House of Commons
European Scrutiny Committee

Twenty-eighth Report of Session 2013–14

Documents considered by the Committee on 18 December 2013, including the following recommendations for debate:

European Semester: Annual Growth Survey
Subsidiarity and proportionality

Report, together with formal minutes

Ordered by The House of Commons
to be printed 18 December 2013
Notes

Numbering of documents

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

- Numbers in brackets are the Committee's own reference numbers.
- Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.
- Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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

Staff

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Meeting Summary

This week the Committee considered the following documents:

**Regulation of medical devices**

These two draft Regulations have been held under scrutiny since November 2012. Through them the Commission seeks to introduce a more rigorous system for Member State supervision of “notified bodies” — bodies responsible for certifying that medical devices are safe to use — and to ensure greater transparency and accountability in relation to devices and their manufacturers. The Government is broadly supportive but has highlighted particular concerns around the level of bureaucracy which could be involved, and the potential impact on the NHS. The Minister’s latest letter updates the Committee on amendments agreed by the European Parliament and negotiations in Council. We are holding the Regulations under scrutiny pending further updates, noting previous work conducted by the House of Commons Science and Technology Committee, and ask for information from the Government on the changes it is seeking to enhance transparency and accountability.

**Gender balance on corporate boards**

This draft Directive has also had a long scrutiny history and was the subject of a House of Commons Reasoned Opinion (that the proposal did not comply with the principle of subsidiarity) which was issued in January. The latest update from the Minister reiterates the Government’s objection to the proposal and notes that these concerns are shared by a number of other Member States. Despite these concerns a plenary vote taken in the European Parliament on 20 November broadly endorsed the Commission’s approach. Progress in the Council has been slow and the Minister questions whether a workable compromise can be reached. We note provisions which would enable Member States to derogate from the draft Directive if they have already put in place effective measures to ensure that, by 2020, at least 40% of non-executive directors on the boards of public listed companies are women. We ask the Minister whether she thinks that the UK would be able to make use of this derogation. We also ask the Government for the latest statistics about gender balance on corporate boards, details of how many listed companies might be excluded from the scope of the Directive on the grounds of being small — and medium-sized enterprises, the outcome of stakeholder consultations; and a summary of the main changes proposed by the European Parliament and the Government’s position on them. The document remains under scrutiny.

**Banking Union: single resolution mechanism**

We have been following the negotiations on the SRM proposal closely and most recently reported on it on 4 December. The Minister has now written to update us on discussions at the ECOFIN Council on 10 December, and further negotiations will be taking place this week at a special ECOFIN Council. Given the continuing uncertainty over the likely final form of the SRM we are not prepared to give clearance from scrutiny, but we do offer a scrutiny waiver with four conditions, relating to: the use of the Article 114 TFEU legal base; the need for clear and unambiguous limitation of the Commission’s role; the importance of
ensuring that any intergovernmental agreement is limited to the Single Resolution Fund and does not regulate the use of EU institutions outside the framework of EU law; and the critical need to secure equality of treatment for participating and non-participating Member States. The documents remain under scrutiny pending a further report on developments in the Council negotiations.

**European Defence Agency**

The EDA is an EU Agency, which became operational in 2005. Agency reports to the Council are deposited before Parliament and hence come for scrutiny to this Committee. We report recent developments in the setting of the budget of the Agency, and ask the Government to let us know the outcome of negotiations (in the form of a Supplementary Explanatory Memorandum), as well as indicating to us its position on the UK’s continued membership of the EDA.
1 European Semester: Annual Growth Survey


Legal base
Document originated 13 November 2013
Deposited in Parliament 20 November 2013
Department Business, Innovation and Skills
Basis of consideration EM of 11 December 2013
Previous Committee Report None
Discussion in Council Economic and Financial Affairs; Employment, Social Policy, Health and Consumer Affairs; Competitiveness; Environment; Education; Youth; Culture and Sport; Justice and Home Affairs and General Affairs Councils before the European Council in March 2014

Committee’s assessment Politically important
Committee’s decision For debate in European Committee B, together with the 2014 Annual Growth Survey, draft Joint Employment Report and Alert Report Mechanism

Background

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

1.2 On the basis of two Commission Communications, Reinforcing economic policy coordination and Enhancing economic policy coordination for stability, growth and jobs: tools for stronger EU economic governance, and of the Van Rompuy Task Force report, Strengthening economic governance in the EU, the June, September and October 2010 European Councils considered and endorsed measures to increase coordination of EU economic governance, including strengthening the Stability and Growth Pact and introducing a “European Semester”.

1.3 The European Semester is an EU-level framework for coordinating and assessing Member States’ structural reforms and fiscal/budgetary policy and for monitoring and addressing macroeconomic imbalances. It attempts to exploit the synergies between these policy areas by aligning their reporting cycles, which would tie together consideration of
National Reform Programmes (reports on progress and plans on structural reforms, under the Europe 2020 Strategy) and Stability and Convergence Programmes (reports on fiscal policy, under the Stability and Growth Pact).

1.4 The European Semester cycle begins with an Annual Growth Survey by the Commission, followed by a series of overarching and country specific documents from the Commission and culminating in examination of the overall and country-specific situations by the European Council. We reported on the 2014 Annual Growth Survey last week, recommending it, together with the 2014 draft Joint Employment Report, for debate in European Committee B.¹

1.5 An element of the European Semester process is the Macroeconomic Imbalances Procedure (MIP). The MIP is a mechanism designed to identify and, if necessary, correct harmful macroeconomic imbalances across the EU, which were a key cause of the current sovereign debt crisis. The first stage of the MIP is publication by the Commission of an annual Alert Mechanism Report. Last week we reported the Alert Mechanism Report for the 2014 cycle, recommending it also for debate with the Annual Growth Survey.²

The document

1.6 The 2014 Annual Growth Survey is supplemented by this Commission Report analysing barriers and obstacles within the single market and how it functions within Member States. After some general observations on implementation and enforcement of the single market, the Commission considers five areas: services markets, financial services, energy markets, transport markets and digital markets. For each of these areas, the Commission outlines the level of integration and some barriers to integration. It then invites Member States to focus on particular areas to improve integration.

Single Market

1.7 The Commission notes that analysis shows a broad improvement in terms of transposition, but that the energy sector remains a problem with many examples of non-transposition by Member States, which have failed to transpose the four Directives concerned. The Commission also notes the continuing problem of lengthy duration of infringement procedures.

Services

1.8 The Commission suggests Member States’, priorities should be:

- adopting a more ambitious approach towards the implementation of the Services Directive by systematically screening regulatory frameworks with a view to assessing the necessity and proportionality of the remaining obstacles;
- taking due account of single market principles when adopting national rules impacting the provision of services and establishment;

• simplifying legislation in the services sector to achieve administrative simplification for businesses;
• improving the functioning of the Points of Single Contact;
• reviewing restrictions on regulated professions;
• eliminating unnecessary and disproportionate barriers and economic needs tests;
• increasing transparency of price differences and consumer rights;
• setting up National Contact Points for patients seeking healthcare abroad; and
• reducing complexity in public procurement.

Financial Services

1.9 In terms of financial services, the Commission recommends that the areas on which Member States should focus include:

• ensuring new rules on capital requirements for banks are implemented by 1 January 2014;
• making arrangements for the Asset Quality Review, the balance sheet assessments and the stress tests for banks;
• compliance with the cooperation requirements in banking legislation;
• finalising the implementation of the Directive on Alternative Investment Fund Managers;
• ensuring all market participants complete migration to the Single European Payment Area before 1 February 2014;
• encouraging and supporting SME access to finance, by developing alternatives to bank financing including crowd funding and venture capital;
• improving the quality of SME credit assessments and facilitating cross-border access to company information, by timely transposition of the Directive on the interconnection of central, commercial and companies’ registers; and
• improving the financing flows within the supply chain and combating payment delays.

Energy Markets

1.10 The Commission expresses concern about progress towards completing the single energy market. In particular, it highlights issues relating to the transposition of the Third Energy Package in some Member States, a need for investment in infrastructure across Europe, concerns on market concentration in some Member States and it calls for the phase out of retail price regulation and for continued investment in renewable energy capacity.
Transport Markets

1.11 The Commission encourages Member States to use the Trans-European Transport Network (TEN-T) to develop and improve cross-border connections and remove bottlenecks, noting the priority for the development to be the TEN-T Core Network, with Core Network Corridors proposed as an implementing tool, particularly for co-ordinating cross-border projects. The Commission suggests that Member States should:

- for rail, focus on ensuring timely transposition of the transport acquis, open domestic rail passenger services to competition and ensure that the institutional set-up guarantees the independence of the infrastructure manager, in order to allow effective competition in railway markets ensuring and guaranteeing equal access to infrastructure;

- for shipping, remove red tape in ports, easing customs formalities for intra-EU shipping and easing customs formalities for ships that dock in third country ports;

- for aviation, accelerate implementation of the Single European Sky to improve safety, capacity, efficiency and the environmental impact of aviation, with the Single European Sky defragmenting the Air Traffic Management network, through implementation of Functional Air Blocks; and

- for road, review any remaining national restrictions to access to domestic road haulage and road passenger markets, with the view to ensuring their full compatibility with existing EU legislation, which should increase the freedom for foreign road hauliers and passenger transport operators to carry out certain cabotage operations and to establish in any Member State.

Digital Markets

1.12 The Commission suggests Member States should focus on:

- ensuring the proper functioning of the electronic communications markets by reinforcing their national regulatory authorities and by implementing regulation that supports a competitive deployment of high speed broadband;

- completing the assignment of the 800 MHz frequency bands as soon as possible and bring the radio spectrum available for wireless broadband to a total amount of at least 1200 MHz and remove barriers to the efficient deployment and use of wireless broadband networks;

- timely implementation of relevant legislation, from e-commerce, as the legislative centrepiece for the provision of on-line services, to taxation, from parcel delivery to payments, from consumer protection legislation such as the Consumer Rights Directive to dispute resolution mechanisms such as Alternative Dispute Resolution/Online Dispute Resolution legislation;

- supporting the use of ICT by improving access to financing connectivity and usage for SMEs;
• adopting a comprehensive and up-to-date cyber-security strategy;

• increasing the availability of user-friendly on-line public services, making e-procurement interoperable and rolling it out more widely across the various levels of administration and promoting more frequent use of e-invoicing; and

• without prejudicing the quality of granted patents and trademarks, considering possible reductions of costs and average delays for registering national patents and trademarks; and

• ensuring specialised intellectual property chambers are in place and have the necessary resources.

**The Government’s view**

1.13 The Minister of State, Department for Business, Innovation and Skills (Lord Livingston), first comments generally, in relation to the single market, that:

• the Commission’s focus on transposition masks more fundamental problems — implementation and enforcement;

• often, Directives which have been properly transposed are not properly implemented on the ground, which means businesses still face the same problems, but there is no downward pressure from the Commission to address this;

• that said, there has been an increase in infringement proceedings, but the Commission failed to meet its own targets for the length of proceedings;

• this is important for business because when a complaint is made, the time taken to resolve it has adverse consequences;

• responsibility for this to some extent lies with Member States and the Commission, but it also indicates the ongoing issue with Court of Justice capacity; and

• given that Member States are encouraging the Commission to take more action, this is likely to get worse and will need to be addressed in a holistic solution.

**Services**

1.14 The Minister says that:

• the Government can support the vast majority of the conclusions in the research, particularly as the UK has been at the forefront of calling for a more ambitious approach towards implementation of the Services Directive;

• this suggests that Member States fully assess their requirements for necessity and proportionality;

• the Government has been calling for this for three years and it has concluded that without the threat of infraction, it is very unlikely Member States will do this;
• so the only answer is for more active enforcement or the Commission carrying out the proportionality assessment — this assessment falls short of that and consequently, adds nothing to the debate; and

• the Government can broadly support the general plea to improve the functioning Services Directive Points of Single Contact, but the language used in the section covering the screening process for regulated professions is disappointingly weak by only inviting Member States to explore the possibility of alternative or less restrictive mechanisms, which is at odds with the analysis of the problem.

1.15 The Minister notes that the Commission in the Report, take the opportunity to advertise and talk up some of the initiatives it already has in train — commenting that some of these will have minimal affect on growth (for example, contact points to help patients seeking healthcare abroad), others are supportive of better regulation efforts (in simplifying public procurement procedures).

Financial Services

1.16 The Minister says that:

• the Government welcomes the policy recommendations outlined in the Report and is working with the Commission to ensure that UK objectives are met in the individual areas;

• in particular it encourages the Asset Quality Review to be credible so as to create market confidence in the European Central Bank supervisory mechanism; and

• furthermore, the Government looks forward to seeing the Commission’s proposals to encourage SME access to finance.

Energy Markets

1.17 The Minister says that:

• the Government strongly supports the aim of completing the internal energy market by 2014, as reiterated by the Council in May;

• to this end, it broadly supports the priorities identified by the Commission and has already made significant progress on these. For instance, the Third Energy Package has been fully transposed and effectively implemented in the UK;

• the UK has some of the most liberalised and competitive energy markets in the EU; and

• the Government has put in place progressive policies to protect the rights of consumers.

Transport Markets

1.18 The Minister first comments that:
it is important to note that legislation creating the single market for transport services has certainly delivered some benefits for the UK and the EU as a whole over the past 20 years;

the Government believes that the transport sector is a key area for growth and competitiveness;

while it believes that there are specific areas of the transport market where progression is possible there is a need, however, to remain cautious to ensure that proposals in this area are justified, proportionate and give due regard to costs and benefits; and

the Government would therefore only encourage the maintenance and effective enforcement of single market rules in the transport sector where this would genuinely deliver added value and economic growth.

1.19 Then, on rail, the Minister says that:

the Government supports further market opening in the domestic rail passenger market;

the Fourth Railway Package has the potential to reduce costs for passengers and operating subsidies for governments and the Government will support efforts to further open the domestic rail market within the EU; and

in developing this package, it must ensure, however, that there is sufficient flexibility so that EU action is compatible with domestic plans for reform and that proposals on the governance of infrastructure management reduce burdens on businesses and do not prevent infrastructure and train operators from working together.

1.20 In relation to shipping the Minister says that:

the Government supports action to remove duplication in administrative and customs processes and the ’Blue Belt’ Package is an essential part of this;

there is a very competitive transport market in the UK and the Government should support improving the competitiveness of ports across the EU;

 enhancing the efficiency and quality of port services should be the EU’s overarching objective and the Government believes that a free market with vigorous competition between ports is the best way to deliver this with minimal recourse to public expenditure; and

it would not support a prescriptive EU approach to the provision of services within ports as it believes that ports themselves are best placed to determine how to provide services that reflect the nature and location of their work.

1.21 Turning to aviation the Minister says that:

the Government supports the Commission in its efforts to tackle the fragmentation of European airspace;
it believes that greater coordination of the European air traffic network and the safe introduction of new technologies is the best way to deliver a safe, sustainable, cost effective and operationally-efficient network;

the Government fully supports the objectives of the Single European Sky initiative;

by working together across Europe it can help to deal with some of the biggest problems facing the aviation industry, governments and air passengers today — delays, cost and environmental impact;

the UK has already successfully implemented many of the key elements of the Single European Sky, such as the separation of regulation from service provision and the establishment of a Functional Airspace Block with Ireland;

the Government believes that greater coordination of the European air traffic network and introduction of new technologies under a single safety umbrella is the best way to deliver a safe, sustainable and efficient network;

it is considering the recently published legislative proposals on accelerating the implementation of the Single European Sky, referred to as Single European Sky II+ (Two Plus), but it is clear that some elements would need further development before implementation could be achieved;

other Member States have even greater concerns than the UK and it is uncertain how and at what speed these proposals will be progressed; but

either way the Government stands ready to provide the necessary technical experts to contribute to progress on the Single European Sky.

Digital Markets.

1.22 The Minister says that:

the Government supports the Commission’s priority of ensuring a proper functioning and competitive electronic communications market;

completion of the telecoms, and wider, single markets could generate much needed economic growth and jobs for EU citizens and ensure that the EU retains its global competitive edge;

the Government also supports, therefore, the objectives of the Commission’s Telecoms Single Market package published on 11 September, especially those proposals within it that empower consumers, tackle unexpectedly high bills, increase transparency in contracts, agree reduction of the differential between domestic and roaming mobile rates and accelerate the roll-out of new technologies across the EU;

the first two objectives also match the recently agreed UK Telecoms Consumer Action Plan that includes action by industry on transparency, contracts, and reducing EU roaming charges;
• the Government’s broadband scheme also mirrors the Commission’s call for deployment of high speed broadband using targeted public support, including the use of EU Structural Funds for broadband rollout;

• parts of the UK are already utilising such funds to help support broadband rollout, especially in rural areas, for example, North Cornwall;

• the Government supports the Commission’s priority to complete the digital single market and boost cross-border e-commerce;

• to deliver the full benefits of a digital single market, action at EU level should include addressing the digital divide by ensuring all EU citizens have access to online services using the latest technology, ensuring competitive provision of cutting-edge communications services through fixed and mobile networks, opening up choice for consumers by making it simple, cheap and secure to buy goods and services online, providing new opportunities for businesses to engage in e-commerce across the EU, improving the portability of digital goods and services and promoting research and innovation into the digital technologies and services of the future;

• in relation to one of the Commission’s key priorities, for Member States to adopt a comprehensive and up-to-date cyber-security strategy, whilst the Government agrees with the aim, and already itself has one in place, this is a provision included in the on-going negotiations on the Network and Information Security Directive and it would not wish to prejudge any outcome of those discussions;

• in relation to the Commission’s prioritising speeding up the registration of patents and trademarks, this year the UK Intellectual Property Office introduced its e-filing system for trade mark applications;

• currently, UK trade mark applications are examined within ten to 15 working days;

• proposals from the Commission, currently under negotiation, include a provision for the introduction of one class one fee in Member States;

• the UK already has a specialist intellectual property court in place — the Intellectual Property Enterprise Court (formerly known as the Patents County Court), which is part of the Chancery Division of the High Court;

• the Government welcomes the Commission’s recognition of the need for the reinforcement of the EU’s ‘intellectual property infrastructure’;

• effective protection of intellectual property rights is essential in today’s knowledge society, where competitiveness relies essentially on creativity and innovation and effective protection includes access to justice at a fair cost;

• the Government has recently concluded a package of sweeping court reforms to support businesses to protect their intellectual property and save them time and money;
the key changes include introduction of a scale of recoverable costs, capped at £50,000, a time limit on case hearings of one-two days to reduce costs and the creation of Small Claims Track for copyright, trade mark and unregistered design cases under a value of £10,000; and

• the UK regime allows rights holders to protect their intellectual property rights effectively and has helped contribute to the UK being listed as top in the Taylor Wessing Global Intellectual Property Index report, published on 12 November.

Conclusion

As we have already noted, we have recommended the 2014 Annual Growth Survey, together with other documents, for debate in European Committee B, to take place before various functional Councils consider the documents in preparation for the March 2014 European Council. This document has been produced as a “Contribution to the Annual Growth Survey 2014” and we recommend that it too be included in the European Committee B debate.

2 Subsidiarity and proportionality

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Legal base —
Department Foreign and Commonwealth Office
Basis of consideration Minister’s letter of 16 December 2013
Previous Committee Report HC 83-xx (2013–14) chapter 5 (6 November 2013)
Discussion in Council Not known
Committee’s assessment Legally and politically important
Committee’s decision For debate on the floor of the House (decision reported 6 November 2013)

Background and previous scrutiny

2.1 In our Twenty-second Report, we outlined the main conclusions of the Commission in their report on the implementation of the principles of subsidiarity and proportionality by the EU institutions and the activity of national parliaments in relation to these principles, principally through the submission of Reasoned Opinions. Informal political dialogue between national parliaments and the Commission in 2012 through the Barroso initiative
is covered by the Commission’s 2012 Annual Report on relations between the Commission and national parliaments which we addressed in another chapter of our Report.3

2.2 In the conclusions to our Report, we said that we agreed with the Government’s opposition to the development of common principles for evaluating subsidiarity and proportionality compliance which would be binding on national parliaments and its identification of deficiencies in the Commission’s responses to Reasoned Opinions. We drew to the attention of the Minister for Europe (Mr David Lidington) the positive response we had received from the Commission to our own efforts to address those and other concerns about Commission responses in our correspondence with the Vice-President of the Commission.

2.3 Given the political significance of the need for an increased role for national parliaments in the EU’s functioning, not least in relation to subsidiarity and proportionality monitoring, we recommended this document for debate on the floor of the House together with the Commission’s 2012 Annual Report on relations between the Commission and national parliaments. We also asked the Minister to provide us with further information on the following questions in advance of that debate:

a) What did the Minister mean when he said that the Government would support “national parliaments’ efforts to improve their coordination, to enable them to make more effective use of the ‘yellow card’ mechanism” and what support had it offered to date?

b) Could the Minister explain the “enhanced yellow card” and new “red card” initiatives currently being discussed in Brussels and provide more detail about their proposed operation; and

c) What was the Minister doing to address ongoing problems with insufficiently substantiated subsidiarity assessments in some of the Government’s Explanatory Memoranda?

