission has proposed a budget of €439 million for the new Programme which would focus EU funding on five specific areas:

- making it easier to exercise the rights derived from EU citizenship;
- promoting effective implementation of the principles of non-discrimination and equality;
- ensuring a high level of data protection;
- enhancing respect for the rights of the child; and
- empowering consumers and businesses to trade across borders.

18.2 Our earlier Reports provide a more detailed overview of the content of the draft Regulation and the Government's position.[40] Whilst welcoming efforts to rationalise and simplify EU funding streams, the Government also underlined the need for budgetary

39 The existing programmes are the Fundamental Rights and Citizenship Programme, the Daphne III Programme and the Programme for Employment and Social Solidarity (Progress).

40 See headnote.

restraint and indicated that it would be seeking "significant reductions from the levels of funding for the current programmes which will be brought together under the proposed Rights and Citizenship Programme in line with the Government's general approach to the EU budget."[41]

18.3 In May 2012, the Government told us that its main negotiating objectives had been met, highlighting in particular:

- the inclusion of clearer objectives and indicators which would make it easier to monitor and evaluate the outcome of projects funded by the Programme;
- a greater role for Member States in approving annual work programmes which establish priority areas for funding; and
- stronger safeguards against duplication with other EU funding programmes for 2014-20 (for example, in the field of public health and consumer policy) by the inclusion of language requiring the Commission to ensure overall consistency and complementarity.

18.4 We agreed to the Government's request for a scrutiny waiver which would enable it to support a Presidency compromise text at the Justice and Home Affairs Council in June 2012 covering all elements of the draft Regulation except the budget. We noted, however, that the proposal remained under scrutiny and asked the Government to report back to us on the outcome of negotiations on the budget for the Programme.

The Minister's letter of 20 November 2013

18.5 The Lord Chancellor and Secretary of State for Justice (Chris Grayling) informs us that, following negotiations with the European Parliament, the draft Regulation is expected to be formally approved by the Council in the coming weeks and invites us to clear it from scrutiny. He describes the more significant changes which have emerged from these negotiations:

> "Firstly, following lengthy discussions with the European Parliament, limits on the allocation of funding between objectives within the Programme have been included, with the provision to use delegated acts to revise the proportions allocated to each group if necessary. This has been achieved by organising the objectives for the Programme into two groups; one focusing generally on the equality objectives and the other objectives placed in a second group. A proportion of the total budget has then been allocated to each group of objectives. Provision has been made for some flexibility to these levels, with the Commission able to vary them by 5%. However, any further variation — up to a limit of 10% from the proportion allocated in the Regulation — is possible only through delegated act. Recital 15a, Articles 7 and 9 and the Annex to the Regulation set out the details. The Government considers that this provides clarity on how funding will be allocated within the Programme. It will not affect the total budget for this Programme nor the Multiannual Framework

41 See letter of 10 May 2012 from the then Lord Chancellor and Secretary of State for Justice (Kenneth Clarke) to the Chair of the European Scrutiny Committee.

(MFF) generally and the Government is therefore content to support these arrangements.

"The second issue relates to the budget for the Programme. The Rights, Equality and Citizenship Programme falls within Heading 3: Security and Citizenship. As part of the broader MFF negotiations, which delivered a real-terms cut on the overall budget ceilings, the Prime Minister agreed a budget for Heading 3 of 15.7 billion euros, representing a cut of about 16% from the Commission's proposal. Within that heading the Commission has provisionally allocated 439 million euro to the Rights, Equality and Citizenship Programme. This will not be finalised until the MFF is formally adopted. In the context of that agreement, and recognising that the budget for this Programme must remain consistent with the budget for the Heading and for the overall MFF, the Government intends to accept the proposed budget envelope for this Programme."

18.6 The Minister highlights a number of smaller changes to the recitals to the draft Regulation:

"These include expanding the recitals relating to combating violence against women (recital 7), Roma issues (recital 5a) and citizens (recital 3). There are also additional recitals relating to racism (recital 5x), gender identity and reassignment (recital 7b), equality between men and women (recitals 5b and 5y) and on a number of administrative elements of the Programme (entry into force, mid-Programme review and effectiveness of implementation)."

18.7 The Minister indicates that the Government is content with the outcome of negotiations and intends to support the draft Regulation when it is brought to the Council for adoption in the next few weeks.