Minister’s letter of 16 December 2013

2.4 The Minister informs us that the debate has been scheduled for 7 January 2014.

Supporting Parliament’s role in subsidiarity control

2.5 He then turns to the issue of how the Government has offered support to Parliament to enable it to improve coordination and make more effective use of the “yellow card” mechanism. He responds to our question on this issue by referring to cross-Whitehall guidance on subsidiarity written by FCO and shared with the Committee last year:

“Departments are encouraged to take an active approach to working with Parliament on subsidiarity in order to make best use of Parliament’s powers to issue reasoned opinions, and to enable Parliamentary scrutiny to proceed smoothly…. Departments may wish to alert the Scrutiny Committees at an early stage (before the proposal is

published) where it has concerns about subsidiarity, and work with committee clerks to consider it more carefully in Explanatory Memoranda. In some cases they could also offer to work through Embassy Posts to alert national Parliaments in other Member States in order to mobilise them to do the same.”

2.6 He adds that his officials regularly liaise with Committee clerks in Westminster and Parliament’s representative in Brussels to discuss legislation which may raise subsidiarity concerns and share any information on the position of other Member States and their Parliaments on such legislation. This close liaison will continue but the “nature and extent of this support” is “in large part” for us and Parliament to determine. He recalls that this cooperation reflects what he said to us in his letter of 30 August:

“The Government is strongly supportive of an increased role for national Parliaments in holding EU institutions to account and, as you know, I am keen that Government does all it can to support Parliament to exercise its own powers to uphold the principle of subsidiarity.”

Subsidiarity reform initiatives

2.7 The Minister says that the Government is “committed to working with partners to make it easier for national Parliaments to play an active role in the EU’s functioning, including to challenge EU legislation where appropriate”.

2.8 Referring to his Berlin speech in May, the Minister says that, in agreement with the Dutch Tweede Kamer:

- a strengthened “yellow card” should involve giving more time to national parliaments to issue a Reasoned Opinion, lowering the numerical threshold for triggering a yellow card and expanding the scope of the card cover, for example, proportionality;

- the possibility should be considered of raising a “red card”, at any point during the legislative process, including after co-decision is complete or in relation to existing legislation, “... under which if a proportion of national parliaments (perhaps a simple majority) issued reasoned opinions covering subsidiarity or proportionality, the Commission would be forced to withdraw its proposal”.

2.9 The Minister also says that there is discussion between Member State governments of the need to urge the EU institutions, including the Commission as initiator of legislation, to apply the principle of subsidiarity and proportionality so that non-legislative solutions are considered where possible. The Minister concludes on this question that “[t]he value of the national parliaments card system is that it provides one institutional means of checking the Commission’s appetite to make new law.”

Subsidiarity assessments in Explanatory Memoranda

2.10 The Minister commits himself and his officials to continue to work with other Departments across Whitehall to address poor quality explanatory memoranda and says that, where examples have been highlighted, guidance will be given at officials’ level to
prevent a recurrence. Subsidiarity issues will continue to be discussed at the cross-Whitehall EU Scrutiny Coordinators meeting and more senior officials will be briefed to ensure that all Departments work on improving performance. The Minister says he takes “very seriously the consideration of subsidiarity” and is “committed to getting this right across Government”.

**Conclusion**

2.11 We thank the Minister for his response to our Report.

2.12 We note though that the Minister’s response is partly reiterative in referring to past policy statements and practice rather than updating us on fresh progress and thinking on the issues of concern to us. We note, for example, that we have been given no indication of what degree of progress has been made on subsidiarity reform initiatives in terms of engaging a wider group of Member States and the EU institutions themselves. We also note that given the persistence of poor quality Explanatory Memoranda, more targeted steps could be taken to address their improvement, specifically in relation to those proposals which are of concern. We hope that the Minister will take the opportunity to respond to these points in the course of the debate which will take place on 7 January.

### 3 Gender balance on corporate boards

<table>
<thead>
<tr>
<th>(34423) 16433/12</th>
<th>Draft Directive on improving the gender balance among non-executive directors of companies listed on the stock exchanges and related measures</th>
</tr>
</thead>
</table>

**Legal base**

Article 157(3) TFEU; co-decision; QMV

**Department**

Business, Innovation and Skills

**Basis of consideration**

Minister’s letter of 9 November 2013

**Previous Committee Report**

HC 86-xxiii (2012–13), chapter 8 (27 February 2013);
HC 86-xxiii (2012–13), chapter 1 (12 December 2012)

**Discussion in Council**

No date set

**Committee’s assessment**

Legally and politically important

**Committee’s decision**

Not cleared; further information requested

### Background and previous scrutiny

3.1 The draft Directive seeks to increase the number of women represented on the boards of publicly listed companies so that they comprise at least one third of a company’s directors or 40% of its non-executive directors by 2020, or by 2018 in the case of public undertakings. The Commission advances three reasons for action at EU level:
• the improbability of achieving greater gender balance if Member States act individually — current rates of progress across the EU suggest that it would take more than 20 years to achieve the suggested targets;

• growing discrepancies in the approaches taken by Member States which may have a negative impact on the functioning of the internal market; and

• the removal of barriers to the participation of women in the labour market in order to stimulate economic growth and competitiveness.

3.2 The Commission describes the 40% target for non-executive directors as a “quantitative objective” rather than a mandatory quota. The draft Directive sets out procedural rules for the selection and appointment of non-executive directors which are intended to ensure that candidates are assessed against objective and gender-neutral criteria. It stipulates that a candidate of the under-represented sex should only be given priority if s/he fulfils the requirements of the job in terms of suitability, competence and professional performance and there are no other factors tilting the balance towards another candidate. The draft Directive does not apply to small and medium-sized companies and Member States may exempt listed companies from the requirement to meet the 40% objective if their workforce has fewer than 10% of one sex.

3.3 Whilst underlining its commitment to more diverse company boards, the Government suggested that “heavy-handed measures, such as mandatory targets, regulation and legislation” would “fail to fix the problem” of women’s under-representation on company boards, were tantamount to quotas, and would be “counterproductive.”4 The Government also highlighted a number of legal and practical difficulties with the Commission’s proposal which are described in our Twenty-third Report of 12 December 2012.

3.4 We recognised that gender equality was an area in which the EU has a clear competence to act but considered that there was, as yet, insufficient justification for the type of action proposed by the Commission for the following reasons:

• it was too soon to conclude that Member States were unwilling to act individually, or that the measures they introduced at a national level would be ineffective;

• the business case advanced by the Commission for more diverse boards as a means of improving corporate governance and performance would tend to suggest that there was more, rather than less, reason for Member States to take action as a means of securing competitive advantage;

• the obstacles cited by the Commission as impeding the functioning of the internal market might be theoretically possible, but a stronger evidence base of problems actually encountered was needed before concluding that EU action to reconcile divergent national approaches was necessary; and

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4 See paras 24 and 38–9 of the Explanatory Memorandum submitted by the Minister for Employment Relations and Consumer Affairs and for Women and Equalities (Jo Swinson).
There was insufficient evidence to show that the draft Directive was the only, or the best, way of increasing the participation of women in the labour market.

3.5 The House agreed to send a Reasoned Opinion to the Presidents of the EU institutions on 7 January 2013. Meanwhile, we invited the Government to comment on the accuracy of the Commission’s prediction that only 17% of UK listed companies within the scope of the draft Directive would have at least 40% of women non-executive directors by 2020 and to explain why, given this slow rate of progress, it considered that the proposal would be counter-productive and create “more, not fewer, barriers for women and less effective boardrooms.”

3.6 The Government’s response, reported in our Twenty-third Report of 27 February 2013, suggested that the number of company boards with at least 40% of women directors by 2020 was likely to be “significantly in excess of the 17% projected by the Commission” and that prescriptive measures, such as quotas or binding targets, might be perceived as condescending and tokenistic, undermining the contribution made by women.

3.7 We noted that the Government was only able to project the proportion of women expected to be occupying board positions in the top 100 or 350 companies listed on the London Stock Exchange, whereas the scope of the draft Directive encompassed (according to Government estimates) approximately 950-odd publicly listed companies in the UK. We asked whether the Government has determined how many of these companies would qualify as a small or medium-sized enterprise and thus be excluded from the scope of application of the draft Directive, since this could appreciably affect its impact in the UK. We also asked for progress reports on the negotiations, indicating how the many concerns highlighted in the Government’s Explanatory Memorandum were being addressed, and a summary of the outcome of the Government’s consultation of stakeholders.

The Minister’s letter of 9 November 2013

3.8 The Minister for Employment Relations and Consumer Affairs (Jo Swinson) reiterates her strong commitment to increasing the number of women on UK company boards and at senior management level and expresses her support for the intentions underlying the draft Directive, but adds:

“However, I agree with the Committee that any measures in this area should be undertaken at national level, taking account of specific national circumstances including business culture, company law and similar factors. Furthermore, the specific proposals being put forward by the Commission run counter to the UK’s voluntary approach and would in my view be counterproductive and have unintended consequences. We have therefore consistently opposed the Directive on grounds of subsidiarity and proportionality, as have a number of like-minded Member States.”

3.9 The Minister notes that a number of Member States, as well as the Council Legal Service, have questioned the legal base for the draft Directive on the grounds that the role

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5 Ibid, see para 24.
of a company director is unique and may not fall within the scope of Article 157(3) of the Treaty on the Functioning of the European Union (TFEU) which concerns “the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.” She draws our attention to a Commission staff working document which provides a detailed explanation of the reasons for citing Article 157(3) TFEU as the sole legal base for the draft Directive and concludes that precedent and the case law of the Court of Justice establish that executive and non-executive board members fall within the ambit of Article 157(3), either as workers or as self-employed individuals. The Minister broadly endorses the Commission’s legal analysis and says that the Government does not intend to challenge the legal base of the draft Directive, but adds:

“It should be noted that the status of directors vis-à-vis the companies on whose board they serve varies considerably from one Member State to another — another illustration of the risks inherent in a one-size-fits-all approach.”

3.10 Turning to the content of the draft Directive, the Minister summarises its key provisions in the following terms:

“The stated objective is that by 2020, women should constitute a minimum of 40% of the non-executive directors, or 33% of all directors, on the boards of all listed companies registered in an EU member state. Small and medium enterprises (SMEs) are exempted. Member States and individual companies could use whatever means they wished to achieve this goal, however in the event that companies did not achieve the target by the set date they would then be required to put in place a transparent selection process for board appointments, based on objective qualifications and open to challenge from unsuccessful candidates. Companies that did not meet the target and did not put these transparent processes in place would face enforcement measures.

“A Member State may derogate from implementing the Directive if it can show that, in aggregate, the listed companies whose registered offices are in that Member State will meet the specified target of 40% or 33% as the case may be. The effect of this derogation clause would be to enable some listed companies to escape the measures specified in the Directive, provided that enough other companies exceeded the target to allow it to be met when all board positions were considered in aggregate.

“It is important to note that these provisions do not amount to quotas. A company could continue indefinitely without meeting the target – even with an all-male board. So long as it implemented the specified selection procedures, it would not be in breach. While this is a welcome change, I continue to believe that the provisions are ill-advised and would not be helpful in the UK context. I have not ruled out compulsory measures if progress is insufficient, but any such measures would be suited to the UK context — and would of course be subject to Parliamentary scrutiny.”

3.11 The Minister explains that two European Parliament Committees — on Legal Affairs and on Women’s Rights and Gender Equality — have jointly considered the draft Directive

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(with input from three other Committees)\(^7\) and their recommendations were expected to be considered in a plenary sitting in November.\(^8\) She continues:

“There is a wide range of views in the Parliament and within political groups. In debate, the draft Directive has been criticised as much for not being rigorous enough as for being disproportionate or unwise. MEPs have also drawn attention to the importance of tackling related issues such as the gender pay gap and to the need for the EU’s own institutions to lead by example, both of which I welcome.

“The case for voluntary measures has been put effectively and constructively by UK members. Marina Yannakoudakis MEP hosted a well-attended meeting in September with speakers Amanda Mackenzie, a member of Lord Davies’s steering group, Helena Morrissey, founder of the 30% Club and Heather McGregor, executive search consultant and FT Columnist. MEPs and Commission officials have praised the UK’s approach and the evident commitment from UK business leaders and Government to improving the gender balance of listed company boards; they are particularly appreciative of the leadership of Lord Davies on this issue.”\(^9\)

3.12 Progress within the Council has proceeded at a much slower pace. The Minister explains:

“Discussions in Council working groups have highlighted the range and diversity of company law systems and hence the difficulty of devising measures that will make sense across all 28 Member States. The key issue is that directors are elected by shareholders to represent them. In some Member States the company may not have much influence over the selection process — hence putting an obligation on the company with regard to selection may not be effective. This applies for example to employee representatives in dual board systems.”

3.13 She says that the Government has “maintained our principled objections on grounds of proportionality and subsidiarity” whilst also putting forward amendments to ensure that provisions derogating from the draft Directive are effective and to clarify the scope of the proposal and the applicable law. She continues:

“Our objections on proportionality and subsidiarity are shared by several other Member States, some of whom also have concerns over the legal basis of the Directive. For this reason it is difficult to see a compromise position emerging.”

3.14 The Minister encloses a minute statement tabled by six Member States (including the UK) at the meeting of Employment Ministers on 20 June 2013, and notes that a number of additional Member States have since associated themselves with it. The statement opposes the adoption of legally binding EU measures and is published as an Annex to this chapter. She adds:

\(^7\) Employment and Social Affairs, Economic and Monetary Affairs, and Internal Market and Consumer Protection.

\(^8\) The plenary vote took place on 20 November.

\(^9\) Lord Davies of Abersoch published a review, *Women on boards*, in February 2011, which noted that, at the current rate of change, it would take over 70 years to achieve gender-balanced boardrooms in the UK. It recommended a voluntary business-led approach to securing a change of culture in boardrooms but did not rule out the possibility of more prescriptive alternatives.
“Officials are keeping in touch with like-minded Member States who are united in principled opposition to the Directive — positions that cannot be addressed by drafting changes. It is of course possible that some Member States could change their view, not least given the elections that have recently taken place in Germany and the Czech Republic.

“Given the fundamental nature of the objections, it is difficult to see how an acceptable compromise can be reached that would lead to agreed legislative measures. Yet we are in agreement with Commissioner Reding on the importance of this issue and the need for political leadership, which she is providing. Hence our preferred outcome remains influencing company behaviours by non legislative means. While this would not be binding, it would allow Member States to unite around a strong political statement on this important issue.”

Conclusion

3.15 We thank the Minister for providing an update on progress made in the Council and the European Parliament. Her letter refers to “a welcome change” in the provisions enabling Member States to derogate from the procedural rules governing the selection and appointment of non-executive directors if they have already put in place effective measures to achieve the 40% quantitative objective. We ask her to explain how this change differs from the Commission’s original proposal and whether she considers that the UK would be able to make use of this derogation. We also ask her to provide updated figures on the number of women represented on the boards of publicly listed UK companies and to indicate whether the trajectory of change anticipated between now and 2020 is likely to achieve the 40% quantitative objective.

3.16 We are disappointed that the Minister has not addressed the question we raised in our Twenty-third Report, agreed on 27 February 2013, which asked how many of the 950-odd listed companies in the UK expected to fall within the scope of the draft Directive would be excluded from its application because they qualify as small and medium-sized companies. Nor has she provided a summary of the outcome of the Government’s consultation of stakeholders which we also requested. We ask her to do so. We understand that the European Parliament voted on the Commission’s proposal at its plenary session on 20 November. We would welcome a summary of the main changes proposed by the European Parliament and the Government’s position on them. Meanwhile, the draft Directive remains under scrutiny.
Annex: Minute Statement by Denmark, Germany, Estonia, Hungary, Latvia, The Netherlands, Czech Republic, The United Kingdom, Sweden

On 14 November 2012, the Commission adopted a proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures. Aiming to address the serious problem of women’s under-representation in economic decision-making at the highest level, the proposed Directive would set a quantitative objective for the proportion of the under-represented sex on the boards of listed companies of 40% by 2020 (by 2018 in the case of public undertakings). The companies would be obliged to work towards that objective, inter alia, by introducing procedural rules on the selection and appointment of non-executive board members.

We share the Commission’s view that, both in the Member States and throughout Europe, fair chances and opportunities for women in non-executive posts should and must be promoted. Women encounter throughout their career lots of barriers, which are unacceptable from a gender equality point of view. They are also preventing the optimal use of the skilled workforce potential.

However we take the viewpoint that, in line with the subsidiarity and proportionality principle, with regard to the different company law systems and different corporate managerial rights throughout the European Union, it is in the authority of the Member States to find their own national approaches to achieving this goal. Many of the Member states are considering or have implemented various and differing national measures tailored to their system on a voluntary and, if appropriate, legal basis to facilitate raising the gender balance in boardrooms.

For these reasons, we reiterate that any targeted measures in this area have to be devised and implemented at national level. We do not support the adoption of legally binding provisions for women on company boards at the European level.
4 The Telecommunications Single Market

(a) (35305) 13562/13 COM(13) 634
Commission Communication: On the telecommunications single market

(b) (35304) 13555/13 + ADDs 1–2 COM(13) 627

Legal base
(a) — 
(b) Article 114 TFEU; ordinary legislative procedure; QMV

Department
Culture, Media and Sport

Basis of consideration
Minister’s letter of 29 November 2013

Previous Committee Report
HC 83-xvii (2013–14), chapter 2 (16 October 2013)

Discussion in Council
December 2013

Committee’s assessment
Politically important

Committee’s decision
Not cleared; further information requested

Background

4.1 The background to the Commission Communication and this draft Regulation is set out fully in our previous Report; likewise the very detailed and helpful analysis of both documents by the Minister (Edward Vaizey) in his Explanatory Memorandum of 10 October 2013.10

Our assessment

4.2 It was notable that the Minister challenged the analysis cited by the Commission and described the issue of any net economic benefits to the EU market from both the package in its entirety and each individual element as unproven. In particular, he noted that, although a drive for more industry consolidation underlies some of the proposals, it was not clear that greater consolidation was the right answer: that, on the contrary, Ofcom analysis suggested that the market differences cited by the Commission stemmed from lower competition and greater pricing-power of incumbents in the US, rather than scale effects; and that fierce retail competition in domestic markets across the EU tended to drive down prices, margins and revenues, and also improve the quality of services. He saw competition as already a clear strength of the EU market, which did not appear to inhibit investment, with EU operators also investing similar shares of their revenue as non-EU

counterparts. Thus, he said, these measures were unlikely to radically alter the prospects of those Member States that already embraced competition in broadband markets. Set against this, he clearly saw the EU’s comparatively slow rollout of Next Generation technologies as the area in which it genuinely lagged behind the US and parts of Asia.

4.3 Moreover, with regard to individual proposals, the Minister:

- did not believe that national notification and compliance has hitherto been a material obstacle to pan-European operations, or see single authorisation as a substitute for addressing ineffective or inconsistent regulation, and noted that the administrative burden for operators in the UK would also increase radically;

- noted that the proposals on Coordination of Use of Radio Spectrum would involve “a shift in competence from national regulators, which we would not want to see”, with the Commission acquiring a power of veto over national draft decisions on spectrum assignment procedures and licence conditions if it considers they would damage the internal market;

- underlined the well-documented value of spectrum to Member States’ economies, and was accordingly concerned that the Commission would be extending its competence into matters that are currently a national responsibility;

- at the same time believed that a pan-EU rollout of 4G mobile broadband services would have an immediate positive impact on the European economy and be more effective than further harmonisation of rules on spectrum auctions, noting that the Commission had not used its existing powers to expedite the allocation of spectrum for 4G service in Member States that had not yet done so;

- saw the wider use of the Radio Spectrum Policy Group to develop harmonised technical conditions and issue guidance on licence fees and durations as a better alternative to the Commission’s proposal;

- believed that a better approach in the area of Virtual Unbundled Local Access (VULA) would be for the Body of European Regulators for Electronic Communications (BEREC) to develop minimum reference offers in greater detail, in close consultation with industry; and notes that the proposal would constitute a significant transfer of power from National Regulatory Authorities (NRAs) to the Commission, which would risk NRAs being prevented from being innovative;

- believed that an open Internet can be achieved through self-regulation, and that transparency of traffic management policies employed by ISPs is the key;

- was concerned that such a quick return to further regulation may introduce costly and unnecessary burdens and encourage an anti-competitive market environment; noting that the recently agreed Roaming III Regulation was negotiated as a ten-year Regulation; and

- was also concerned that the proposal to change the role of its Chair carries the risk that BEREC may no longer be able to act independently of the Commission, and
may represent the first step towards a centralisation of BEREC’s functions to Brussels and the erosion of national regulators’ discretion.\textsuperscript{11}

4.4 The theme of the Minister’s analysis was familiar to those who had been engaged in this area over the years: an apparent determination by the Commission to undervalue the established process of taking this highly complex and fast-moving area forward in close coordination with NRAs and the industry, and instead to press for the enhancement of the Commission’s direct control. BEREC was a case in point: only this summer an independent assessment by PWC concluded that its structure was relevant and efficient and that it had, thus far, successfully fulfilled its functions.\textsuperscript{12}

4.5 It was perhaps therefore not entirely regrettable that there appeared to be considerable constraints on the Commission’s timeline being met. In the short term, we asked the Minister to write to us in a month’s time, to let us know how the Commission’s proposals were received at the October European Council and what sort of report was likely to be made to the 6 December Telecoms Council.

4.6 In the meantime, we retained the documents under scrutiny.\textsuperscript{13}

**The Minister’s letter of 29 November 2013**

4.7 The Minister says that discussions on the Telecoms Single Market package at the 24-25 October European Council focused on the digital economy, innovation and services — areas chosen because Member States believed that they have the potential to create growth and jobs — and that there was only a short discussion on the package at Council, much less than was originally expected and in the main due to other matters on which Council wished to focus. The Minister notes that the Council Conclusions welcomed the presentation on the proposals from the Commission and encouraged “the legislator to carry out an intensive examination with a view to timely adoption”.

4.8 The Minister comments thus:

““This is regarded as Council indicating agreement with the aims of the proposals but reflecting concern about some of the detail.

“What is notable is that other measures also covered in the same section of the Conclusions — those promoting the Digital Single Market — were assigned specific completion dates. This can be seen as a reflection of the relative importance assigned by Council to the proposal’s agreement.”\textsuperscript{14}
4.9 With regard to the 5 December Telecoms Council, the Minister says that the package will be discussed, rather than reported on, at a morning-only Council:

“The absence of a report reflects the relatively slow progress the package has made thus far, with an initial exchange of views at Working Group level taking place this week following some discussion on the associated Impact Assessment in the previous two weeks.

“I anticipate that the discussion will be in the form of an orientation debate. This will be steered by a Presidency paper and will seek responses to three specific questions. I anticipate this paper will be published a week before Council and I intend to cover my responses in detail in my Pre-Council Statement.”

4.10 In the relevant part of his WMS, the Minister says:

“The Council will take part in an “orientation debate” guided by a paper and two questions from the presidency. The first question relates to the proposal for a regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a connected continent (first reading—EM13562/13 and 13555/13 + ADDs 1-2). It asks member states to indicate what actions contained in the proposal they regard as priorities; and whether it is appropriate to carry out such actions at EU or member state level. The main points of the UK intervention will include: a view that while UK welcomes the objectives of the proposal, we remain concerned that the link between the stated aims and the constituent elements of the package remain unclear or unproven in a number of circumstances; signal, our support for action at EU level for the pro-consumer parts of that package; support for the eventual reduction of the EU roaming rates to zero; and support for proposals that could accelerate the roll-out of new technologies across the EU. Finally, we will state that we do not support the proposals laid out in the package that would give the Commission further competency over spectrum management nor those that would result in the introduction of regulation covering issues relating to net neutrality.”

Conclusion

4.11 We are grateful to the Minister for this further information, which we are drawing to the attention of the House because of the widespread interest in telecoms issues.

4.12 For the same reason, we are also drawing this chapter of our Report to the attention of the Culture, Media and Sport Committee.

4.13 We look forward to hearing from the Minister in two months time about what subsequent developments have taken place, and what the prospects are then for this package prior to the 2014 European Parliamentary elections.

4.14 In the meantime, we shall continue to retain the documents under scrutiny.

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15 See 5 Dec 2013: Col. 63WS; also http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131205/wmstext/131205m0001.htm#1312055100003.
5 Doha Amendment to the Kyoto Protocol

<table>
<thead>
<tr>
<th>(a)</th>
<th>Draft Council Decision on the conclusion of the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder</th>
</tr>
</thead>
<tbody>
<tr>
<td>(35513)</td>
<td>15878/13 + ADDs 1–3 COM(13) 768</td>
</tr>
<tr>
<td>(b)</td>
<td>Draft Regulation amending Regulation (EU) No. 525/2013 as regards the technical implementation of the Kyoto Protocol to the United Nations Framework Convention on Climate Change</td>
</tr>
<tr>
<td>(35518)</td>
<td>15889/13 COM(13) 769</td>
</tr>
</tbody>
</table>

**Legal base**

(a) Articles 192(1) and 218(6) TFEU; consent; unanimity

(b) Article 192(1) TFEU; co-decision; QMV

**Documents originated**

(a) 13 November 2013

(b) 14 November 2013

**Department**

Energy and Climate Change

**Basis of consideration**

EMs of 4 December 2013

**Previous Committee Report**


**To be discussed in Council**

No date set

**Committee’s assessment**

Legally and politically important

**Committee’s decision**

Not cleared; further information awaited

**Background**

5.1 In order to meet the environmental challenges presented by global warming, the 1992 United Nations Framework Convention on Climate Change (UNFCCC) requires industrialised countries to return their emissions of greenhouse gases by the year 2000 to the levels obtaining in 1990. However, in 1997, the Kyoto Protocol went on to set legally binding emission targets for industrialised countries to meet by 2012 for the greenhouse gases listed in Annex A\(^{16}\) to the Protocol. The Community of 15\(^{17}\) accordingly undertook to reduce its 1990 emission levels by 8% by the period 2008–12, with reductions being apportioned between the individual Member States\(^{18}\) under the Effort Sharing Decision (406/2009/EC). We and the previous Committee have from time to time drawn to the attention of the House reports produced by the Commission on the EU’s progress towards meeting its target, the most recent of these\(^{19}\) having shown that emissions in the EU-15 in

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16 Carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, hydrofluorocarbons and perfluorocarbons.

17 Of the new Member States, all but Cyprus and Malta have individual reduction targets under the Protocol, equivalent to 8% (except for Hungary and Poland, where the target is 6%).

18 This arrangement requires the UK to achieve a reduction of 12.5%.

2011 were 14.9% below the base year, meaning that its target for 2008–12 will be over-achieved. The Report also noted that the EU-28 is on course to meet its latest target, set out in its 2009 Energy and Climate Change Package and endorsed by the European Council in March 2012, of a 20% reduction by 2020.

5.2 In December 2012, the Doha Amendment to the Protocol was agreed, which extends it into a new commitment period running from 1 January 2013 to 31 December 2020. The EU and each of its 28 Member States have confirmed that they will ratify the Amendment together, participate in this new commitment period, and take mitigation commitments under it: they have also made a political declaration that — as under the first commitment period — they will fulfil their commitments jointly, confirming the 20% reduction commitment (which is set out in Annex B to the Amendment).

5.3 However, although Parties agreeing to fulfil commitments jointly are deemed to have met these if the joint commitment is achieved, failure to achieve that joint commitment means that each party is responsible for its own emission level. Consequently, the individual obligations of each party to the joint fulfilment agreement (which will be notified to the UNFCCC Secretariat when the Doha Amendment is formally ratified) will also be set out.

5.4 In order to take these matters forward, the Commission has now made the following two proposals.

**The current proposals**

*(a) Draft Council Decision*

5.5 This is intended to provide the basis for the implementation and ratification of the Doha Amendment by the EU and its Member States, and sets out the fundamental terms of the joint fulfilment agreement. It confirms that the EU and its Member States will fulfil their commitments under the Doha Amendment jointly, including with Iceland, and clarifies responsibilities for submitting reports to facilitate the calculation of assigned amounts by the Commission and the Member States. It also specifies that Member States should take the necessary steps to complete their domestic ratification processes no later than 16 February 2015, as far as possible, and requires them to inform the Commission by 15 September 2014 of the probable date of completion of the relevant procedures.

5.6 The proposal is accompanied by three Annexes, of which the most important is Annex I. This outlines the notification of the terms of the agreement to fulfil jointly the commitments of the European Union, its Member States and Iceland under Article 3 of the Kyoto Protocol, and continues in many respects the approach adopted for the first commitment period from 2008–12 regarding the application of the Protocol at Member State level, the base year for the EU, and the exclusion of international aviation.

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20 Along with Iceland.
21 The Kyoto Protocol requires commitments by its Parties to be translated into an assigned amount, which reflects the authorised quantity of emissions, expressed in tonnes of carbon dioxide equivalent, during a commitment period.
22 Annex II contains the Declaration by the Union made in accordance with Article 24(3) of the Protocol; and Annex III sets out the terms of the Doha Amendment.
5.7 However, the Commission points out that the EU’s approach to achieving the necessary reduction will be different from that in the first commitment period, when the individual commitments identified for each Member State embraced the full extent of their economy wide emissions, covering both those sectors included within the Emissions Trading System (ETS) and those outside (which are subject to the Effort Sharing Decision). Since 1 January 2013, the ETS no longer operates through targets and national allocation plans for individual Member States, being implemented instead through a single Union-wide “cap”, with a harmonised auctioning system. As a consequence, it is no longer possible to assign accurately shares of the ETS to individual Member States, and a common emission level will therefore have to be set. Also, although emission levels in sectors subject to the Kyoto Protocol but not covered by the ETS will continue to be set for individual Member States, they will no longer be presented as percentage reductions, but as absolute figures expressed in tonnes of carbon dioxide equivalent (set out in Table 1 of Annex I).

5.8 The Doha Amendment also makes three other changes to the Kyoto Protocol. First, it adds nitrogen trifluoride to the list of greenhouse gases in Annex A. Secondly, where a Party wishes to adjust its commitment by increasing its ambition during a commitment period, this currently requires an amendment to Annex B to the Protocol (which has to be agreed by consensus and ratified by three-fourths of the Parties); in future, there would be a simplified procedure under which an increase in ambition will be adopted, unless more than three-fourths of the Parties object, and there would no longer be a requirement for ratification. Thirdly, it introduces a clause under which a Party’s target for the period 2013–20 would not be able to exceed its average emissions for the years 2008–10 (though as the EU’s average emissions for that period are above the estimated average for 2013–20, this clause is unlikely in practice to apply to it).

(b) Draft Regulation

5.9 This would enable the EU to give legal effect to a number of decisions taken at the Doha Conference relating to the implementation of the substantive mitigation commitment listed in the Agreement. A key feature of this has been a comprehensive system of emissions accounting to ensure transparency and compliance, under which each party with a commitment is required to calculate an assigned amount representing the tonnage it is allowed to emit (in carbon dioxide equivalent). This is then issued as assigned account units (AAUs) in the national registry (which will also hold, and account for, transactions in units resulting from use of the Protocol’s flexibility mechanism).

5.10 The Protocol’s second commitment period will continue, and to some extent enhance, those arrangements, and the draft Regulation will address a number of issues in the transitional period between the two (including the carryover of surplus units). In addition, it seeks to clarify the interaction between the Kyoto rules and relevant EU legislation, and to align them in a number of areas, notably the management of transaction of Kyoto units in and between national registries.

23 The figure for the UK will be 2.743 billion tonnes.
The Government’s view

5.11 These two documents are the subject of separate Explanatory Memoranda of 4 December 2013 from the Secretary of State for Energy and Climate Change (Mr Edward Davey).

5.12 He says that, as these are proposals for the joint fulfilment and ratification of the EU and its Member States’ commitments under the Doha Amendment, it is appropriate that they should be dealt with at the EU level. Consequently, he does not envisage any subsidiarity concerns at this stage, although officials will monitor any such implications as negotiations on how ratification will be implemented progress.

5.13 The Minister also notes that the legal base of Article 218(6) TFEU cited in the draft Council Decision covers the adoption of agreements made by the EU with third countries. However, he goes on to point out that both documents are also based on Article 192(1) TFEU concerning matters relating to the environment, which is an area of shared competence, and that, in the particular field of climate change (which falls under the environment by virtue of 191(1) TFEU), there has been exercise of competence by the EU.\(^{24}\) However, areas of Member State competence also remain, particularly with regard to the non-traded sectors which fall outside the Emissions Trading System, and, as the Member States are individual Parties to the Kyoto Protocol, concerns about compliance with the UK’s own international obligations must also be taken into account.

5.14 The Minister says that, as negotiations on the proposed Decision continue, these matters will be subject to on-going consideration, particularly with regard to the exercise of previously unexercised shared competence. Officials are also carefully analysing the proposals to establish precisely how ratification will be implemented, and, in addition to any competence issues, will consider alignment with international law, the breadth of any proposed delegated acts, and practical aspects (in order to ensure that the proposals are consistent with the requirements, provisions and mechanisms already agreed within the existing EU climate and energy package).

Conclusion

5.15 These two documents clearly relate to an important area of international activity from both an environmental and political perspective, and, for that reason alone, we are drawing them to the attention of the House. However, it is also evident that the Government’s consideration of them is at an early stage, and that clarification will be needed not only in a number of practical and policy areas (such as the relationship between the EU Emissions Trading System and the Effort Sharing Decision), but also as regards the respective exercise of competence by the EU and Member States, and the use of delegated acts. We are therefore holding both documents under scrutiny, pending further information from the Government on these various points.

\(^{24}\) For example, in the establishment of the Emissions Trading System.
6 Promotion of agricultural products

| (35574) | Draft Regulation on information provision and promotion
| 16591/13 | measures for agricultural products on the internal market and in third countries

Legal base Articles 42 and 43(2) TFEU; co-decision; QMV
Document originated 21 November 2013
Deposited in Parliament 27 November 2013
Department Environment, Food and Rural Affairs
Basis of consideration EM of 9 December 2013
Previous Committee Report None
Discussion in Council No date set (but see para 6.9 below)
Committee’s assessment Politically important
Committee’s decision Not cleared; further information awaited

Background

6.1 The Commission has long highlighted the importance of agriculture and the agri-food industry to the EU, and the need for them to maintain their competitiveness and market share on both the internal and external markets. In particular, it has argued that this requires an ambitious policy of promotion, and Council Regulation (EC) No. 3/2008 provides for EU funding to bodies which submit proposals approved by the Commission for delivering promotional measures boosting the image of agricultural products in the eyes of consumers in the Union and in third countries. The aim of these measures —which include the promotion of fruit and vegetables, dairy products, meat, wine, and EU quality labels (such as Protected Designations of Origin (PDO), Protected Geographical Indications (PGI)) and organic products — are to address the quality, nutritional value and safety of foods and production methods.

The current proposal

6.2 This draft Regulation, which would reform existing EU measures in this area, follows a public consultation in July 2011 and an independent evaluation, and it also reflects a statement agreed by the Council in December 2011, which called for a more ambitious promotion policy, with increased focus on third country and multi-Member State campaigns, simplified administrative procedures, and increased EU consumer awareness of the merits of EU agricultural produce, especially quality schemes.

6.3 Its key elements are:

- an increase in budget from €60 million in 2013 to €200 million by 2020;
• an expansion of the list of beneficiaries to include producer organisations (as well as trade and inter-trade organisations, which are already eligible under the current scheme);

• an expansion of the list of eligible products to include all processed agricultural products (excluding tobacco and fishery products), although “National” quality schemes in the meat sector would no longer be eligible (and would instead be covered by rural development schemes);

• some limited information about branding and origin would be allowed in promotion campaigns (mainly with reference to those in third countries);

• the selection process would be simplified, involving a one stop procedure carried out solely by the Commission, rather than involving Member States as at present;

• the administrative management of the programmes would be delegated to an existing EU executive agency, except for “simple” programmes led by one Member State (which would continue to manage it);

• the current funding arrangements (whereby the EU provides up to 50%, the proposing organisation at least 20% and up to 50%, with discretion for Member States to provide up to 30%) would be replaced by new rules, where there would be no Member State funding, the EU would provide up to 50%, and the remainder would be funded by the proposing organisation; and

• multi-Member State programmes would be eligible for EU funding of up to 60%.

6.4 In addition, the Commission would be required to adopt a work programme on an annual basis, setting out EU priorities, and in particular encouraging more third country campaigns. It would also have to establish a support service for partners looking to set up multi Member State programmes, and to give advice on best practice and export activities, and programmes would be subject to a systematic impact assessment, with an evaluation framework to gauge how the promotion policy is performing.

The Government’s view

6.5 In his Explanatory Memorandum of 9 December 2013, the Parliamentary Under-Secretary for Farming, Food and the Marine Environment (George Eustice) says that the Government supports the aim of maximising the export of agricultural products, particularly to growing third country markets, and is also in favour of simplifying procedures and removing red tape for businesses and industry. To that extent, therefore, it sees some merit in the Commission’s proposal.

6.6 However, he says that the Government has serious concerns about the significant increase in budget proposed over the seven year period until 2020, does not consider that the Commission has adequately demonstrated that EU funded promotion measures provide significant added value, or that the increase in public expenditure is justified. In particular, it has reservations about continued and increased expenditure on EU promotion campaigns within the internal market: and, although it sees more benefit in targeting growing third country markets, breaking down trade barriers and opening up
new markets (for example, through the Commission’s high level trade mission), it believes that, even in those circumstances, the expenditure needs to be justified.

6.7 The Minister adds that:

- the Government has concerns about the proposal that some of the administrative work should be carried out by an EU executive agency, observing that, although the Commission has indicated that this would be an existing agency and not a new body, it has not specified which: and the Government would also want to see the evidence that the use of an existing agency would be cost-effective and efficient;

- whilst it does not see a particular difficulty with the proposed expansion of the list of eligible products to include processed products, it would want to be sure that this would not lead to products produced in third countries benefiting from EU-funded promotion measures;

- it also has concerns about the proposal to remove national quality meat schemes from the list of eligible products, and would want to know what other measures the Commission is proposing for these products; and

- the proposal to allow some limited information regarding origin and branding in promotion campaigns could have benefits for UK producers, although care would be needed to ensure that it was not a means to duplicate or replace commercially funded campaigns.

6.8 The Minister also points out that the UK does not currently provide co-funding for EU promotion measures, so the proposal to withdraw Member State funding would not have an impact. However, he notes that the Commission has indicated that co-funding under the new scheme could still be met through parafiscal charges of the kind used for many current UK campaigns, or through compulsory contributions (including the statutory levies collected by the Agricultural and Horticultural Development Board and the Scottish and Welsh meat levy bodies, Quality Meat Scotland and Hybu Cig Cymru).

6.9 Finally, the Minister says that the Commission has indicated that it would like to move swiftly on this proposal with a view to getting a first reading agreement before the European Parliament elections at the end of May 2014, and that it is looking to implement even in those circumstances, the new measures by 1 January 2016.

**Conclusion**

6.10 Insofar as Council Regulation (EC) No. 3/2008 already provides for EU funding of promotional measures in this area, this proposal does not break new ground, and we note that the Government is not opposed in principle to the sort of measures covered by it. On the other hand, there are clearly concerns about some of the detailed administrative provisions, and in particular at the prospect of a more than three-fold increase in budgetary expenditure between 2013 and 2020 (and the lack of any clear justification for it). We share those concerns, and we are therefore reporting the proposal to the House, and holding it under scrutiny, pending further information on these various points, and in particular the proposed funding arrangements.
7 Regulation of medical devices

| (34294) 14493/12 | COM(12) 542 + ADDs 1–5 |
| (b) | Draft Regulation on in vitro diagnostic medical devices |
| (34295) 14499/12 | COM(12) 541 |

Legal base
(Both) Articles 114 and 168(4)(c) TFEU; co-decision; QMV

Department
Health

Basis of consideration
Minister’s letter of 4 December 2013

Previous Committee Reports
HC 86-xxxviii (2012–13), chapter 4 (17 April 2013);
HC 86-xxxv (2012–13), chapter 8 (13 March 2013);
HC 86-xxxii (2012–13), chapter 2 (13 February 2013);
HC 86–xx (2012–13), chapter 10 (21 November 2012)

Discussion in Council
No date set

Committee’s assessment
Politically important

Committee’s decision
Not cleared; further information requested

Background and previous scrutiny

7.1 The draft Regulations would repeal and replace three existing Directives which establish the EU regulatory framework for medical devices. The first — document (a) — applies to all types of medical devices, including implants. The second — document (b) — applies to in vitro diagnostic medical devices used to test samples derived from the human body. Both seek to introduce a more rigorous system for Member State supervision of “notified bodies” — bodies responsible for certifying that medical devices are safe for use — and to ensure greater transparency and accountability in relation to devices and their manufacturers.

7.2 The Government broadly welcomes the draft Regulations, subject to two concerns. First, it considers that the Commission’s proposals to introduce additional pre-market scrutiny of higher risk devices by a central Committee of Member State experts would be ineffective and overly bureaucratic. Second, it questions the removal of an existing exemption for “in house” devices manufactured and used within the same health institution which would substantially increase costs within the NHS. Our Twentieth Report of 21 November 2012 describes the main changes proposed by the Commission to the EU’s existing regulatory framework. It is supplemented by our Thirty-second and Thirty-fifth Reports, agreed on 13 February and 13 March 2013, which set out the
Government’s response to a number of issues we raised in our earlier Report, and our
Twenty-ninth Report of 17 April 2013, which summarised the outcome of a public
consultation on the draft Regulations carried out by the Medicines and Healthcare
products Regulatory Agency (MHRA).

7.3 We have broadly endorsed the Government’s approach to the negotiations and asked
to be informed of any significant developments, particularly with regard to the treatment of
“in-house” devices and the introduction of an additional tier of pre-market scrutiny for
certain high risk medical devices, as well as the issues highlighted in our earlier Reports.