Conclusion

18.8 **We thank the Minister for his letter. Whilst we note that there has been no reduction in the budget of €439 million originally proposed by the Commission for the Rights, Equality and Citizenship Programme, we also note that Heading 3 (Security and Citizenship) of the EU's Multiannual Financial Framework for 2014–20, of which the Programme forms part, has seen a significant reduction of around 16%. Given this broader context, and the satisfaction expressed by the Minister with the outcome of negotiations on the draft Regulation, we are content to clear the proposal from scrutiny.**

19 Access to documents

(35212) 12444/13 COM(13) 515	Commission Report on *the application in 2012 of Regulation (EC) No. 1049/2001 regarding public access to European Parliament, Council and Commission documents*

Legal base	—
Document originated	10 July 2013
Deposited in Parliament	19 July 2013
Department	Ministry of Justice
Basis of consideration	EM of 30 July 2013
Previous Committee Report	None
Discussion in Council	None foreseen
Committee's assessment	Legally important
Committee's decision	Cleared

The document

19.1 The European Commission published its report on the application in 2012 of Regulation regarding public access to European Parliament, Council and Commission documents[42] (the Regulation) on 16 July 2013.

19.2 In 2012, 17,940 new documents were added to the public register of documents required under Article 11(1) of the Regulation. None of those documents (whether created or received by the Commission) were "sensitive" as defined by Article 9(1). Article 9(3) provides that sensitive documents may only be added to the Register with the consent of the originator.

19.3 The report notes that initial applications for access in 2012 fell. The number of applications fell from 6,447 in 2011 to 6,014, while the number answered under the Regulation fell from 6,055 to 5,274. The breakdown of applications by area of interest shows that the Commission Secretariat General received the highest number of applications followed by the Directorate General for Health and Consumers. Enquires from academics remained the largest single category.

19.4 The geographical breakdown of applications remained largely consistent with previous years. In 2012, persons or bodies in Belgium submitted the highest number of applications at 21.85% followed by Germany on 14.04% and the UK on 10.17% of the total. The proportion of requests originating from the UK has risen from 7.24% in 2010 when, in addition to Belgium and Germany, France and Italy also submitted proportionately more applications.

19.5 The percentage of initial applications in response to which the documents were disclosed in full fell to 74.48% in 2012 (compared with 80.20 % in 2011). However, despite

42 (EC) 1049/2001.

this fall nearly three quarters of requests are granted in full. The percentage of cases in which applications were granted in full after an initial refusal increased slightly (18.75% compared to 14.58% in 2011). The proportion of such applications where the original decision was upheld in its entirety also went up (56.88% compared to 42.36% in 2011). However, the percentage of cases in which partial access was granted after an initial refusal fell (24.38% compared to 43.05% in 2011).

19.6 The main reason for refusing initial applications was the protection of the purpose of inspections, investigations and audits (25.32% of total exception use compared to 21.90% in 2011). This was very closely followed by the protection of the Commission's decision-making process (25.15% of total exception use against 25.73% in 2011). These two exceptions were also the most commonly cited in confirmatory applications in 2012 (45.10% and 15.69% of total exception use respectively, compared to 32.68% and 19.33% in 2011).

19.7 The Ombudsman closed 18 investigations of complaints against the Commission in 2012: ten with a critical or further remark, and eight without further actions.

19.8 The Court of Justice delivered three judgments on appeal in 2012, in *Commission v Agrofert Holdings a.s.*,[43] *Commission v Editions Odile Jacob SAS*,[44] and *IFAW Internationaler Tierschutz-Fonds v Commission*.[45] The first two judgments concern competition policy and in the last, which we set out in further detail below, the Court gave an interpretation of the assessment of the objections raised by a Member State to the disclosure of documents originating from it. The UK did not intervene in any of these cases.

19.9 The General Court handed down six judgments concerning Commission decisions on access. Three further cases were removed from the register following the withdrawal by the applicant and another three following a decision of the General Court not to adjudicate. Three additional applications were also rejected by order of the General Court.

19.10 In 2012, 14 new cases were brought against the Commission under the Regulation and one new appeal has been brought to the Court of Justice against a judgment of the General Court.