The Minister’s letter of 4 December 2013

7.4 The Parliamentary Under-Secretary of State for Quality (Earl Howe) provides an
update on recent developments. He tells us that the European Parliament held its plenary
vote on the draft Regulations on 22 October and describes some of the key amendments
agreed. The first concerns pre-market scrutiny of high risk medical devices:

“the EP voted in favour of removing the Commission’s proposals for additional pre-
market scrutiny and replacing it with a scrutiny system of two parts. Firstly, certain
high risk devices must only be assessed by ‘special notified bodies’. These special
notified bodies would be designated and regulated by the European Medicines
Agency (EMA). Secondly, a newly formed committee of clinical experts, the
Assessment Committee for Medical Devices (ACMD), would further scrutinise a
subset of these devices. This scrutiny process would involve the ACMD reviewing
information submitted by the manufacturer on the clinical evaluation of the device,
the post-market clinical follow-up plan and any information on marketing of the
device in non-EU countries. Which devices it would scrutinise would be decided on
a case by case basis according to specified criteria, such as the novelty of the device
and an increased rate of serious incidents in the category or group the device belongs
to. However, scrutiny would not be engaged where Common Technical
Specifications or harmonised standards in relation to clinical evidence and post-
market clinical follow-up were in place.

“The Government position on the proposed changes by the EP remains the same as
in my previous correspondence in relation to the scrutiny mechanism proposed by
the Commission. We are against any form of additional pre-market scrutiny and
believe that patient safety is best safeguarded through strengthening notified bodies
and co-ordinating vigilance across the EU. We are concerned that the proposals
dilute the responsibility for pre-market approval and will create a longer and more
uncertain approval process. Additionally, we are concerned about the costs which
will be associated with the system as proposed by the EP. The EMA does not
currently have the resources to designate and monitor notified bodies and there
would be costs associated with building and maintaining this expertise. There would
also be significant costs associated with setting up and maintaining the ACMD.
Therefore, the Government does not support the EP proposals for pre-market
scrutiny.”

7.5 The European Parliament has also proposed changes to the provisions on the re-
processing of single-use devices:
“This is the process by which medical devices, which have been labelled by the manufacturer as single-use, are reprocessed, assessed as safe and resold as a ‘new’ device. The core of the proposal from the EP is that all medical devices would be reprocessable by default and that a central list, maintained by the Commission, would detail all devices which are unsuitable for reprocessing and so may be labelled single-use. However, changes introduced at plenary created a confused framework which seems to allow reprocessing of all single-use devices in certain circumstances. The Government is concerned that the proposals from the EP are unworkable – even before the changes were made at plenary – and we continue to support the proposal put forward by the Commission as a balanced solution to the issue.”

7.6 Turning to proposed amendments to the draft Regulation on in vitro diagnostic medical devices (IVDs), the Minister reiterates the Government’s position that the highest risk (Class D) IVDs, which are developed and used “in-house” by a single health institution, should be exempted from compliance with the full regulatory requirements applicable to other IVDs. He continues:

“The EP voted in favour of widening the scope of the in-house exemption to include Class D IVDs where certain requirements are met. These requirements are that no suitable CE-marked equivalent IVD is available, the health institution is accredited to ISO 15189 and the health institution provides the Commission and their competent authority with a list of IVDs being manufactured in-house. The Government is pleased that the EP recognised the need to extend the in-house exemption to cover Class D IVDs and considers their proposal to be broadly workable, subject to some minor changes.”

7.7 The Minister expresses “serious concerns” about the EP’s proposal to include new provisions on genetic testing which would introduce a requirement for mandatory counselling and informed consent to be given explicitly and in writing in advance of a test, adding:

“Firstly, we are concerned that they are outside the scope of the legislation which is concerned with issues relating to the placing on the market of IVDs and not their subsequent use. Secondly, the proposals are out of step with current clinical practice in the UK and do not recognise the significant differences between different types of genetic tests. We have worked closely with stakeholders such as the European Society for Human Genetics and the Foundation for Genomic and Population Health on this issue and will continue to do so as we seek to remove these provisions during negotiations.”

7.8 The Minister notes that the EP voted in favour of a system of pre-market scrutiny of IVDs similar to that proposed for high risk medical devices and reiterates the Government’s opposition.

7.9 Progress within the Council has been “steady” and the Minister notes that the Council is not yet ready to present an agreed position. He continues:

“The EP and Commission have been vocal about their desire to agree the Regulations before the elections for European Parliament in summer 2014. The UK remains
committed to finding agreement and hopeful that, despite a challenging timetable, productive discussions between the Council and the Parliament can take place. However, whilst we wish to make quick progress we are not prepared to rush into agreeing legislation that includes provisions that will be overly burdensome on businesses or insensitive to public health policy in individual Member States. It is critical that the final agreement strikes the appropriate balance between correcting the weaknesses whilst maintaining the strengths of the current EU system.”

Conclusion

7.10 We thank the Minister for his helpful update and look forward to receiving further progress reports on the negotiations.

7.11 We recall that in earlier correspondence with the Committee, the Minister accepted that there was an inadequate level of transparency and accountability in the existing regulatory framework for medical devices and said that the Government would take “a critical look at all aspects of transparency in the proposed Regulations to see if it can be increased further.”25 The Report of the Science and Technology Committee on the regulation of medical implants in the EU and UK26 also highlighted the need for greater transparency and called for all clinical data used in the approval of a medical implant to be made publicly available (without revealing the identity of patients or clinical trial participants). When the Minister produces his next progress report on negotiations, we ask him to describe the changes the Government is seeking to enhance transparency and accountability and the extent to which these are reflected in any of the amendments proposed by the European Parliament. Meanwhile, the draft Regulations remain under scrutiny.

25 See letter of 3 December 2012 from the Minister to the Chair of the European Scrutiny Committee.

8 European Investment Bank projects outside the EU

Draft Council Decision granting an EU guarantee to the European Investment Bank (EIB) against losses under financing operations supporting investment projects outside the Union

Legal base
Articles 209 and 212 TFEU; co-decision; QMV

Department
International Development

Basis of consideration
Minister’s letter of 28 November 2013

Previous Committee Reports
HC 83-xxii (2013–14), chapter 9 (6 November 2013)
and HC 83-viii (2013–14), chapter 6 (3 July 2013)

Discussion in Council
To be determined

Committee’s assessment
Politically important

Committee’s decision
Not cleared; further information requested

Background

8.1 The proposal is to update the current EU budgetary guarantee to the EIB that covers risks of sovereign and political nature when financing operations outside the EU. This External Lending Mandate (ELM) allows the EIB to use its Own Resources to operate in more challenging investment climates outside the Union in support of the EU’s external policy objectives; provides both an overall ceiling to loans covered under the Guarantee and an opportunity to determine the strategic direction of the EIB in its external operations; and, more broadly, safeguards its creditworthiness, so as not to compromise its principal task of contributing to the development of EU Member States.

8.2 The regions covered are the Neighbourhood and Partnership Countries (including the Mediterranean, Eastern Europe, Southern Caucasus and Russia); Asia, Central Asia and Latin America, South Africa as well as EU Pre-accession countries (the African, Caribbean and Pacific (ACP) region is covered separately under the Cotonou Agreement and funded through the European Development Fund, or EDF).

8.3 This proposed new Decision sets out the overall scope and general conditions of the ELM for the period starting 1 January 2014 to 31 December 2020, in line with the Multiannual Financial Framework (MFF). In drawing it up, the Commission examined several options and objectives (see our previous Report for details). They chose the option called FOCUS: to focus on less credit-worthy beneficiaries while implementing an overall signature target on climate change, which was judged as having the most impact.

8.4 In her Explanatory Memorandum of 23 June 2013, the Parliamentary Under-Secretary of State at the Department for International Development (Lynne Featherstone) welcomed the overall proposal and strongly endorsed the EIB’s external role. She also endorsed the proposal to replace the current separate Climate Change Mandate with an overall climate change investment target, and welcomed the idea of developing a method to establish the use of the EU budget guarantee where it benefitted less creditworthy clients and served
harder-to-reach markets. She also supported the Mandate continuing to cover all geographical areas, including harder-to-reach markets in Asia (such as Burma, Bangladesh) which were key DFID priorities (see paragraphs 6.8–6.9 of our first previous Report for greater detail).27

8.5 Looking ahead, the Minister said that negotiations in the Financial Counsellors (FINCO) working party in Brussels would now centre on the regional sub-ceilings and broader strategic directions of the EIB in its external lending; the draft proposal would then move to the European Parliament in the autumn.

Our assessment

8.6 Given that the Minister would be seeking at least some improvements to the draft mandate — establishing a method to ensure that the guarantee was used where it added most value and further clarification in terms of success criteria with respect to the provision of a €3 billion “top up” after a midterm review — we retained the Council Decision under scrutiny, and asked the Minister to update the Committee when discussions in the working party had been concluded.

8.7 We also drew this chapter of our Report to the attention of the International Development Committee.28

8.8 The two updates provided thus far by the Minister demonstrate very much what might be expected in this type of negotiation: the Minister has not achieved all her objectives — particularly with regard to Asia and Central Asia — but notes that the proposal that has emerged from COREPER29 nonetheless contains a number of elements that should lead to more effective spending (see paragraphs 9.8–9.12 of our most recent previous Report).30

8.9 Most recently, we asked the Minister to write to us again once the negotiations with the European Parliament (EP) had made some progress, and in any event no later than 28 November.

8.10 We also drew these developments to the attention of the International Development Committee.31

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29 COREPER, from French Comité des représentants permanents, is the Committee of Permanent Representatives in the European Union, made up of the head or deputy head of mission from the EU member states in Brussels. Its job is to prepare the agenda for the ministerial Council meetings; it may also take some procedural decisions. It oversees and coordinates the work of some 250 committees and working parties made up of civil servants from the member states who work on issues at the technical level to be discussed later by COREPER and the Council. It is chaired by the Presidency of the Council of the European Union. There are in fact two committees: COREPER I consists of deputy heads of mission and deals largely with social and economic issues; COREPER II consists of heads of mission (Ambassador Extraordinary and Plenipotentiary) and deals largely with political, financial and foreign policy issues.
The Minister’s letter of 28 November 2013

8.11 The Minister reports that in early November the European Parliament’s Budget Committee produced a first reading position on the ELM.

8.12 She continues as follows:

“The EP’s suggested amendments are in line with what we expected and reflect three main EP priorities. These are 1) Allowing reflows from previous EIB activities to increase the overall size of the ELM; 2) Increasing EIB’s reporting requirements and Parliamentary oversight of the EIB; and 3) Changing the focus of the EIB’s work to include new priority sectors and an increased focus on climate change.

“On the first point, the EP has suggested that reflows from previous EIB activities are used to increase the overall ceiling of the External Lending Mandate from €25bn (£21bn) to €27bn (£23bn). To take account of this increase, the regional ceilings within the ELM have all been revised upwards by 8%. The UK does not support this amendment. We support the overall size of the guarantee ceiling in the original Commission proposal (£21bn) which is consistent with our position on discipline in the EU budget overall. Furthermore the UK believes that reflows should go back to the “general budget” of the EU, thereby reducing the contributions required from Member States. We will continue to strongly oppose this amendment.

“On point 2), the EP has inserted clauses increasing the reporting requirements of the EIB to the EP and the Commission. While the UK supports increased coherence of EU external policies, we believe that the current level of reporting and oversight is adequate and should be maintained. We are concerned that the increases proposed would duplicate existing reporting requirements and place undue administrative and reporting burdens on the EIB. We are supportive however of amendments that would improve the quality of existing EIB reporting. We therefore support EP proposals that suggest greater inclusion of the Results Measurement (REM) Framework in current reporting.

“The EP has been quite prescriptive in the sectors in which the EIB should work and is pushing for an increase in the priority given to climate change. We support the EIB’s strong focus on climate change mitigation but are keen that the EIB maintains some flexibility in the areas in which it works. The UK supports all three priorities of the EIB (social and economic infrastructure, private sector and financial development, and climate change mitigation and adaptation) and we want to give the EIB room to manage the balance between these priorities. We are also keen to ensure that the impact of the EIB in these sectors is not diluted by the addition of competing priorities. There is room for negotiation on this point however and the UK could support some additional and strengthened reference to climate change in the ELM.”

“Since the beginning of November, three informal trialogues have taken place. These are set to continue until technical agreements on the majority of the text have been reached. The more contentious issues, such as reflows and regional ceilings, will be reserved until other elements of the text have been settled. The Presidency are likely
to convene a COREPER discussion on the issue of reflows and regional ceilings, but
the exact timing of this will depend on progress made with the rest of the text.”

Conclusion

8.13 We are grateful to the Minister for this further information, which we are again
drawing to the attention of the International Development Committee.

8.14 The Minister has made her position clear:

• no reflows from previous EIB activities to increase the overall ceiling;

• no increase in European Parliament oversight; and

• some additional and strengthened reference to climate change in the ELM, but
nothing else that would interfere with the EIB properly balancing this with its other
priorities — social and economic infrastructure, private sector and financial
development — or risk diluting the impact of the EIB in these sectors by the
addition of competing priorities.

8.15 We rely upon the Minister to provide a further update prior to any proposal to
take a revised text to the Council for adoption, and in good time for any questions that
might arise to be posed and answered beforehand.

8.16 In the meantime, we shall continue to retain the Council Decision under scrutiny.
## 9 Iran sanctions and the EU General Court

| (a) | 35384 | Council Decision 2013/497/CFSP of 10 October 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran |
| (b) | 35385 | Council Regulation (EU) No. 971/2013 of 10 October 2013 amending Regulation (EU) No. 267/2012 concerning restrictive measures against Iran |
| (c) | 35515 | Council Decision 2013/661/CFSP of 15 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran |
| (d) | 35516 | Council Regulation (EU) No. 1154/2013 of 15 November 2013 amending Regulation (EU) No. 267/2012 concerning restrictive measures against Iran |
| (e) | 35578 | Council Decision 2013/685/CFSP of 26 November 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran |

**Legal base**

(a) Article 29 TEU; unanimity; —
(b) Article 215 TFEU; QMV; —
(c) Article 29 TEU; unanimity; —
(d) Article 46(2) of Council Regulation (EU) 267/2012; QMV; —
(e) Article 29 TEU; unanimity; —
(f) Article 46(2) of Council Regulation (EU) 267/2012; QMV; —

**Document originated**

(a)–(b) 10 October 2013
(c)–(d) —
(e)–(f) 26 November 2013

**Deposited in Parliament**

(a)–(b) 15 October 2013
(c)–(d) 21 November 2013
(e)–(f) 28 November 2013

**Department**

Foreign and Commonwealth Office
9.1 This Council Decision and implementing Regulation expand the existing EU Iran sanctions listing criteria regarding the Islamic Republic of Iran Shipping Lines (IRISL, the Iranian state shipping company) and associated entities or individuals. They also correct an anomaly to ensure that those who themselves violate or evade sanctions are targeted, not only those who assist others to do so. Adoption took place on 12 October 2013.

9.2 The Council Decision and implementing Regulation relist eight entities whose listing was annulled by the General Court on 6 September 2013. It also relists Hanseatic Trade Trust & Shipping (HTTS), whose listing was annulled on 3 August 2013 and amends the listing of Onerbank ZAO. Adoption took place on 15 November 2013.

9.3 The Council Decision and Regulation relist Islamic Republic of Iran Shipping Lines (IRISL) and fifteen of its subsidiaries. It also amends the listing of MASNA to include additional identifying information. Adoption took place on 26 November 2013.

9.4 In an Explanatory Memorandum dated 25 October the Minister for Europe (Mr David Lidington) explains that on 16 September, the EU General Court ruled in favour of a legal challenge by IRISL and 17 associated entities to their designation under EU Iran Sanctions. The Court gave the Council two months and ten days either to appeal this decision or to take remedial action before the designations’ automatic annulment on 24 November. To maintain IRISL’s designation and that of the 17 related entities, the Minister says it was necessary to expand the existing wording of the Council Decision and implementing Regulation defining who can be subject to sanction (the wording is referred to as the
“sanctions criteria”). Amendments were made to Articles 23(2) b, c and e of Regulation 267/2012. The expansion of the language in these Articles achieved two things:

— it allowed for the designation of entities who *themselves* evade or violate UN or EU Iran sanctions. This corrects an anomaly, as only those who *assisted others* in evading or violating sanctions were previously captured. This is relevant to IRISL, which itself breached a UN Resolution regarding the transport of conventional arms; and

— it added new wording into the sanctions criteria covering IRISL to capture more comprehensively those entities assisting IRISL, that is, those who provide essential services to IRISL or those that act on its behalf. This provides a basis for several of the associated entities whose designation had been successfully challenged to be targeted through relisting under the expanded criteria. Similarly, wording was added to the Islamic Revolutionary Guard Corps (IRGC) criterion, expanding it to include entities that provide essential services to the IRGC or act on its behalf.

9.5 The Minister explains that the UK continues to support the designation of these entities for their role in supporting Iran’s proliferation activity through IRISL. As nuclear negotiations with Iran are ongoing, it is essential to retain existing EU sanctions pressure on Iran. He says “[w]e are currently working with the EU to build the case to relist IRISL and as many of the 17 associated entities as possible, whilst addressing the concerns of the EU General Court in its ruling.”

9.6 In addition to depositing an Explanatory Memorandum, the Minister wrote to us on 25 October with more information about the General Court litigation on the EU sanctions regime against Iran. He explains that it has taken time to study the judgement and consider a solution; a draft Council Decision and Regulation were made available by the European External Action Service (EEAS) on 27 September, and first discussed by EU Member States on 1 October. A Decision and Regulation needed to be agreed by 10 October, as otherwise there would not have been sufficient time to give notice to the entities and relist them before the annulment came into effect. He regrets that due to these tight timings, he had to agree to the adoption of this Council Decision and Regulation before we had an opportunity to scrutinise these documents.

**Documents (c) and (d)**

9.7 In an Explanatory Memorandum dated 28 November the Minister explains, at the time of writing, significant progress has been made in recent talks between Iran and the E3+3, with a first step deal having been agreed. However, in parallel with providing Iran with some relief from some EU sanctions, the Government will remain firm in upholding and maintaining existing listings such as those detailed below. The relisting of these nine entities occurred prior to the deal that was reached over the weekend of 23/24 November 2013.

9.8 On 6 September 2013 the General Court ruled in favour of the Council in the case of Iranian bank Melli and EIH, and lost challenges brought by eight entities to their designation under EU Iran Sanctions (the eight entities are Post Bank of Iran, Iran Insurance Company, Export Development Bank of Iran, Persia International Bank, Iranian Offshore Engineering and Construction Company, Bank Refah Kargaran, Naser Bateni
and Good Luck Shipping Company). The Court gave the EU Council two months and ten
days either to appeal this decision or to take remedial action before the designations’
automatic annulment on 16 November 2013. Separately, on 3 August 2013 the EU General
Court ruled in favour of Hanseatic Trade Trust & Shipping (HTTS).

9.9 The Council took decisions to relist all nine entities, on the basis of new statements of
reasons concerning each of them.

9.10 Additionally, the Council amended the reasons behind the listing of Onerbank ZAO.
The Council also allowed the listing of Qualitest FZE to lapse.

9.11 The UK continues to support the designation of the nine entities for their role in
supporting Iran’s proliferation activity either through the provision of support to the
Government of Iran or to IRISL, or in the case of Persia International Bank, by being
owned by another listed entity (Banks Mellat and Tejarat).

9.12 The Minister’s Explanatory Memorandum was accompanied by a letter of the same
date which covers much of the same ground.

**Documents (e) and (f)**

9.13 In an Explanatory Memorandum dated 2 December the Minister explains that this
Council Decision and Regulation relist IRISL plus 15 of its subsidiaries (Bushehr Shipping
Co. Ltd, Hafize Darya Shipping Lines (HDSL), Irano — Mistr Shipping Co., Irinwestship
Ltd, IRISL (Malta) Ltd, IRISL Europe GmbH, IRISL Marine Services and Engineering Co.,
ISI Maritime Ltd, Khazar Shipping Lines, Marble Shipping Ltd, Saffran Payam Darya
Shipping Lines (SAPID), Shipping Computer Services Co., Soroush Saramin Asatir Ship
Management, South Way Shipping Agency Co. Ltd and Valfajr 8th Shipping Line Co). The
Council decided not to relist IRISL Club and Leadmarine as it did not feel there was a
strong enough case to support relisting. The documents also amend the listing of MASNA
(the Managing Company for the Construction of Nuclear Power Plants) to include
additional identifying information. Adoption took place on 26 November 2013.

9.14 The Minister says that the relisting of these 16 entities occurred prior to the deal that
was reached between E3+3 and Iran over the weekend of 23/24 November 2013.

9.15 The Minister’s Explanatory Memorandum was accompanied by a letter of the same
date which covers much of the same ground.