The IFAW judgment

19.11 IFAW was a non-governmental organisation active in the field of the protection of animal welfare and nature conservation. It objected to an industrial project being carried out on a protected site in Germany, and requested access to a number of documents the Commission had received in connection with the examination of the industrial project, in particular documents originating from various authorities of the Federal Republic of Germany including a letter from the German Chancellor to the President of the Commission. The Court stated as follows:

43 C-477/10

44 C-404/10

45 C-135/11

- Regulation No. 1049/2001, as is apparent from recital 4 in the preamble and from Article 1, is intended to give the fullest possible effect to the right of public access to documents held by an institution. Under Article 2(3) of the Regulation, that right extends not only to documents drawn up by an institution but also to documents received by an institution from third parties, including the Member States, as expressly stated in Article 3(b) of the regulation;

- However, Article 4 of the Regulation lays down exceptions to the right of access to a document. In particular, Article 4(5) provides that a Member State may request an institution not to disclose a document originating from that State without its prior agreement;

- In the present case, the Germany made use of the possibility offered by Article 4(5) and requested the Commission not to disclose the German Chancellor's letter. It based its objection on the exceptions concerning the protection of the public interest as regards international relations and the economic policy of a Member State laid down in the third and fourth indents of Article 4(1)(a) of the Regulation, and the exception concerning the protection of the Commission's decision-making process laid down in the second subparagraph of Article 4(3) of the Regulation. Consequently, in the contested decision, the Commission based its refusal to grant access to the German Chancellor's letter on the objection raised by the German authorities pursuant to Article 4(5) of Regulation No. 1049/2001;

- The Court has previously held that that provision is procedural in nature, since it confines itself to requiring the prior agreement of the Member State concerned where that State has made a specific request to that effect, and that it is a provision dealing with the process of adoption of the EU decision;

- Unlike Article 4(4) of Regulation No. 1049/2001, which gives third parties only a right to be consulted, with respect to documents originating from them, by the institution concerned as regards the application of one of the exceptions in Article 4(1) and (2), Article 4(5) makes the prior agreement of the Member State a necessary condition for disclosure of a document originating from it, if that State so requests;

- Where a Member State has made use of the option given to it by Article 4(5) to request that a specific document originating from that State should not be disclosed without its prior agreement, disclosure of that document by the institution requires the prior agreement of that Member State to be obtained;

- It follows, conversely, that an institution which does not have the agreement of the Member State concerned is not entitled to disclose the document. In the present case, the Commission's decision on the request for access to the German Chancellor's letter thus depended on the decision taken by the German authorities as part of the process of adoption of the contested decision;

- However, Article 4(5) does not confer on the Member State concerned a general and unconditional right of veto, so that it can oppose, in an entirely discretionary manner and without having to give reasons for its decision, the disclosure of any

document held by an institution simply because it originates from that Member State;

- The exercise of the power conferred on the Member State concerned by Article 4(5) of the Regulation is limited by the substantive exceptions set out in Article 4(1) to (3), with the Member State merely being given in this respect a power to take part in the institution's decision. The prior agreement of the Member State referred to in Article 4(5) is thus not a discretionary right of veto but a form of assent confirming that none of the grounds of exception under Article 4(1) to (3) is present. The decision-making process thus established by Article 4(5) of the Regulation therefore requires the institution and the Member State involved to confine themselves to the substantive exceptions laid down in Article 4(1) to (3);

- The institution to which the request is made, as the maker of a decision to refuse access to documents, is therefore responsible for the lawfulness of the decision. The Court has thus held that the institution cannot accept a Member State's objection to disclosure of a document originating from that State if the objection gives no reasons at all or if the reasons relied on by that State for refusing access to the document in question do not refer to the exceptions listed in Article 4(1) to (3);

- It follows that, before refusing access to a document originating from a Member State, the institution concerned must examine whether that State has based its objection on the substantive exceptions in Article 4(1) to (3), and has given proper reasons for its position;

- On the other hand, contrary to IFAW's argument, the institution to which the request is made does not have to carry out an exhaustive assessment of the Member State's decision to object by conducting a review going beyond the verification of the mere existence of reasons referring to the exceptions in Article 4(1) to (3);

- To insist on such an exhaustive assessment could lead to the institution being able, after carrying out the assessment, wrongly to communicate the document in question to the person requesting access, notwithstanding the objection, duly reasoned in accordance with paragraphs 61 and 62 above, of the Member State from which the document originates; and

- It follows that IFAW is not correct in submitting that the General Court erred in law by not acknowledging that the Commission was required, with respect to the document whose disclosure was refused, to carry out an exhaustive assessment of the reasons for objecting put forward by the Member State on the basis of the exceptions in Article 4 of Regulation No. 1049/2001.

The Government's view

19.12 The Explanatory Memorandum of the Minister of State at the Ministry of Justice (Lord McNally) states simply that the Government welcomes the EU institutions' continued commitment to transparency, and that it will continue to monitor the judgments of, and ongoing cases in, the General Court and the Court of Justice.

Conclusion

19.13 **In a change of practice from previous years we report this document to the House, and set out the reasoning of the Court's judgment in *IFAW*, because of the importance that we attach to greater transparency in EU decision-making. The *IFAW* judgment shows the limits placed on an EU institution's assessment of a Member State's reason for non-disclosure.**

19.14 **We have no questions to ask of the Government on this report, however, and so clear it from scrutiny.**

20 The Brussels I Regulation and the Unified Patent Court

(35249) 12974/13 COM(13) 554	Draft Regulation amending Regulation (EU) No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Legal base	Articles 67(4) and 81(2) TFEU; QMV; co-decision
Department	Ministry of Justice
Basis of consideration	Minister's letter of 24 November 2013
Previous Committee Report	HC 83-xvi (2013–14), chapter 12 (9 October 2013)
Discussion in Council	December
Committee's assessment	Legally important
Committee's decision	Cleared

Background

20.1 The proposals intend to amend EU Regulation No. 1215/2012 — the Brussels I (recast) Regulation — by adding the Unified Patent Court (UPC) to the list of judicial bodies which fall under the jurisdiction of the Regulation; by clarifying the operation of the rules on jurisdiction in relation to the UPC; by clarifying the operation of the rules about parallel proceedings in relation to the UPC; and by clarifying the operation of the rules on recognition and enforcement in the context of the relationship between contracting and non-contracting Member States to the UPC.

20.2 The Brussels I Regulation sets out rules relating to the international jurisdiction of courts of the Member States of the EU in civil and commercial matters. It covers, among other things, litigation in the area of intellectual property, including patents. The recast of the Regulation comes into force in January 2015.

20.3 One of the reasons for the present Proposal is that the coming into effect of the UPC is linked to the recast Brussels I Regulation. The Agreement which sets up the UPC cannot

come into effect before the amendments to the recast Brussels I Regulation, which regulates the relationship between the two instruments. The present proposal will ensure compliance between the UPC Agreement and the recast Brussels I Regulation, thus enabling the creation of the UPC.

20.4 An amendment to the Brussels I Regulation will also be necessary to reflect the recently agreed Protocol involving the Benelux Court of Justice. This Protocol allows for the jurisdictional competence of the court to include specific matters which come within the scope of the Brussels I Regulation, in this case, intellectual property litigation. The amendment will be needed to ensure that the Benelux Court can be considered as a court of the Member State under the terms of the Brussels I Regulation, ensuring that the Regulation applies fully to the Benelux Court.

20.5 In our first Report we concluded that the proposed revision was largely uncontentious but we asked the Government to provide us with a further update before Council negotiations concluded.

The Minister's letter of 24 November

20.6 The Secretary of State for Justice (Chris Grayling) attaches a revised copy of the draft Regulation. He highlights the UK success in getting inserted recital 4a, which provides clarity on the restricted grounds of jurisdiction of the UPC, and its contribution to recital 5a, which again provides detail about the circumstances in which it would be appropriate, for example, to hear cases involving third country defendants. He says the stakeholders that the Government has consulted are content with this final draft. He also annexes his letter to our sister Committee in the House of Lords relating to the extension of jurisdictional rules to non-EU domiciled defendants.

20.7 He concludes that, overall, this is a good outcome for the UK, whose economy will benefit from the creation of the UPC and the establishment of one of the Central Divisions in London.

Conclusion

20.8 **For the House's record we set out the revised recitals to which the Minister refers:**

- **"(4a) The amendments to Regulation (EU) No 1215/2012 provided for in this Regulation with regard to the Unified Patent Court are intended to establish the international jurisdiction of that Court and do not affect the internal allocation of proceedings among the divisions of that Court nor the arrangements laid down in the UPC Agreement concerning the exercise of jurisdiction, including exclusive jurisdiction, during the transitional period foreseen in that Agreement.**

- **"(5a) The common court should be able to hear disputes involving defendants from third States on the basis of a subsidiary rule of jurisdiction in the specific case where an EU claimant brings proceedings against a third State defendant before a common court relating to an infringement of a European patent giving rise to damage as well inside as outside the Union. In order to ensure access to**

court in the Union in such a situation, Regulation (EU) No 1215/2012 should provide for subsidiary jurisdiction for the common court in a way similar to that of national courts. Such subsidiary jurisdiction should be exercised by the common court where property belonging to the third State defendant is located in a Member State party to the agreement establishing the common court and the dispute in question has a sufficient connection with such a Member State, for instance, because the claimant is domiciled there or because the evidence relating to the dispute is available there. In establishing its jurisdiction on this ground the common court should have regard to the value of the property in question which should not be insignificant and which should be likely to make the enforcement of the judgment possible, at least in part, in the Member States party to the agreement establishing the common court."