**The decisions of the General Court**

The decisions of the General Court\(^\text{32}\) on 6 September can be summarised as follows:

- with regard to Post Bank Iran, Iran Insurance Company, Good Luck Shipping and
  Export Development Bank of Iran, the Court found that the Council had not

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\(^{32}\) Judgments in Joined Cases T-35/10 and T-7/11 Bank Melli Iran; Case T-493/10 Persia International Bank plc; Joined
Cases T-4/11 and T-5/11 Export Development Bank of Iran; Case T-12/11 Iran Insurance Company; Case T-13/11 Post
Bank Iran; Case T-24/11 Bank Refah Kargaran; Case T-434/11 Europäisch-Iranische Handelsbank AG; Joined Cases T-
42/12 and T-181/12 Naser Bateni; Case T-57/12 Good Luck Shipping, and Case T-110/12 Iranian Offshore Engineering
and Construction Co. v Council.
proved the facts of which it accuses those four companies and that the Council could not, therefore, properly establish that they had provided support for nuclear proliferation. Consequently, the acts of the Council requiring the funds of those companies to be frozen were annulled;

- the Court also annulled the relevant acts in so far as they concern Mr Bateni, Persia International Bank and Iranian Offshore Engineering and Construction Co. In each of those cases, the Court found that the Council made an error of assessment inasmuch as the facts and evidence on which it relied (in the case of Mr Bateni, the fact that he is or was director of a designated company; in the case of Persia International Bank, the fact that Bank Mellat, a designated company, owns 60% of its share capital; and in the case of Iranian Offshore Engineering & Construction, the fact that it was subject to three export denials) did not by themselves justify the adoption and/or maintenance of the restrictive measures;

- in the case of Bank Refah Kargaran, the Court found that the Council breached the obligation to state reasons and the obligation to disclose to Bank Refah Kargaran the evidence used against it. The single reason given — that Bank “Refah Kargaran had taken over ongoing operations from Bank Melli after Bank Melli became subject to restrictive measures — was not sufficiently detailed, since the Council did not identify any specific operation purportedly ‘taken over’ from Bank Melli and carried out by Bank Refah Kargaran. Accordingly, the Court annulled the acts of the Council imposing restrictive measures on Bank Refah Kargaran;

- as regards Europaïsch-Iranische Handelsbank, the Court annulled the acts of 23 May 2011 in so far as they concern that company on the ground that the Council merely adopted the listing proposal of a Member State without evaluating the allegations contained within it. However, in adopting the December 2011 acts maintaining that bank on the list, the Council did not commit the same procedural error, and all the other arguments on which the bank relied were also rejected by the Court, which held, inter alia, that the transactions carried out by Europaïsch-Iranische Handelsbank on behalf of designated Iranian entities justified the adoption of restrictive measures against it. Consequently, those more recent acts were not annulled and the funds of Europaïsch-Iranische Handelsbank remained frozen; and

- lastly, the Court dismissed the action of Bank Melli Iran in its entirety, holding in particular that the fact that Bank Melli Iran ensured that scholarships were paid on behalf of the Atomic Energy Organisation of Iran (AEOI) after restrictive measures had been adopted against AEOI by the United Nations Security Council constituted support for nuclear proliferation.

The decision of the General Court on 16 September can be summarised as follows:

- the statement of reasons for the listing of IRISL was excessively vague;

33 Judgement in case T-489/10 IRISL v Council.
• the Council had not established that, by having transported on three occasions military material in breach of a UN Security Council Resolution, IRISL provided support for nuclear proliferation. The Court concluded that the three incidents in question did not justify the adoption and maintenance of the restrictive measures against IRISL; and

• As the Council had not established that IRISL had provided support for nuclear proliferation, restrictive measures could not be justified against entities owned or controlled by IRISL.

**Conclusion**

9.16 The Minister’s Explanatory Memoranda are pithy to a point and do not help us to understand how the relisting of entities in documents (a) to (f) will render the listings lawful. So we ask the Minister to explain how the grounds for annulment with respect to each of the entities relisted have been addressed, so that we can better understand the legal basis for the relistings. For example, in addition to being informed that new statements of reasons have been submitted, we would like to know how the new statements cure the defects of the previous statements. The same goes for new evidence upon which the EU relies.

9.17 We also ask the Government to confirm whether documents (a) to (f) are subject to further appeal.

9.18 In terms of scrutiny procedure, we understand for the reasons the Minister sets out why it was not possible on these three occasions to respect the scrutiny reserve resolution before adoption in the Council.

9.19 The documents remain under scrutiny pending the Minister’s response.
10 CSDP: the EU’s comprehensive approach to external conflict and crises

(35595) Draft Joint Communication: The EU’s comprehensive approach to external conflict and crises

**Legal base**

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**Background**

10.1 The document sets out the High Representative and European Commission’s ideas for how the EU could take a more comprehensive approach to its external relations policies and actions — bringing the collective weight of the EU’s diplomatic, economic, development, civilian and military tools together in a coherent manner and in coordination with other actors. It notes that whilst the Comprehensive Approach is not a new concept, the ideas and principles governing it have yet to become systematically embedded as the guiding principle for EU external action across all areas, in particular in conflict prevention and crisis management.

10.2 In his 9 December Explanatory Memorandum, the Minister for Europe (Mr David Lidington) said that this document — produced jointly by the High Representative for Foreign and Security Policy and the European Commission, without Member State consultation — was currently under inter-service consultation, had been shared on an informal basis with the Government, and was therefore subject to change. The Minister expected the final version to be released in advance of the European Council (Defence) on 19 and 20 December 2013; full discussion of the document was likely in early 2014 with Conclusions agreed at the Foreign Affairs Council at that time.

10.3 In the meantime, as there was likely to be some level of discussion prior to the Council, he had chosen to submit an Explanatory Memorandum at the earliest opportunity; and, subject to changes in the final publication, would update the Committee as required.

10.4 The Minister described the Comprehensive Approach as a UK priority and particularly welcomed the importance placed on it in Baroness Ashton’s recent European
External Action Service (EEAS) review paper. Thus far, the analysis and recommendations were broadly in line with UK thinking:

“It focuses on better working practices and coordination, avoiding proposals that would cross our red-lines on institutional growth or re-structuring.”

10.5 The Minister said that the following proposals particularly aligned with UK thinking:

- “Focussing on all stages of the cycle of a conflict or crisis, including in particular, conflict prevention;
- “Ensuring responses are context specific;
- “Developing common strategic vision for regions/countries;
- “Better using Delegations as a focus to support coherence on the ground and encouraging co-location where appropriate;
- “Drawing on the strength of all available instruments;
- “Focussing on improved coordination between all EU actors;
- “Better coherence between long term objectives and short term action; and
- “Establishing stronger links between the Commission and EEAS, including better use of the HRVP’s [High Representative/Vice Presidents] dual-hatted role to enhance coherence.”

10.6 However, he had some concerns:

“The paper does not give much detail on how the proposed actions will be taken forward or their implementation monitored. Nor does it give adequate attention to the importance of partnerships and in particular the role of NATO. We will strengthen these areas through Council Conclusions in the New Year and thereafter.”

Our assessment

10.7 We noted that the 19–20 December European Council discussion on defence was to be the first opportunity in five years for Heads of State and Government to agree the strategic direction of the EU’s Common Security and Defence Policy (CSDP)—centred on three “clusters” — increasing the effectiveness, visibility and impact of CSDP; enhancing the development of capabilities; and strengthening Europe’s defence industry — and informed by the three principal documents: a report from the HR on the EU’s Common Security and Defence Policy; a Joint Communication, *Towards a More Competitive and..."
10.8 We also noted that we had recommended all three documents for debate: the latter two prior to the European Council and the first early in the New Year, after the relevant European Council Conclusions had emerged.

10.9 We were accordingly grateful to the Minister for his initiative. We considered that this further Joint Communication would be relevant to the debates on the HR’s Reports on the EU’s CSDP and the EEAS. Before then, however, we asked the Minister to deposit the final version, together with any further views he might have, depending on the extent to which it differed from this draft.

10.10 In the meantime, we retained the document under scrutiny.

**The Minister’s letter of 16 December 2013**

10.11 The Minister writes as follows:

“While the final version of the Joint Communication is broadly welcome, from a HMG perspective, it is less positive than the draft we submitted on 9 December. We will therefore not welcome or endorse it at the December European Council. We will only agree conclusions that “note” its publication.

“Of most concern in the final version are changes in Section 7 (making better use of EU Delegations). In particular, we are concerned by the introduction of language on consular protection and security expertise in EU Delegations. Neither reference existed in the earlier draft we passed to the Committee. This is particularly disappointing given the fact that we made clear in negotiations on Review of the EEAS that, as the Treaties and the EEAS Council Decision make clear, the EEAS has only a supporting role in consular assistance. What is more, we will not allow the development of a network of Defence and Security Experts in EU Delegations, as such expertise should only be considered on a case by case basis when there is a clear operational need.

“Additionally, we believe that the Communication has been weakened in respect of EEAS-Commission coordination, through the removal of a recommendation for the High Representative/Vice President to more regularly chair meetings of RELEX Commissioners, and the removal of language that underlined the importance of coordination by the EEAS’ Geographical Desks.

“Overall, this is a disappointing outcome, particularly as HMG otherwise agrees with much of the Joint Communications’ content (as outlined in the EM), which seeks to improve the EU’s response to conflict and crises through the Comprehensive Approach.”

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Conclusion

10.12 We are not sure about why the Minister has written thus, rather than (as we asked) deposit the published document along with an Explanatory Memorandum. We ask him now to do so, and to outline how he envisages this important Communication being taken forward and what positions he will be taking in any further discussion not only about these new areas of concern but also those he has already outlined, viz., how the proposed actions will be taken forward and their implementation monitored; and the insufficient attention being given to the importance of partnerships, and in particular the role of NATO (c.f. paragraph 10.6 above).

10.13 In the meantime, we shall continue to retain the document under scrutiny, and continue to consider it relevant to the forthcoming debates on the EEAS review and the EU High Representative’s proposals on CSDP.

10.14 More generally, the outcome reinforces our dissatisfaction with the way in which the Government has handled thus far two of the three pivotal documents that we have recommended for debate — whereby, contrary to our clearly stated wishes, neither the Defence and Security Sector Joint Communication nor the HR’s EEAS review is to be debated before the European Council. Major issues are all the more plainly at stake.

10.15 With regard to European defence, the Minister for International Security Strategy noted as recently as late November that there were still many substantial areas of the Communication about which he had concerns: the Commission owning or operating military or related dual-use capabilities; intervention in government to government sales; incentives that might distort the defence market or impede UK industry’s ability to work with essential non-EU suppliers; and other proposals that the Commission continued to support that he believed could lead to unnecessary regulatory interference in the defence market.36

10.16 With regard to the EEAS review, the Minister made clear as long ago as September that he was concerned at proposals concerning the EEAS’s role in providing consular assistance and attempts to establish a formal network of military and civilian security experts in EU delegations.37

10.17 As we have noted in our consideration of these documents and the HR’s CSDP proposals, notwithstanding both Ministers’ assertions that “red lines” have been adequately defended, there remain — as is once again demonstrated here — strong impulses in the Commission EEAS and among other Member States for a different direction of travel; including an enhanced role for the European Parliament and no consideration of the role of national parliaments.

10.18 With such major issues at stake, the debates that we have recommended are all the more timely.

37 See (35271) —: HC 83-xiii (2013–14), chapter 17 (4 September 2013).
11 Money laundering and terrorist financing

(a) Draft Regulation on information accompanying transfers of funds
   (34681) 6230/13 COM(13) 44
(b) Draft Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
   (34682) 6231/13 COM(13) 45
(c) European Central Bank Opinion on a draft Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and on a draft Regulation on information accompanying transfers of funds
   (34950) 9968/13 —

Legal base
(a)–(b) Article 114 TFEU; co-decision; QMV
(c) —
Department
HM Treasury
Basis of consideration
Minister’s letter of 13 December 2013
Previous Committee Reports
(a)–(b) HC 86-xxxv (2012–13), chapter 14 (13 March 2013)
(c) HC 83-vii (2013–14), chapter 8 (26 June 2013)
Discussion in Council
Not known
Committee’s assessment
Politically important
Committee’s decision
Not cleared; further information requested

Background
11.1 The EU has in place legislation to prevent money laundering and terrorist financing, currently Directive 2005/60/EC (Third Money Laundering Directive or Third MLD) and Council Regulation 1781/2006 (the Wire Transfer Regulation).

The documents
11.2 The draft Directive, document (b), and the draft Regulation, document (a), were presented by the Commission to revise and replace the Third MLD and the Wire Transfer Regulation, to reflect recent changes made to the international standards on anti-money laundering and counter terrorist financing as set by the intergovernmental organisation, Financial Action Task Force (FATF).38

38 See http://www.fatf-gafi.org/pages/aboutus/.
11.3 The European Central Bank (ECB) issued this Opinion, document (c) on the draft Directive and the draft Regulation. The ECB was supportive of both Proposals and did not highlight any areas of real concern.

11.4 When, in March, we considered the legislative proposals, documents (a) and (b), we noted the Government’s support for the Commission’s approach in the drafts and for the generality of the detail and the need for EU-level action in this area. But we noted also that the Government was continuing engagement with business and was giving further consideration to a number of points, such as the extended scope in relation to gambling. So we asked, before considering the documents again, to hear about how the Government’s thinking was developing and, in particular, whether this revealed any significant problems with the proposals. Meanwhile these documents remained under scrutiny.

11.5 When, in June, we considered the ECB Opinion, document (c), we said than in its response to our earlier request on the legislative proposals we should like the Government to include how the ECB Opinion played into that thinking. Meanwhile this document also remained under scrutiny.\(^{39}\)

The Minister’s letter 13 December 2013

11.6 The Commercial Secretary to the Treasury (Lord Deighton) writes with an update on the state of play of the draft Directive. But he tells us that Council negotiations on the draft Regulation have not yet taken place, although discussions are expected to begin under the Greek Presidency in 2014.

11.7 Reminding us that the draft Directive is to implement the revised FATF Standards, which the Government fully supports, having played an active role in their development and negotiation, the Minister says that:

- next year the FATF is due to begin its evaluation of countries’ compliance with these new Standards;
- the Government expects the UK to be evaluated in 2016 and is seeking to agree the draft Directive in a timely way so that domestic legislation can be amended to reflect the Standards by then;
- as we were told previously, while the Government remains broadly supportive of the Commission’s proposals, there are a limited number which gave cause for concern;
- these include those related to extension of scope on gambling sector regulation, removal of thresholds for e-money products, introduction of a supranational approach to risk assessment and mitigation and third country equivalence;
- in addition other Member States have proposed changes to the Commission’s proposals which also give rise to concern;

\(^{39}\) See headnote.
• the Government has made progress on these issues through negotiations in Council working groups;

• Ministers considered some of these issues as part of a status update at the 15 November ECOFIN Council;

• the Presidency hopes to agree a general approach on this matter early in 2014; and

• in parallel, both the draft Directive and the draft Regulation are being discussed actively in the European Parliament under the joint-leadership of the Economic & Monetary Affairs and Civil Liberties, Justice and Home Affairs committees, suggesting potential progress towards trilogue negotiations in January or February 2014.

11.8 The Minister then gives us a detailed update on the proposals of concern to the UK in the draft Directive, as follows.

**Company Registry of Beneficial Ownership**

11.9 The Minister says that:

• transparency of company beneficial ownership has been a priority for the UK’s 2013 Presidency of the G8;

• following commitments made at the Lough Erne Leaders’ Summit and stakeholders’ responses to a consultation led by the Department for Business, Innovation and Skills, the Prime Minister announced on 31 October that the UK’s central registry of company beneficial ownership information will be made publicly accessible — a full response to the consultation will be issued in early 2014;

• the draft Directive is an opportunity to secure EU wide commitment on transparency of company beneficial ownership, ensuring that companies know who owns and controls them and that this information is accessible to law enforcement, tax administrations and other relevant authorities — ideally through a central registry for greater transparency;

• ahead of the 15 November ECOFIN Council, the Prime Minister wrote to the European Council President to encourage other Member States to follow the UK’s lead on this issue;

• a letter from MEPs to Finance Ministers also urged Member States to take action similar to the UK on company beneficial ownership;

• these letters gave renewed political impetus at the ECOFIN Council, yet support remains patchy;

• a number of Member States and MEPs are also now calling for registries of trust beneficial ownership;
• the Government recognises the need to improve the transparency of trusts to help prevent their use for illicit purposes and is committed to implementing the Standards in relation to trusts in order to achieve this; but

• it does not believe that trust registries would be an effective option to addressing the risks associated with trusts.

Supranational Risk Assessments

11.10 The Minister tells us that:

• in line with the Standards, the Commission’s proposals require Member States to conduct a risk assessment of their money laundering and terrorist financing (ML/TF) regimes;

• the Government is supportive of this and the Prime Minister committed in the UK G8 Action Plan to conducting a national risk assessment by 2014;

• the Government recognises the need for Member States to share the findings of these assessments to help identify EU level risks, particularly where the findings lead to policy decisions at Member State level;

• however, the Government opposes granting powers to the Commission to introduce legally binding measures across the EU in response to a supranational assessment of risk;

• risk varies significantly across the EU, as it does globally;

• the assessment of risk is most effective at national level — with effective communication of that within the EU to identify and consider EU level risks; and

• the Government will resist proposals to give the Commission new powers to introduce legally binding measures in response to a supranational assessment of risk.

Third Country Policy

11.11 The Minister comments that:

• the Commission’s proposal would discontinue Third Country Equivalence listing as established under the Third Money Laundering Directive, yet some Member States have called for its retention;

• the Third Country Equivalence listing sought to identify third countries with equivalent ML/TF legislation in order to extend to those third countries the effective exemption from due diligence that exists for firms doing business with each other in the EU;

• the lack of objective and up to date information on which to make decisions on third country equivalences led to a listing process that was highly subjective and criticised by the FATF during evaluations of Member States; and
for this reason, the Government will continue to resist other proposals to continue with either a “white list” or “black list” of third countries.

**e-money (electronic money)**

11.12 The Minister says that:

- the Government remains concerned at the Commission’s proposal to remove the threshold below which due diligence is not required for e-money products;
- this is expected to lead to different approaches to e-money by Member States, given the approach already taken by some Member States and what is being sought by some in negotiations on the draft Directive;
- removal of the threshold could undermine the single market, the growth of this sector and financial inclusion; and
- Council working group negotiations are progressing positively and the Government is working closely with industry representatives to ensure a proportionate and effective approach to e-money products.

**Gambling Service Providers**

11.13 The Minister tells us that:

- the Commission’s proposal would extend the scope of the Directive to require regulation of all providers of gambling services;
- this would go beyond the scope of the Standards, which only apply to casinos;
- given the disproportionate impact that this would have on the gambling sector in the UK, the Government continues to oppose this proposal; and
- Council working group negotiations are progressing positively and the Government is working closely with industry representatives to ensure a proportionate and effective approach to any extension of scope in the gambling sector.

**Politically-Exposed Persons (PEPs)**

11.14 The Minister says that:

- the Government supports the Commission’s proposal on PEPs, which is to treat all EU PEPs as ‘domestic’ PEPs, which under the Standards can be subject to a risk-based rather than prescriptive approach to customer due diligence;
- not all PEPs present the same level of risk and the Government does not consider it necessary for all PEPs to be subject to the same level of due diligence by firms;

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the Government opposes other proposals for an EU list of PEPs, as that would undermine the risk-based approach that firms take and lead to a tick-box approach to due diligence that is likely to be less effective in preventing the laundering of the proceeds of corruption;

this view is supported by recent best practice issued by the FATF; and

a broad definition of PEPs and support for a risk-based approach will allow a proportionate approach that can be adapted to different cultural and political contexts.

**Cooperation between Financial Intelligence Units (FIUs)**

11.15 The Minister says that:

- the draft Directive contains a small number of provisions which contain Justice and Home Affairs (JHA) obligations;
- these relate to cooperation between FIUs;
- the Government believes that JHA obligations require a JHA legal base; and
- it is seeking to have these concerns addressed prior to agreement being reached on the Directive.

**Sanctions and Supervision**

11.16 The Minister tells us that:

- the Government agrees with the Commission’s aim of harmonising sanctions, highlighting the need for measures to remain ‘minimum maximum’ in nature, that is they are the minimum to be applied but can be exceeded;
- this is in line with the provisions of the Standards;
- minimum sanctions requirements should be proportionate and in line with the powers and capacities of supervisors and self-regulated bodies; and
- on supervision, the Government welcomed the Commission proposals and has secured progress in clarifying the issue of home-host country supervision in order to ensure minimal burden on businesses ‘passporting’ their services from one Member State into another.

11.17 Turning to our question as to how the ECB Opinion, document (c), played into the Government’s position, the Minister comments that:

- like the Government, the ECB is broadly supportive of the Commission proposals and welcomed the general strengthening of the risk-based approach in the draft Directive;

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41 FIUs are national law enforcement agencies, which often cooperate at an international level.
• the Government is keen for sanctions to be harmonised though these should remain ‘minimum maximum’ principles, consistent with a risk-based approach and a minimum harmonisation Directive; and

• the Government has been supportive also of efforts to align key concepts between the draft Regulation and the Payment Services Directive.

Conclusion

11.18 We are grateful to the Minister for his account of where matters stand on these proposals and look forward to information on further developments.

11.19 Meanwhile the documents remain under scrutiny. However, in that connection we note the Minister’s suggestion that the Presidency may wish to secure agreement on general approaches and move to trilogues in the New Year. So we remind him that the Government cannot support such general approaches while the proposals remain under scrutiny.
12 Banking Union: single resolution mechanism


(b) European Central Bank Opinion on a draft Regulation establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Bank Resolution Fund and amending Regulation (EU) No. 1093/2010 (CON/2013/76)

Legal base
(a) Article 114 TFEU; co-decision; QMV
(b) —

Department
HM Treasury

Basis of consideration
Minister’s letter of 12 December 2013

Previous Committee Reports
(a) HC 83-xiii (2013–14), chapter 19 (4 September 2013) and HC 83-xxiii (2013–14), chapter 10 (4 December 2013)
(b) HC 83-xxiii (2013–14), chapter 10 (4 December 2013)

Discussion in Council
Probably 18 December 2013

Committee’s assessment
Legally and politically important

Committee’s decision
Not cleared; but conditional scrutiny waiver granted

Background

12.1 In September 2012 the Commission published a Communication about establishing a “Banking Union” and two draft Regulations concerning supervision of the banking sector.42 One draft, now adopted as Council Regulation (EU) No. 1024/2013 (the ECB Regulation), confers tasks on the European Central Bank (ECB) concerning policies relating to the prudential supervision of credit institutions. The other, now adopted as Regulation (EU) No. 1022/2013 (the EBA Amending Regulation) amends consequentially the Regulation establishing the European Banking Authority (EBA).

12.2 The ECB Regulation gives the ECB specified supervisory tasks in relation to the prudential regulation of credit institutions established in the eurozone, through a Single Supervisory Mechanism (SSM). This transfer of responsibilities to the ECB is intended to ensure an effective prudential supervisory mechanism within the eurozone. There is an

option for non-eurozone Member States to participate in the SSM through a “close cooperation” arrangement on an opt-in basis. Collectively eurozone Member States and those choosing to opt in would be known as “participating Member States”. The ECB is to carry out its tasks within the existing EU supervisory framework and will not take over any tasks from the EBA. The EBA will continue to work towards a single rulebook, regulatory convergence and consistency of regulatory practice.

12.3 Also relevant to establishing the Banking Union is a draft Bank Recovery and Resolution Directive (the BRRD), which would set the rules for dealing with the recovery and resolution of credit institutions and investment firms in all Member States. In June the ECOFIN Council agreed a general approach on the BRRD for discussions with the European Parliament. Following those discussions the Council modified its general approach on 10 December, with a view to concluding a deal with the European Parliament.

12.4 As foreshadowed in its 2012 Communication, in July the Commission proposed this Regulation, document (a), to establish, as the second pillar of the Banking Union, uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms, in the framework of a Single Resolution Mechanism (SRM) and a Single Bank Resolution Fund. The draft Regulation builds on the BRRD and sets out to a degree how the BRRD should be applied within the participating Member States. There are two main elements of the SRM proposal:

- transfer of responsibility for bank resolution from the national to the EU level in participating Member States; and
- creation of a Single Bank Resolution Fund to assist in the financing of resolutions under the SRM.

12.5 In this Opinion, document (b), the ECB comments on the draft Regulation on a SRM. It fully supports establishing the SRM. The ECB considers both the SRM and the SSM to be essential parts of the integrated financial framework of the Banking Union, which will help break the link between banks and sovereigns in the Member States concerned and reverse the current process of financial market fragmentation.

12.6 Earlier this month, we again considered the SRM proposal and we noted that:

- it seemed possible that the Presidency would attempt to secure a general approach on the draft Regulation, document (a), at the ECOFIN Council on 10 December; and
- we were being asked to give the Government a free hand, by clearing the document from scrutiny, to acquiesce in such a general approach if it deemed it appropriate.

12.7 However, we said that:

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• we had received Government responses to important questions, asked in early September, so late that we had been unable to analyse them satisfactorily before the Council meeting, let alone consider whether we wished to recommend a timely debate;

• so in these circumstances we would not clear the document from scrutiny and we advised the Government that, given the importance of the issues at stake, we would regard an abstention in a vote on a general approach at the forthcoming Council as merely a token regard for parliamentary scrutiny;

• we wanted the Government to report back, promptly, on the outcome of the Council, before we would consider further scrutiny of the document; and

• regarding the ECB Opinion, document (b), since it related so closely to aspects of the draft Regulation still being negotiated, we would hold it also under scrutiny.45

The Minister’s letter

12.8 The Financial Secretary to the Treasury (Sajid Javid), writes to update us on the discussions of the SRM at the ECOFIN Council on 10 December. He says that as a result of the discussions it is clear that the three basic elements of any proposal are likely to be as follows. First, the Minister reports that there remains a consensus among participating Member States that the new Single Resolution Board (an EU agency, which, as originally proposed would support the Commission in the latter’s task of deciding on resolution or insolvency for a troubled institution) would take most decisions on bank resolution, with the involvement of EU institutions limited only to those decisions that demonstrably cannot be taken by an EU agency under existing case law. He adds that the Board’s detailed decision-making arrangements remain to be agreed.

12.9 Secondly, the Minister says that the scope of the SRM will continue to be that all banks are to be covered within the overall mechanism, with national resolution authorities playing a larger role in smaller banks and in resolutions where no external funding is required.

12.10 Thirdly, the Minister tells us that:

• some Member States have proposed moving some elements of the proposal to an intergovernmental agreement between the participating Member States, in particular the mutualisation of resolution funding;

• Ministers will meet to finalise the scope of this agreement and how it will interact with the SRM’s provisions; and

• there was broad agreement that an intergovernmental agreement would include provision for participating Member States to compensate non-participating Member States for any liabilities they incurred (including through the EU budget) as a result of EU institutions performing tasks under this Regulation.
12.11 The Minister continues that:

- the Government will continue to approach negotiations constructively and will be prepared to support an agreement provided it is consistent with the overall framework for dealing with banking failure in the BRRD (which remains subject to discussion in trilogues) and provides for fair and equal treatment of non-participating Member States;

- it has made substantive progress in securing equal treatment of resolution authorities in participating and non-participating Member States and will continue to push for full equal treatment in any general approach;

- as part of this, the Government is seeking stronger non-discrimination requirements, provisions for close cooperation between the SRM’s authorities and resolution authorities in non-participating Member States and symmetry in application of the EBA’s binding powers on all resolution authorities across the single market;

- the Presidency now plans to seek agreement on a general approach on the SRM Regulation and to finalise the scope of the intergovernmental agreement between the participating Member States at a special ECOFIN Council (probably on 18 December); and

- discussions to finalise texts, including with the European Parliament, would then continue in the New Year.

12.12 The Minister concludes by saying that:

“I appreciate that these are significant issues. But it would greatly help the Chancellor and I at next week’s negotiations if we had your support for an agreement which secures UK interests and, in particular, ensures no budget liability for the UK and provides for equal treatment for participating and non-participating Member States.”

**Conclusion**

12.13 We refer to the Minister’s letter of 3 December, which we reported on 4 December,46 and note the revisions to the proposed Regulation to accommodate the Meroni doctrine by curtailing the discretion of the Board on questions of policy. We also note the (second) Opinion on this of the Council Legal Service,47 and ask the Minister to confirm that, as a result of the revisions, the Legal Service is content that the delegation of power to the Board is now lawful.

12.14 We thank the Minister for this prompt account of the 10 December ECOFIN Council. We note his plea for our support for an agreement which secures UK interests, which we take to be a request for clearance of the documents from scrutiny. Given the continuing uncertainty over the likely final form of the SRM we are not prepared to give that clearance. We recognise, however, the fast moving nature of the negotiations

46 Ibid.
47 14547/13, 7 October 2013.
on this matter and are prepared to grant a waiver, in terms of the Scrutiny Reserve Resolution, enabling the Government to support a general approach, on the following conditions:

- that the Government only accepts an Article 114 TFEU legal base if the Regulation can be demonstrated to contribute “to an on-going harmonisation process in the field of financial services”\(^\text{48}\) across the EU, rather than solely within the eurozone. Otherwise, this proposal could set a dangerous precedent for the legal base of future eurozone measures. This point was not addressed in the (first) Council Legal Service Opinion\(^\text{49}\) — should the Minister vote in favour of the proposal based on Article 114 TFEU we expect him to provide the necessary legal justification;

- that there is clear and unambiguous limitation of the Commission’s role. We note that in his letter of 3 December the Minister says “the proposed conferral of executive power on the Commission using secondary legislation would be unprecedented”. Should the Minister vote in favour of the proposal we expect him to provide a justification of why the powers conferred on the Commission are no longer “unprecedented”, but are consistent with the EU Treaties;

- that an intergovernmental agreement be limited to the Single Resolution Fund and that it does not regulate the use of EU institutions outside the framework of EU law, as was the case with the intergovernmental Treaty on Stability, Coordination and Governance in the Economic and Monetary Union; and

- that the equality of treatment for participating and non-participating Member States remains secured.

12.15 We look forward to a further report on developments in the Council negotiations — meanwhile the documents remain under scrutiny.


\(^{49}\) Ibid.
13 Freezing and confiscation of proceeds of crime

| (33758) 7641/12 + ADDs 1–2 COM(12) 85 | Draft Directive on the freezing and confiscation of proceeds of crime in the European Union |

**Legal base**  
Articles 82(2) and 83(1) TFEU; co-decision; QMV

**Department**  
Home Office

**Basis of consideration**  
Minister’s letter of 4 December 2013

**Previous Committee Reports**  
HC 86-xxii (2012–13), chapter 9 (5 December 2013);  
HC 86-xii (2012–13), chapter 5 (12 September 2012);  
HC 86-vi (2012–13), chapter 4 (27 June 2012);  
HC 428-lvii (2010–12), chapter 1 (18 April 2012)

**Discussion in Council**  
Agreed at COREPER level on 3 December 2013

**Committee’s assessment**  
Legally and politically important

**Committee’s decision**  
Not cleared; further information requested

**Background and previous scrutiny**

13.1 The draft Directive, which would establish a set of minimum rules covering different types of confiscation (value-based confiscation, extended confiscation, non-conviction based confiscation and third party confiscation), has been considered in some detail in our earlier Reports and was the subject of a “Lidington” opt-in debate in June 2012. Despite welcoming the aims of the draft Directive and indicating that it was broadly in line with existing UK legislation and practice, the Government somewhat belatedly concluded that it might undermine the UK’s domestic civil asset recovery regime. This was because the draft Directive — an EU criminal law measure — included provisions on non-conviction based confiscation which are governed in the UK by civil procedures under Part V of the Proceeds of Crime Act (POCA) 2002 and might, the Government feared, provide a basis for asserting that more stringent criminal law standards and safeguards (under Article 6(2) and (3) of the ECHR) should apply to Part V of the Act. The Government therefore decided not to opt in to the draft Directive, but to play an active role in negotiations with a view to considering a post-adoption opt-in.

13.2 We have retained the draft Directive under scrutiny for two reasons. First, a decision to opt into the Directive after its adoption by the Council and the European Parliament might have some bearing on the UK’s 2014 block opt-out decision, as many of the criminal offences to which the Directive would apply are set out in EU criminal law instruments adopted before the Lisbon Treaty entered into force and are thus within the scope of the UK’s block opt. See HC 683 (2013–14); The UK’s block opt-out of pre-Lisbon criminal law and policing measures.

50 See headnote.
51 See HC 683 (2013–14); The UK’s block opt-out of pre-Lisbon criminal law and policing measures.
original text might have for UK participation in the Directive. Second, the Government indicated that its priority was to establish effective mutual recognition arrangements for conviction and non-conviction based confiscation orders, in both the civil and criminal contexts. We asked the Government to inform us of the progress it is making in exploring with EU partners more effective arrangements for mutual recognition in this area.

13.3 We last reported on the draft Directive just over a year ago, when it was anticipated that the Council would agree a general approach at the December Justice and Home Affairs Council. Our Twenty-second Report of Session 2012–13, agreed on 5 December 2012, summarised the main developments in negotiations within the Council. We noted that the Government’s principal concern — that the inclusion in an EU criminal law measure of provisions on non-conviction based confiscation might increase the risk of legal challenge to the UK’s civil recovery procedures — remained in Article 5 of the draft Directive. However, other changes appeared to make it somewhat more, rather than less, likely that the Government might wish to consider opting in post-adoption.

13.4 We asked the Government to provide further progress reports once negotiations with the European Parliament were underway highlighting, in particular, changes likely to affect the Government’s assessment of the costs or benefits of participating in the draft Directive. Finally, we reminded the Minister that we looked forward to hearing what progress the Government was making in seeking to establish more effective arrangements for the mutual recognition of confiscation orders obtained in both civil and criminal law contexts.

The Minister’s letter of 4 December 2013

13.5 The Minister for Security (James Brokenshire) confirms that a general approach was agreed at the Justice and Home Affairs Council in December 2012 and that trilogue negotiations began in June 2013. His letter summarises the main elements of a provisional agreement reached by the European Parliament and Council:

“The most significant changes to the text relate to the non-conviction based (NCB) confiscation provisions. Article 5 of both the Commission text and that of the General Approach contained stand-alone NCB provisions. This Article has now been deleted. The obligation to take measures to enable the confiscation of assets from those who have fled, or are too ill to stand trial, are now included in Article 3, and, as in the General Approach, may be met through holding trials in absentia or, if that is not possible, through the use of an NCB power (Article 3(2)).

“Article 4, on extended confiscation, has also been significantly amended. The Directive now identifies those offences to which extended confiscation should at least apply. In the General Approach, extended confiscation applied to a person convicted of a ‘serious criminal offence’. However, the term ‘serious’ was not defined and was left to Member States to define. The Parliament and the Commission found that approach unacceptable and compromise was reached with the Council on a list of ‘serious’ offences.

“The Parliament and the Council have also provisionally agreed a declaration calling upon the Commission to conduct a feasibility study for a separate instrument for NCB confiscation. This declaration will sit alongside the declaration agreed at the
General Approach calling on the Commission to consider revising the mutual recognition arrangements in light of the changes brought about by the Directive. Given the upcoming European Parliamentary elections, and changes at the European Commission, I do not expect any proposals for an instrument on the mutual recognition of NCB orders to emerge in the short term.”

13.6 The Minister expects the European Parliament formally to approve the compromise text in January 2014, followed by formal approval in the Council in February. He continues:

“As you know, the Government did not opt in to this instrument at the pre-adoption stage. Once the text has been adopted the Government will carefully consider a post-adoption opt-in. This will be subject to Parliamentary scrutiny in the normal way.”

Conclusion

13.7 We thank the Minister for providing us with a copy of the text provisionally agreed by the Council and the European Parliament and note the Government’s intention to consider opting into the Directive once it has been formally adopted by both institutions. We ask him to ensure that the final agreed text is deposited in Parliament with an Explanatory Memorandum explaining how the Directive differs from the text originally proposed by the Commission and the general approach text agreed by the Council in December 2012.

13.8 We are particularly interested to hear whether the removal of a specific provision on non-conviction based confiscation addresses the Government’s concern that the Directive might taint the UK’s domestic civil asset recovery regime under Part V of the Proceeds of Crime Act 2002. We also note that most of the EU criminal law instruments to which the Directive would apply are subject to the UK’s 2014 block opt-out decision and the Government has already indicated that it does not intend to rejoin them. We look forward to receiving a detailed explanation of the impact that the Government’s 2014 block opt-out decision will have on the scope of application of the Directive in the UK, should the Government recommend opting in. Pending deposit of the final agreed text of the Directive, the proposal remains under scrutiny.
14 EU–Madagascar Fisheries Agreement

Draft Council Regulation amending Council Regulation (EU) No. 1258/2012 on the allocation of fishing opportunities under the Protocol agreed between the European Union and the Republic of Madagascar setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the two parties currently in force

Legal base
Article 43(3) TFEU; QMV

Document originated
4 July 2013

Deposited in Parliament
10 July 2013

Department
Environment, Food and Rural Affairs

Basis of consideration
EM of 24 July 2013 and Minister’s letter of 10 December 2013

Previous Committee Report
None

Discussion in Council
Shortly

Committee’s assessment
Politically important

Committee’s decision
Cleared

Background

14.1 The EU has a number of Fisheries Partnership Agreements with third countries under which its vessels may catch in the waters of the country concerned in exchange for a financial contribution. One such country is Madagascar, with which the EU entered into a new Agreement in 2012, providing fishing opportunities for certain highly migratory species. In particular, 34 EU surface long-liners over 100GT are licensed to catch these, with Spain currently receiving 17 such licences, France nine, Portugal five, and the UK three.

The current proposal

14.2 By-catches of sharks form part of the catches of these vessels, and, following a recommendation by the Scientific Committee of the Indian Ocean Tuna Commission, an annual by-catch of 200 tonnes has been set for EU vessels for a period of two years from 1 January 2013. The Commission duly put forward in July 2013 this proposal, which would divide that quantity up between the Member States concerned. However, although Spain would receive 166 tonnes, Portugal 27 tonnes and France seven tonnes, the UK would receive no allocation.

The Government’s view

14.3 We initially received an Explanatory Memorandum of 24 July 2013 from the then Minister (Richard Benyon), saying that the Government recognised that none of the UK vessels with a licence had been active in recent years, due to fear of piracy, and that the proposal was unlikely to have any practical effect during the duration of the present
Agreement. Nevertheless, he pointed out that piracy concerns have led to a decline in the uptake by other Member States as well, and that the UK vessels could have an interest in returning once the situation normalises. As this would be almost impossible without any by-catch allocation, the UK had raised the matter in the negotiations on this document.

14.4 Our Chairman wrote to the then Minister on 11 September, saying that we hesitated to recommend clearance whilst this matter remained unresolved, and that we would be holding the document under scrutiny, pending further information. We have now received a letter of 13 December from the current Minister (George Eustice) saying that this issue was raised recently at a Council working group, when the UK reiterated its concerns that the absence of any allocation of shark quota to the UK would effectively prevent its vessels from returning to the fishery in the future. However, he reports that, at present, it seems unlikely that the UK will be given such an allocation, and says that, although the Government supports the aim of limiting the level of shark catches in this region, if the UK were in the event to receive no shark quota under a Protocol in which a by-catch may be inevitable, it would abstain on this amendment.

Conclusion

14.5 Whilst the context of this proposal is somewhat specialised, and it seems unlikely to have any immediate practical impact, it is nevertheless the case that the UK has clearly been treated less favourably than the other three Member States with an interest in this fishery, and, from what the Minister has said, it appears unlikely that the Regulation eventually agreed will rectify this. Since the Regulation will be adopted by qualified majority, there may ultimately be little the Government can do to prevent such an outcome, but we nevertheless think it right to draw this situation to the attention of the House.

15 Coupled national support schemes under the CAP

| (35598) | European Court of Auditors Special Report No. 10 concerning the Common Agricultural Policy: is the specific support provided under Article 68 of Council Regulation (EC) No. 73/2009 well designed and implemented? |

Legal base
Deposited in Parliament 2 December 2013
Department Environment, Food and Rural Affairs
Basis of consideration EM of 10 December 2013
Previous Committee Report None
Discussion in Council No date set
Committee’s assessment Politically important
Committee’s decision Cleared
Background

15.1 The reform of the Common Agricultural Policy (CAP) in 2003 began the process of ‘decoupling’ (i.e. breaking the link between the €40 billion or so of direct payments paid to EU farmers each year and agricultural production). Specifically, a number of schemes under which farmers were paid per head of livestock or area of crops were abolished, and replaced by the Single Payment Scheme, based on land area.

15.2 However, an exemption enabled a limited degree of funding from Member States’ direct payment budgets for nationally designed schemes involving coupled support, and, following the CAP ‘Health Check’ in 2008/09, this provision was revised and extended by virtue of Article 68 of Council Regulation (EC) No. 73/2009. This enables such support to be granted (a) for specific types of farming which are important for the protection of the environment, improving the quality of agricultural products, improving their marketing, enhancing animal welfare, activities entailing additional agri-environment benefits; (b) for addressing specific disadvantages affecting livestock farmers in economically vulnerable or environmentally sensitive areas; (c) in areas subject to restructuring and/or development programmes to ensure against land abandonment and/or to address specific disadvantages; (d) for contributions to premiums for insurance against losses caused by adverse weather or diseases; or (e) for contributions to mutual funds addressing losses caused by animal or plant disease or environmental incidents.

The current document

15.3 The total budget for 2010–13 is €6.4 billion, and this Special Report by the European Court of Auditors (ECA) examines whether the support was well designed and implemented. It notes that, in that period, 24 Member States had introduced measures under Article 68, roughly two-thirds of which represented coupled support (with the remaining expenditure covering measures involving agri-environment, abandoned farmland and insurance). It selected 13 measures in France, Italy, Spain and Greece, which between them accounted for expenditure of €2.7 billion, with each measure being considered in terms of scheme design, including underlying justification; analysis of management and control systems; and inspections to check compliance.