20.9 **We thank the Minister for his letter, have no further questions to ask, and clear the draft Regulation form scrutiny.**

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

Department for Business, Innovation and Skills

(35461) — —	Court of Auditors Report on the annual accounts of the European Institute of Innovation and Technology for the financial year 2012 together with the Institute's replies.

Department of Energy and Climate Change

(35469) — —	Court of Auditors Report on the annual accounts of the Euratom Supply Agency for the financial year 2012 together with the Agency's replies.
(35498) 15763/13 COM(13) 762	Commission Communication — *Implementing the Energy Efficiency Directive — Commission Guidance.*

Department for Environment, Food and Rural Affairs

(35494) 15533/13 COM(13) 766	Draft Council Decision on the signing and provisional application of the Protocol setting out the fishing opportunities and the financial contribution provided for by the Fisheries Partnership Agreement between the European Community and the Republic of Seychelles.
(35495) 15534/13 COM(13) 765	Draft Council Regulation concerning the allocation of fishing opportunities under the Protocol to the Fisheries Partnership Agreement between the European Community and the Republic of Seychelles.
(35496) 15536/13 COM(13) 767	Draft Council Decision on the conclusion of the Protocol setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Republic of Seychelles.
(35522) 16022/13 COM(13) 757	Draft Regulation amending Regulation (EC) No. 1166/2008 on farm structure surveys and the survey on agricultural production methods, as regards the financial framework for the period 2014–2018

Department of Health

(35471) — —	Court of Auditors Report on the annual accounts of the European Monitoring Centre for Drugs and Drug Addiction for the financial year 2012 together with the Centre's replies.
(35473) — —	Court of Auditors Report on the annual accounts of the Executive Agency for Health and Consumers for the financial year 2012 together with the Agency's replies.

Department for International Development

(35341) 14232/13 COM(13) 663	Draft Council Decision regarding transitional EDF management measures from 1 January 2014 until the entry into force of the 11th European Development Fund.

Department for Work and Pensions

(35458) 15550/13 COM(13) 738	Draft Council Decision on the position to be adopted in the EEA Joint Committee amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement.

HM Treasury

(35489) 15727/13 COM(13) 763	Draft Council Implementing Decision approving the update of the macroeconomic adjustment programme of Portugal.

Home Office

(35445) 14822/13 COM(13) 741	Draft Council Decision on the signing of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas.
(35446) 14823/13 COM(13) 742	Draft Council Decision on the conclusion of the Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas.

Formal minutes

Wednesday 27 November 2013

Members present:

Mr William Cash, in the Chair

Andrew Bingham	Kelvin Hopkins
Mr James Clappison	Jacob Rees-Mogg
Geraint Davies	Henry Smith
Nia Griffith	Mr Michael Thornton

The Committee deliberated.

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

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

Paragraphs 1.1 to 1.7 read and agreed to.

Paragraph 1.8 read, amended and agreed to.

Paragraphs 2.1 to 21 read and agreed to.

Resolved, That the Report be the Twenty-fifth Report of the Committee to the House.

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

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[Adjourned till Wednesday 4 December at 2.00 p.m.

Standing Order and membership

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

a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and

c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression "European Union document" covers —

i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;

v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

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

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

Current membership

Mr William Cash MP (*Conservative, Stone*) (Chair)
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*)
Stephen Gilbert MP (*Liberal Democrat, St Austell and Newquay*)
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*)
Mr Michael Thornton MP (*Liberal Democrat, Eastleigh*)

The following members were also members of the committee during the parliament:

Mr Joe Benton MP (*Labour, Bootle*)
Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)
Tim Farron MP (*Liberal Democrat, Westmorland and Lonsdale*)

Penny Mordaunt MP (*Conservative, Portsmouth North*)
Sandra Osborne MP (*Labour, Ayr, Carrick and Cumnock*)
Ian Swales MP (*Liberal Democrat, Redcar*)