15.4 The Court notes that, although Article 68 enables Member States to maintain coupled support only in clearly defined cases, they had a large degree of discretion in practice, and it concludes that, as a result, the measures have not always been aligned with the principle of decoupling and simplification, tending in many cases simply to continue the previous coupled aid. It also comments that the Commission had few powers to monitor or control the schemes adopted; that Member States had supplied little evidence that the measures introduced were necessary or relevant; that the effectiveness of scheme design and levels of aid were questionable; and that there were weaknesses in the administrative controls.

15.5 The Court also notes that, under the further CAP reform agreement earlier this year, many of the existing Article 68 measures will continue to be permitted under the new voluntary coupled support provisions, and that consequently they could well be maintained. It makes three basic recommendations:
that the granting of coupled support should be justified to the Commission and checked by it;

that a system of monitoring should be introduced, with indicators established at the outset to provide for subsequent evaluation; and

that Member States need to establish suitable and comprehensive management and control systems.

15.6 The Commission’s response is included in the report, and in essence says that it has fulfilled its responsibilities under the Article 68 provisions, and that any weaknesses are down to Member State decisions and actions.

The Government’s view

15.7 In his Explanatory Memorandum of 10 December 2013, the Parliamentary Under-Secretary for Farming, Food and the Marine Environment (George Eustice) points out that, by their very nature, coupled payments distort the market as they encourage a level of supply which outstrips demand, and so depress prices for all EU producers. In addition, they require additional layers of bureaucracy, whilst the resulting overproduction can also lead to negative environmental and development impacts. He says that it has, therefore, been the policy of successive UK Governments to oppose the use of coupled payments, and that none of the Article 68 options have been taken up in England, Northern Ireland or Wales (though Scotland has since 2005 operated a limited coupled support scheme for the beef sector, which currently operates under the Article 68 provisions).

15.8 The Minister adds that the UK argued during the negotiations on the current Article 68 measures that the provisions did not provide for adequate control or monitoring, and that consequently, the Court’s findings do not come as a surprise. However, he finds it disappointing that the report was not available in time to influence the recent CAP reform negotiations, particularly those on the voluntary coupled support arrangements which will replace Article 68 measures under the new CAP in 2015. He says it is also disappointing that the Commission has neither accepted any responsibility for inadequacies in the existing detailed rules, nor undertaken to try and address these in the delegated and implementing acts needed to implement the CAP reform agreement on voluntary coupled support. The UK will therefore continue to press the Commission on this issue in order to help avoid perpetuating the weaknesses identified by the Court.

Conclusion

15.9 Although (with the exception of the Scottish Beef scheme) the UK has chosen not to make use of the provisions of Article 68 of Council Regulation (EC) No. 73/2009, the extent to which a measure of coupled support should be maintained under the Common Agricultural Policy has been a bone of some contention. We are therefore drawing to the attention of the House this report by the European Court of Auditors, which makes a number of pertinent observations on the way in which the Article has been operated to date by other Member States, and the extent to which this situation will continue after the latest round of reforms come into effect. We also endorse the Government's comment that it would have been preferable had the Court’s findings...
been made available in time to influence the relevant CAP reform negotiations in Brussels.

16 The EU and Indonesia

| 8949/13 | COM(13) 230 |

*Legal base*  
Articles 207, 209, and Article 218(6)(a) TFEU; QMV; consent

*Document originated*  
24 April 2013

*Deposited in Parliament*  
30 April 2013

*Department*  
Foreign and Commonwealth Office

*Basis of consideration*  
Minister’s letter of 28 October 2013

*Previous Committee Reports*  
HC 83-xvi (2013–14), chapter 21 (9 October 2013); HC 83-xii (2013–14), chapter 21 (17 July 2013)

*Discussion in Council*  
22 July 2013

*Committee’s assessment*  
Legally and politically important

*Committee’s decision*  
Cleared (decision reported 9 October 2013)

**Previous scrutiny**

16.1 When we last reported on this proposal, we drew the following conclusions:

“There are two points to make. The first is that the Minister appears to be unaware of his Government’s Code of Practice on Scrutiny of Opt-In and Schengen Opt-Out Decisions, adopted in May of this year and to be found in annex S of the Cabinet Office Scrutiny Guidance. At paragraph 4 the Code says that an Explanatory Memorandum ‘will provide an indication, to the extent possible, of the Government’s views as to whether or not it would opt in and the factors likely to influence the Government’s decision’. We ask the Minister to consider whether saying ‘at the time the Government had not yet arrived at a view’ is a satisfactory explanation of why there was no mention of factors likely to influence the Government’s opt-in decision in the Explanatory Memorandum. On reflection he may realise that the Government’s opt-in decisions are rarely agreed at the time an Explanatory Memorandum is drafted, that is why the relevant factors are so important.

“Secondly, it is dismissive of the Committee’s interest in the Government’s reasons for not opting into a readmission agreement with Indonesia to reply by saying no more than it was not in the UK’s interest to do so. Again, on reflection, he may
realise that ‘not in the UK’s interest’ can cover a host of virtues or a multitude of sins: either way, it is not illuminating in any sense at all.

“We think the letter displays a cavalier disregard for a Report of this Committee, which sits ill with the Minister’s overall responsibility for relations with Parliament on EU affairs, and with his often repeated statements that he takes Parliamentary scrutiny very seriously indeed. We therefore ask the Minister to reconsider his answers, to write again, and to ensure that the relevant officials in his Department are made aware of our concerns.”

**Minister’s letter of 28 October 2013**

16.2 The Minister for Europe replied as follows:

“Thank you for your Committee’s clearance of the Proposal for a Council Decision on the conclusion of the Framework Agreement on Comprehensive Partnership and Cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part, as ‘legally and politically important’.

“I understand your Committee’s concerns expressed in its report of 9 October regarding the lack of a fuller explanation in my Explanatory Memorandum (EM) dated 9 July 2013 regarding the Government’s approach to the opt-in in this case. Relevant officials have been made aware that, in order to fully comply with the JHA Code of Practice guidance, EMs submitted to your Committee should seek to set out factors likely to inform the Government’s consideration in future cases of this kind.

“My officials are working to improve internal procedures to ensure that factors likely to influence the Government’s decision are detailed at an early stage in EMs and correspondence with your Committee – in order to ensure that the important work of the Parliamentary scrutiny committees is informed by the greatest extent of information possible. I fully accept your point that the Government should be able to provide greater detail on the factors likely to affect an opt-in decision.

“I appreciate that the explanation given in my 2 August letter that ‘it was not in our national interest to opt-in’ could have been elaborated further. The Government decided that the UK should not opt in to the readmission element of the EU-Indonesia PCA and that we should instead assume these commitments in our own right as a separate contracting party to the agreement. This was our preferred approach due to the fact that the readmission provision fell in an area of unexercised shared competence, where either the EU or the Member States could act. We took the view that the EU should not bind the UK by its exercise of such shared competence.

“However, we will assume these commitments in our own right. Indonesia is not currently an immigration returns priority for the UK (there were only nine enforced returns to Indonesia in 2012) and there are no problems with existing bilateral returns arrangements which signing up to a EU agreement on readmission would help resolve. However, should the EU bring forward a future readmission agreement
with Indonesia, the Government’s view is that our opt-in will apply. Any such future readmission agreement would of course be deposited separately with Parliament for the scrutiny committees’ consideration.

“We were able to take this approach due to the mixed competence nature of the agreement and because it was unclear from the text whether the EU or the Member States (or both) were entering into the commitments on readmission. We are therefore bound by the readmission commitment in respect of Indonesia, but not as part of the EU.”

Conclusion

16.3 We note the Minister’s acknowledgement of the failings of his original Explanatory Memorandum and trust a similar situation will not arise again.

16.4 The differences of opinion between the Government and ourselves on the application of the opt-in in the absence of a Title V legal base have been aired in many of our previous Reports; and so, whilst grateful for the Minister’s reply, we do not propose to take this further.

17 EU Special Representative for the South Caucasus and the crisis in Georgia

| (35626) | Council Decision amending the mandate of the European Union |
| — | Special Representative for the South Caucasus and the crisis in Georgia |

**Legal base**

Articles 28, 31 (2) and 33 TEU; QMV

**Department**

Foreign and Commonwealth Office

**Basis of consideration**

EM of 10 December 2013

**Previous Committee Report**

None; but see (35052) —: HC 83-vii (2013–14), chapter 14 (26 June 2013); also (33954) —: HC 86-iv (2012–13), chapter 22 (14 June 2012) and (32778) —: HC 428-xxxvi (2010–12), chapter 20 (14 September 2011)

**Discussion in Council**

24 January 2014 Foreign Affairs Council

**Committee’s assessment**

Politically important

**Committee’s decision**

Cleared; further information requested

Background

17.1 The EU Special Representative (EUSR) for the South Caucasus was first appointed on 20 February 2006. He was tasked with supporting the EU High Representative for Foreign
Affairs and Security Policy and the Council in: assisting Armenia, Azerbaijan and Georgia in carrying out political and economic reforms; preventing conflicts in the region and contributing to the peaceful settlement of conflicts, including through promoting the return of refugees and internally displaced persons; engaging constructively with main interested actors concerning the region; encouraging and supporting further cooperation between States of the region, including on economic, energy and transport issues; and enhancing EU effectiveness and visibility in the region. 18 months ago, the “Georgia Crisis” mandate was transferred from that of EUSR to Central Asia. The incumbent is Mr Philippe Lefort, a senior and experienced French diplomat (most of whose career has been dedicated the Caucasus and Russia, including as Ambassador to Georgia in 2004–2007).

The Council Decision

17.2 The Council Decision that we considered at our meeting on 26 June 2013 extended Mr Lefort’s mandate for a further year, to 30 June 2014.

17.3 The Minister for Europe (Mr David Lidington) supported the mandate extension, again describing the South Caucasus as of strategic importance to the UK and the EU, and provided a full and further positive of Mr Lefort’s performance over the past 12 months (see our earlier Report for full details). Continued stability was, he said, also key for the UK’s prosperity and energy security goals, and of particular importance to BP — the single largest investor in the Azerbaijan economy investing more than £20 billion in the Shah Deniz gas field alone; with a significant market position in Azerbaijan, operating one of the largest oil fields, which is a cornerstone of the Azerbaijani economy, and three of the four major oil and gas export pipelines; part of the Shah Deniz Consortium (SDC), with a 25.5% stake; and the current operator of the Shah Deniz I gas field, one of the world’s largest gas condensate fields. The Minister said that the SDC were looking to invest substantially to extend the field to supply gas to the EU and to expand the South Caucasus Pipeline (Azerbaijan–Georgia–Turkey). Georgia would, he said, remain a vital transit route for Azerbaijani oil and gas.

17.4 The political context was also as challenging as ever. Over the past year, tensions were again heightened between Armenia and Azerbaijan, and with Presidential elections due this October in Azerbaijan, there was the possibility of unhelpful rhetoric and nationalistic sentiment over Nagorno-Karabakh. Since last October, there had also been a tense and difficult political co-habitation between President Saakashvili and the government: the next four months leading up to the Presidential elections in October 2013 were likely to remain tense. The role of the EUSR would be important to ensure that Georgian domestic political concerns did not interfere with the Geneva Talks. Russia continued to consolidate its military presence and “borderise” the boundary between Georgia and the breakaway region (Abkhazia and South Ossetia), taking an increasingly aggressive approach in recent months. Given the proximity of Abkhazia to Sochi, Russia was taking an activist approach on security issues in the run-up to the 2014 Winter Olympics. Georgia’s insistence on its territorial integrity and commitment to NATO membership remained red lines for Russia. There was a need for stability and continuity which Phillippe Lefort in his role as EUSR could provide.

52  See (35052) —: HC 83-vii (2013–14), chapter 14 (26 June 2013).
17.5 The Minister then noted that the Member States and the High Representative had agreed that, though the mandate should be renewed for one year, it should be reviewed during Autumn 2013, with the review to be completed by 31 December 2013.

17.6 He continued as follows:

“The EU Political and Security Committee\(^53\) have stressed that these changes made to the format of the mandate are not due to under performance. This six month period will be used to assess how best to carry out the EU’s role in the region. While noting its support for the work of the EUSR for the South Caucasus and the Crisis in Georgia, the UK welcomes this proposal. We consider it is right to re-evaluate the way the EU engages in the region, given the difficulty in getting traction and making progress on the conflicts — for reasons predominantly outside the control of the EUSR. The six month budget should not be seen as prejudging the outcome of the review.

“Bilateral matters between the European Union and Armenia, Azerbaijan, and Georgia respectively will continue to be handled by the European External Action Service and the EU delegations in the three South Caucasus capitals. These include matters such as negotiations on Association Agreements, Deep and Comprehensive Free Trade Agreements, human rights, media freedom, and domestic electoral reform. Both Georgia and Armenia are making good progress on Association Agreements with the EU, and have ambitious plans to initial them at the Vilnius Eastern Partnership Summit in November 2013.”

**Our assessment**

17.7 We were puzzled that — with a mandate that was to be reviewed at the six-month point, and a six-month budget — the mandate itself had been extended for a year. We presumed that this was not in some way to avoid scrutiny of the outcome of the review. We therefore asked that, when the budget for the second six months was submitted for scrutiny, the Minister’s Explanatory Memorandum should include a full exposition of the approach taken by the review, its outcome and how it had informed whatever changes were put forward, and the Minister’s views thereon.

17.8 Timing was likely to be tight. We therefore asked the Minister also to provide the Committee with a report of the “emerging findings” in the late autumn, so that it was not presented on the eve of the Christmas recess with what was effectively a *fait accompli*, with no time to pose any questions that might arise.

17.9 On the understanding that this would be so, we cleared this further extension\(^54\).

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\(^53\) The committee of ambassador-level officials from national delegations who, by virtue of article 38 TEU, under the authority of the High Representative and the Council, monitor the international situation in areas covered by the CFSP and exercise political control and strategic direction of crisis management operations, as set out in article 43 TEU. The chair is nominated by the HR. Walter Stevens was appointed as Chair on 21 June 2013. He was then working in the Headquarters of the EEAS, as Head of the Crisis Management and Planning Directorate. He previously served as Permanent Representative of Belgium to the Political and Security Committee and to the West European Union.

\(^54\) See headnote: (33954) —: HC 86-iv (2012–13), chapter 22 (14 June 2012).
The draft Council Decision

17.10 The draft Council Decision sets out a proposed budget for the second six months of the current mandate.

The EUSR’s budget

17.11 In his Explanatory Memorandum of 10 December 2013, the Minister explains the budgeting exercise thus:

“The EUSR is paid for through the CFSP budget. The 12 month budget for FY12-13 was €2,000,000. The first six month budget for 2013-14 was increased to €1,050,000, after the UK secured a reduction of €30,000. Officials in London and Brussels pushed hard for the Commission to reduce costs. Over this period, this represented an increase of 5% compared to FY12-13.

“The second six month budget for 2013-14 was proposed to again be €1,050,000. However, officials in London and Brussels have fought hard for a reduction of the budget, and received a decrease of €10,000. The budget now stands at €1,040,000.

“As the budget has been split in half into two separate six month budgets, some items had to be budgeted in both, in case they were needed e.g. removal allowance (€14,000) for the EUSR-SC and South Caucasus based employees and financial liability insurance (€5,500). These two items are unlikely to be spent and will therefore be returned to the CFSP budget and spent on other external action. Each budget requires its own audit, and therefore this second six month budget requires an additional €15,000 in funding to be budgeted. Together these items represent €34,000 and therefore a large part of the €40,000 increase in the budget from 2013. We will push for use of twelve month budgets with any future mandate renewals, given the extra costs associated with six month budgets.

“Throughout the budget negotiations, the UK was the only Member State to push for savings. If we had blocked the budget and referred it to the Council of Permanent Representatives (COREPER), we could have made a clear statement of our fiscal prudence but there was no question that we would have been outvoted through Qualified Majority Voting. Our scope to push for further savings in the budget was therefore limited.”

The political context

17.12 The Minister illustrates the strategic significance of the region to the UK in the same terms as hitherto (c.f. paragraph 17.3 above).

The Government’s view

17.13 With regard to the EUSR himself, the Minister says:

“The UK supports the work of the EUSR. The EUSR has regular access to the Presidents and Foreign Ministers of Armenia and Azerbaijan. He is able to relay the concerns of EU member states to counter periods of rising tension and has delivered
messages of restraint including on the possible opening of Nagorno-Karabakh airport. The EUSR also engages key stakeholders including in Moscow and Ankara.

“The EUSR leads the EU’s work in respect of the conflicts in Georgia and makes frequent trips to Georgia, including the breakaway regions, and is one of the co-chairs of the Geneva peace talks. He also continues to have an advisory role to the EU Monitoring Mission (EUMM). This is important, as it helps to ensure that the EU’s work in Georgia is joined-up. The EU continues to be the main international actor on the ground in Georgia.”

**The mid-term review of the EUSR’s mandate**

17.14 The Minister says:

“The UK urged the EEAS to ensure that a review take place in a timely manner in order to allow for the decision and possible accompanying budget to be put to the Scrutiny Committees before the Christmas Recess. In the event, the review took the form of a discussion within the Political and Security Committee in Brussels on 20 November. A budget for the second six month period was first put before the Relex working group on 2 December.”

**The Government’s view**

17.15 The Minister comments thus:

“While the UK was in favour of the mandate continuing, we were disappointed that a more thorough review did not take place. We have made this point to the EEAS. As I have set out in recent correspondence to both Committees,55 we continue to push, as part of the wider EEAS review process, for improvements to the overall EUSR system.”

**Conclusion**

17.16 This is further evidence of a disturbing pattern which applies more generally to CFSP missions too, whereby the UK ploughs a lonely furrow in its endeavours to introduce and sustain even a semblance of effective budgetary discipline, monitoring and evaluation. The leisurely pace taken by the EEAS with regard to the mandate review is unexplained, and unacceptable. Why did it take so long for any work to be done? And why, if the six months starting in June were to be used to assess how best to carry out the EU’s role in the region, was the Minister prepared to settle for no more than a PSC discussion that took place only three weeks ago?

17.17 This plays into the wider question of the EUSR’s role as a whole. As the Minister notes in his letter to the Committee, we have a shared concern over their grading and remuneration. The UK’s objectives may well be “the need for a greater focus on efficiency, effectiveness and accountability, as well as a reduction in EUSR grading from

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55 See the Annex to this chapter of our Report.
AD16 to 14, to tackle the excessive salaries that you have highlighted as a key concern for the Committee.” But as we have seen here, in such areas the UK rarely finds sufficient support to achieve such objectives. Are we likely to find ourselves outvoted again?

17.18 The wider EUSR review also raises an even wider question: the role of national parliaments. CSDP is the responsibility of the Member States. It is not enough for the Minister simply to be seeking what Member States are already entitled to, i.e., “adequate time to review and revise mandates in the light of the circumstances in which an EUSR deployment is being considered”: that goes without saying.

17.19 What national parliaments are also entitled to is to scrutinise the outcome of this wider review before any decisions are taken on its implementation — especially in view of the endeavours of the European Parliament to involve itself in the process. We once again ask the Minister to assure us, in terms, that the review will be deposited with an Explanatory Memorandum, for prior scrutiny, before any decisions on it are taken.

17.20 We do not wish to see approval of the next six months budget of this EUSR to be held up in the meantime. We now therefore clear the document, and ask the Minister to respond within ten working days to the other matters we raise above.

Annex: extract of the EUSR review from the Minister’s letter of 4 December 2013 on the EU High Representative’s review of the European External Action Service (EEAS):

“In its report,56 the European Scrutiny Committee asked for further information of when, and in what form, the review of EU Special Representatives (EUSRs), foreseen in the EEAS review, will emerge. Discussions on EUSRs are ongoing. The UK has been working hard with like-minded partners to gain support for our objectives of increasing the effectiveness, efficiency and accountability of EUSRs, with a particular emphasis on the importance of national parliaments being given adequate time to review and revise mandates in the light of the circumstances in which an EUSR deployment is being considered.

“This work was interrupted on 14 October by an unexpected proposal from the EEAS setting out the ‘possible modalities and timetable’ for a full transfer of EUSRs, their staff and associated resources to the EEAS. This was backed up with a European Parliament proposal to decrease the EUSR line within the CFSP budget by 50% and transfer it to the EEAS. Following quick action by British officials in Brussels, with support from a majority of other Member States, this proposal has now been rejected.

“As a result of efforts by the UK and like-minded Member States, the EEAS circulated on 25 November a non-paper setting out further options on EUSRs. This was discussed during a 28 November Brussels meeting on horizontal issues, attended by Julian Braithwaite, the UK’s Ambassador to the Political and Security Committee.

The paper and discussion were predominantly positive from a UK perspective. The UK set out our objectives for EUSRs, including the need for a greater focus on efficiency, effectiveness and accountability, as well as a reduction in EUSR grading from AD16 to 14, to tackle the excessive salaries that you have highlighted as a key concern for the Committee.

“The subsequent discussion saw support from a number of Member States for EUSR grades (and their salaries) to be reconsidered or reduced, as well as appetite for increasing efficiency and effectiveness of the role. The EEAS also agreed that the promised review of the 2007 Council guidelines for EUSRs should take place by spring 2014 – in good time before the next round of EUSR mandate renewals in summer 2014. We are now working to ensure that a commitment to hold the 2014 review on EUSRs is included in the General Affairs Council Conclusions on the wider EEAS review process.”

### 18 Terrorist finance tracking

| (a) | Commission Communication: *A European terrorist finance tracking system (EU TFTS)* |
| 17063/13 | + ADDs 1–2 |
| COM(13) 842 |

| (b) | Commission Communication on the Joint Report from the |
| 17064/13 | Commission and the U.S. Treasury Department regarding the |
| + ADD 1 | value of TFTP provided data pursuant to Article 6(6) of the |
| COM(13) 843 | Agreement between the European Union and the United States of America on the processing and transfer of financial messaging data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program |

**Legal base**
- Documents originated: 27 November 2013
- Deposited in Parliament: 3 December 2013
- Department: HM Treasury
- Basis of consideration: EM of 10 December 2013
- Previous Committee Report: None
- Discussion in Council: Not known
- Committee’s assessment: Politically important
- Committee’s decision: Cleared
Background

18.1 The Terrorist Finance Tracking Program (TFTP) is a US Treasury Department programme that uses financial data carried on the SWIFT (Society for Worldwide Interbank Financial Telecommunications) payment system to identify, track and pursue terrorists and their financial supporters. In order to access SWIFT data held in the EU, a data-sharing agreement between the EU and US was approved and came into force on 1 August 2010.\(^{57}\)

18.2 When the Council agreed to the conclusion of the EU-US TFTP Agreement it asked the Commission to submit a “legal and technical framework for extraction of data on EU territory”. It requested that this be done within one year of the entry into force of the EU-US TFTP Agreement and, within three years of the date of entry into force of the agreement, to present a progress report on the development of an equivalent EU system. In July 2011, the Commission produced a Communication setting out five options for an EU Terrorist Financing and Tracking System (TFTS). Given the lack of a clear preference for any of the options, the Commission concluded that further analysis would be necessary by way of an impact assessment.\(^{58}\)

The documents

18.3 The Communication, document (a), presents the outcome of the analysis of the feasibility of the options for an EU TFTS, in line with the key principles of safeguarding fundamental rights, necessity, proportionality and cost-effectiveness. The Communication is accompanied by an impact assessment and an executive summary of the assessment.

18.4 The main options considered by the Commission are a framework for extraction of data on EU Territory, or an EU equivalent system, options for which are a fully centralised system at EU level, a decentralised system at Member State level and three hybrid systems in which both the EU and Member States would have a role. The options are described briefly in the following paragraphs.

A framework for extraction of data on EU Territory

18.5 Under this option, EU data would not be transferred to the US for analysis, but would be held and analysed within the EU. US analysts or experts authorised to run searches could either be physically located at the premises or could have remote access to the data.

18.6 The Commission highlights significant drawbacks to this proposal:

- with TFTP data stored in the US and the EU, fragmentation of searches, which currently run against one set of TFTP data, may have a negative impact on the quality and number of intelligence leads and worsen the overall efficiency of the TFTP; and

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\(^{57}\) See (31521) —, (31700) 11048/10, (31714) 11173/10, (31720) 11172/10: HC 428-i (2010–11), chapter 6 (8 September 2010) and Gen Co Debs, European Committee B, 8 February 2011, cols. 3-14.

\(^{58}\) (33029) 12957/11: see HC 428-xxxv (2010–12), chapter 6 (7 September 2011).
it may also significantly slow down the process of analysis, as different consecutive
searches on the TFTP data stored in two locations could be necessary to further
follow up an intelligence lead.

18.7 The Commission concludes that this option does not appear to be necessary,
proportionate, or cost effective as it would not bring additional intelligence benefits, would
be costly and demanding to set up and could create risks to personal data protection.

**A fully centralized system at the EU level**

18.8 Under this option, a single EU body would perform all the key functions of the
system:

- requesting extraction of data;
- storing data;
- searching;
- carrying out intelligence analysis;
- safeguarding and monitoring the system; and
- disseminating intelligence leads to Member States.

18.9 The Commission believes that this option is legally unsound as it would not respect
Article 72 TFEU, which confirms that the primary responsibility for maintaining law and
order and the safeguarding of internal security lies with the Member States. It concludes
that such a system would be neither feasible nor acceptable for Members States, as it would
require the creation of some form of centralized intelligence capacity at EU level.

**A fully decentralized system at Member State level**

18.10 Under this option, the system would be run by Member States’ competent
authorities, with no functions being performed at EU level. This would mean that data
could be transferred to and searched by all 28 Member States in parallel. As this option
would multiply data flows, the Commission believes there would be important cost
implications. It also believes it would also lead to an increased risk of inconsistent
treatment of data and creation of uneven data protection mechanisms. This option is not
considered to be viable.

**An EU TFTS coordination and analytical service**

18.11 Under this option, an EU central unit would have to be created, and would be tasked
with requesting data from the Designated Provider(s) (for example, SWIFT), running
searches, analysing intelligence and distributing the results. The difference from a fully
centralized system would be that the Member States would have direct access to the system
and would be able to request searches to be run on their behalf by the central unit or by
their own analysts.
18.12 This option is assessed in the Commission’s impact assessment. The Commission says that:

- the option would be likely to have a positive impact on the prevention of terrorism and enhancement of security in the EU, as it would involve both the EU and Member State teams using the programme and could ensure the system is geared towards the specific “EU threat”;
- this improvement is, however, contingent on an increasing willingness and ability of Member States to share information and analysis in the medium to long term;
- it is unclear to what extent this increased flow of information can be relied upon;
- additionally, as Member States would retain the capacity to request searches from the US under the TFTP, this system would need significant Member State buy-in and cooperation, if it were to provide a more coherent EU picture; and
- like all the options related to a new system, it would also lead to significant additional costs.

An EU TFTS extraction service

18.13 This option would also involve the creation of an EU central unit. However, the EU body would run searches at the request of Member States and would disseminate results to Member States without analysing the intelligence. However, it would be able to run its own searches and to analyze the result of these searches.

18.14 This option is assessed in the Commission’s impact assessment. The Commission says that:

- the option could have some positive impact on preventing terrorism and enhancing security in the EU;
- the system would be more responsive to EU threat analyses, as the searches would be run according to the specific intelligence requirements of Member States;
- the role of the centralised EU body would, however, be limited to conducting searches and transfer of responding data to the requesting Member State — it would act as a gatekeeper;
- there would be no EU-level analysis and the system would be wholly reliant on Member States sharing analyses with one another, outside the system, to create a coherent EU intelligence picture; and
- the inability of the system to guarantee a uniform approach to definitions of searches would increase the risk of false positives, thereby impinging on data protection and privacy rights.
A Financial Intelligence Unit (FIU) coordination service

18.15 Under this option an ad-hoc EU platform of financial intelligence experts would be created, possibly building on the FIU platform to compile the requests from FIUs of each Member State and then issue requests for data from Designated Provider(s). Each Member State’s representative would be responsible for running searches, carrying out analysis and managing results on behalf of its own Member State. It would then be up to Member States’ competent authorities to make use of the intelligence leads and further disseminate them at national level.

18.16 This option is assessed in the Commission’s impact assessment. The Commission says that:

- the option would be responsive to specific intelligence needs of Member States and so would have some positive impact on preventing terrorism and enhancing security;
- however, as national FIUs would be responsible for the searches and analyses of their Member States, a clear picture could only be achieved with the enhanced cooperation of Member States, outside the system;
- furthermore, as FIUs focus on financial intelligence only, the divide between this information and the broader intelligence landscape could make it more difficult to see links and spot terrorist financing; and
- there is a very low level of EU involvement in this option and capacity would be enhanced primarily at the national level.

Other options

18.17 In addition to these options, the impact assessment also looks at:

- the baseline scenario, maintaining the status quo;
- two implementation options regarding the purpose of an EU TFTS, one limiting access to the system to combating terrorism, as now, and another adding serious organised crime; and
- two implementation options regarding the scope of the system, one limiting it to the current Designated Provider, SWIFT, and the other encompassing multiple Designated Providers.

Conclusion

18.18 The Commission says that:

- all options would be technically and operationally difficult to set up and maintain and would entail significant cost to the EU, Member States and the Designated

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59 FIUs are national law enforcement agencies, which often cooperate at an international level.
Provider including, *inter alia*, the cost of development of IT infrastructure, secure facilities and the cost of tens, if not hundreds, of staff responsible for the management of the system and for the implementation of safeguards and controls;

- but there is potential for enhanced coordination to assess EU-specific tracking of terrorist financing;
- an independent intelligence and investigation tool on EU soil would remove the requirement for transferring data to the US;
- but any EU TFTS would entail further personal data collection and would still require extensive data protection safeguards and controls, similar to those already in force under the EU-US Agreement;
- Member States are making increasing use of the reciprocity clauses in the existing TFTP to enhance security in the EU and prevent terrorism;
- therefore the principal objective identified for an EU TFTS is already being addressed by the existing system;
- three of the options are feasible, with advantages and disadvantages, but that at this stage a proposal for an EU TFTS is not clearly justified or proportionate; and
- it recommends maintaining the TFTP and not taking forward plans for an EU system.

18.19 The Commission Communication, document (b), concerns a Joint Report produced by it and the US Treasury Department, in accordance with the EU-US TFTP Agreement. The Report assesses the value of TFTP Provided Data, “with particular emphasis on the value of data retained for multiple years and relevant information obtained from the joint review conducted pursuant to Article 13” and using information provided by the US Treasury, Europol and Member States. This follows on from two previous joint reviews on the implementation of the agreement, carried out in February 2011 and October 2012.

18.20 The Report focuses on how TFTP Provided Data have been used and the value the data bring to counter terrorism investigations in the US and the EU. It includes multiple concrete examples where TFTP data, including data retained for three years or more, have been valuable in counter terrorism investigations, in the US and the EU, before and since the agreement entered into force on 1 August 2010, including:

- the April 2013 Boston Marathon bombings;
- threats with respect to the 2012 London Summer Olympic Games;
- the 2011 plot to assassinate the Saudi Arabian Ambassador to the US;
- the July 2011 attacks in Norway conducted by Anders Breivik; and
- the October 2010 Nigerian Independence Day car bombings.

18.21 The Report describes the methodology for assessment of retention periods by the US Treasury Department and deletion of non-extracted data. In accordance with the
requirements of the agreement, the Treasury Department has deleted all non-extracted data received prior to 31 December 2008. The requests for data are defined on the basis of a regular and extensive evaluation of responsiveness of particular message types and geographic regions. Moreover, the Treasury Department also conducts ongoing evaluations to assess that data retention periods continue to be no longer than necessary to combat terrorism or its financing.

18.22 The Report states that:

- several Member States and Europol benefit on an ongoing basis from TFTP-derived information and the valuable investigative leads which they receive;
- over the last three years, in response to 158 requests made by Member States and the EU, 924 investigative leads were obtained from the TFTP; and
- taking into account both the unique value of historical data and its prevalence among the TFTP leads, the reduction of the TFTP data retention period to anything less than five years would result in significant loss of insight into the funding and operations of terrorist groups.

18.23 The Report mentions that:

- as requested by the Commission, consultations have been launched relevant to media allegations about a potential breach of the terms of the agreement by US authorities;
- information, provided by the US Treasury Department in letters of 18 September and 8 November 2013 and during high level meetings on 7 October and 18 November 2013 to further clarify the implementation of the EU-US TFTP Agreement, has not revealed any breach of the agreement; and
- the Commission and the Treasury Department have agreed to carry out the next Joint Review in spring 2014.

18.24 Some key highlights from the Report, supported by concrete examples in it, are:

- counter terrorism investigators noted that the TFTP contains unique, highly accurate information that is of significant value in tracking terrorist support networks and identifying new methods of terrorist financing;
- in cases where little is known about a terrorism suspect beyond the individual’s name or bank account number, TFTP-derived information can reveal critical pieces of information, including locations, financial transactions and associates;
- the unique value of the TFTP lies in the accuracy of the banking information, since the persons concerned have a clear interest in providing accurate information to ensure that the money reaches its destination;
- counter terrorism investigators rely on multiple datasets to investigate and disrupt terrorist operations;
• however, there may be gaps in information that can prevent investigators from fully understanding these networks;

• the TFTP provides investigators with accurate financial messaging information that may include account numbers, bank identification codes, names, addresses, transaction amounts, dates, email addresses and phone numbers;

• using this information, investigators can map terrorist financial support networks, including identifying previously unknown associates;

• TFTP-derived information may be used to provide leads that assist in identifying and locating persons involved with terrorist networks and providing evidence of financial activities in aid of terrorist attacks;

• based on the TFTP, it has been possible to obtain information on US and EU citizens and residents suspected of terrorism or terrorist financing in third countries, where requests for mutual legal assistance were not responded to in a timely manner;

• terrorist organisations use multiple methods to fund their operations;

• these methods may include money laundering, narcotics trafficking, theft and the use of front organisations to raise funds;

• TFTP-derived information can aid counter terrorism investigators in identifying the means employed by terrorists and their supporters to fund their operations;

• financial transactions can also provide counter terrorism investigators with the information needed to identify individuals facilitating terrorist training;

• terrorist organisations require funding to allow associates to travel to training sites;

• these transactions often indicate when a suspected terrorist has decided to become operational and affiliate with a group or organisation;

• TFTP-derived information can provide investigators with the counter terrorism information they need, including dates of travel, transaction amounts, names, aliases, locations and contact information, to track these individuals;

• counter terrorism authorities demonstrated to the EU and US assessment teams that financial data retained over multiple years, known as historical data, are of significant value to counter terrorism investigations;

• historical data allow investigators to identify funding trends, track group affiliations and analyse methodology;

• due to the accuracy of TFTP data, investigators can use financial transactions to track terrorists and their supporters world-wide over multiple years; and

• since the agreement entered into force in August 2010, 45% of all TFTP data viewed by an analyst were three years or older.
The Government’s view

18.25 The Commercial Secretary to the Treasury (Lord Deighton) says that:

- the Government fully supports the EU-US TFTP Agreement, which is a vital tool in the global fight against terrorism and its financing;

- it welcomes the Commission’s Communications, including its impact assessment, and the latest Joint Report on the TFTP;

- it notes the many concrete examples which demonstrate the value of the TFTP agreement, as well as the positive and ongoing assessment of the safeguards in place;

- the Commission’s impact assessment has shown no compelling advantage of an EU system over the current TFTP and has highlighted some major drawbacks to the effectiveness of such a system; and

- in the Government’s view the costs would not outweigh the benefits; and

- therefore it supports the Commission’s assessment that at this stage a proposal for an EU TFTS is not clearly demonstrated.

Conclusion

18.26 Whilst clearing these documents we draw them to the attention of the House for the information they give about the utility of the EU-US TFTP Agreement and about the apparent lack of a justification for an EU TFTS.
19 European Defence Agency

(a) Head of Agency’s Report to the Council

(b) Draft Budget 2014

Legal base —
Department Defence
Basis of consideration Minister’s letter and EMs of 22 November 2013
Previous Committee Report None; but see (34457) 15323/12 and (34458)
15327/12: HC 83-xviv (2012–13), chapter 12 (19 December 2012); (33514) —, (33561) — and (33562)

Discussed in Council 19 November 2013 Foreign Affairs Council
Committee’s assessment Politically important
Committee’s decision Cleared; further information requested

Background

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

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Structure

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

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

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

Way of working

19.5 The Agency originally described itself as facing outwards; its main “shareholders” as being the Member States participating in the Agency; key stakeholders as including the Council and the Commission as well as third parties such as OCCAR (fr. Organisation Conjointe de Coopération en matière d’Armement),61 LoI (Letter of Intent) and NATO; and as having a special relationship with Norway (through an “Administrative Arrangement”).62

19.6 Previous Committees were fully engaged in the development of the EDA, culminating in a debate in June 2004 in European Committee B.63 There, the then Secretary of State stated that its principal purpose would be to improve Member States’ military capabilities.

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

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

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

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

63 Stg Co Deb, European Standing Committee B, 22 June 2004, cols. 4-24.
“shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.”

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

19.10 The Agency’s website notes that:

“The European Defence Agency is the place to go for European defence cooperation. The Agency supports the Council and the Member States in their effort to improve the European Union’s defence capabilities - a critical task in these challenging times.

“It works on the basis of a new approach that draws together the whole defence spectrum, tailoring its work to the military needs of tomorrow, providing different and often innovative solutions.

“Since its foundation in 2004, the EDA and its participating Member States have launched important projects, boosting helicopter availability, forming the European Air Transport Fleet and working to insert Unmanned Aircraft Systems into normal airspace, to name but a few.

“EDA is pragmatic, cost effective and results oriented. It offers multinational solutions for capability improvement in a time where defence budget constraints foster the need for cooperation.”

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

**The Minister’s letter of 22 November 2013**

19.12 In his letter, the Minister for International Security Strategy (Dr Andrew Murrison) writes in connection with the 19 November Foreign Affairs Council and EDA Steering Board meetings. He explains that the confirmed agenda was released to participating Member States just a few days before the meeting, and that there was insufficient time to provide the Committee with the Government’s policy position on the agenda items prior

64 See http://www.eda.europa.eu/Aboutus.
to the Steering Board meeting; and says that he is now writing to inform the Committee of the positions that he took on each of the items and the subsequent decisions taken.

19.13 He does so as follows:

“The Steering Board agreed the EDA work programme 2014. In addition, the Steering Board endorsed roadmaps on Air-to-Air Refuelling, Governmental Satellite Communications and Remotely Piloted Air Systems.

“In more detail, the areas of discussion were as follows:

“EDA Work Programme 2014: The work programme for 2014 encompasses projects endorsed by the Steering Board in Air-to-Air Refuelling, Governmental Satellite Communications and Remotely Piloted Air Systems. In addition it sets the roadmaps for implementation of the Research and Technology Strategy, improved European Armaments Cooperation and European Defence Technological Industrial Base Strategy. While efforts have been to better prioritise the Work Programme, the UK believe there is further work required and will continue to pursue greater cooperation between NATO and EU capability planning.

“Air-to-Air Refuelling: The EDA Steering Board endorsed a roadmap on Air-to-Air Refuelling to increase overall European capacity, reduce fragmentation of the fleet and optimise the use of existing assets. UK involvement is limited to the optimisation of existing assets, through the offer of unallocated capacity on the RAF’s core fleet of Voyager aircraft, subject to contracting arrangements, to other nations to help reduce their shortfall. Thus far the UK has received offers from all five nations with compatible aircraft (France, Germany, Italy, Spain and Sweden). The UK is now exploring commencing receiver trials with these nations in Spring 2014.

“Remotely Pilot Air Systems: The UK has no intention to participate in the development of a European Medium Altitude Long Endurance (MALE) Remotely Piloted Air System (RPAS). However, not wishing to block other Member States to pursue this initiative, the UK has endorsed a Common Staff Target as the basis for those Member States who wish to participate in the subsequent programme to develop a Common Staff Requirement. The UK’s position was noted in the minutes of the meeting (attached a Flag A). While the UK does not intend to participate in the programme to develop a European MALE RPAS we do see some merit in shared RPAS research, including Air Traffic Insertion (ATI) to allow the operation/transit of future RPAS through Civil airspace. To that end, in the margins of the Steering Board I signed the Programme Arrangement for a Joint Investment Programme on RPAS ATI.

“Governmental Satellite Communications: The Steering Board endorsed a roadmap, developed in cooperation with Member States, the European Commission and European Space Agency to address the disaggregation of existing Member States’ capabilities beyond 2018. UK involvement is limited to participation in the GOVSATCOM Users Group alongside Germany, Estonia, France and Italy to exchange lessons learnt. The current UK priority is discussing future SATCOM requirements with France before looking at wider opportunities. It is likely that the
UK will be able to encourage other Member States to align with UK-French requirements and timelines through our participation in this forum.

“In the margins of the Steering Board, Ministers of the concerned Member States signed the following agreements: “Programme Arrangement on Joint Investment Programme on RPAS ATI”, “Programme Arrangement on Helicopter Training Course Programme”, “Letter of Intent to establish a European MALE RPAS Community”, and a “Letter of Intent to establish a GOVSATCOM Users Group.”

19.14 The Minister then notes that the Government is still considering the case for UK membership of the EDA, with the aim of announcing the outcome of the review shortly.

19.15 The Minister then explains that the customary Council guidelines for the following year’s activity have been replaced by the Foreign Affairs Council Conclusions.

**The 2012 Head of Agency’s Report**

19.16 In his first Explanatory Memorandum of 22 November 2013, the Minister for International Security Strategy (Dr Andrew Murrison) says that this report by the Head of the European Defence Agency (EDA) to the Foreign Affairs Council (FAC) describes the progress on the Agency’s main output areas and provides an overview of Agency activities including: the update of the Capability Development Plan (CDP); Preparing for the future; European Defence Technological and Industrial Base; and interaction with key stakeholders.

**The Government’s view**

19.17 The Minister says that he is “content that the report accurately captures the key EDA activities and that those activities are consistent with the scope of the EDA’s competence and remit”, and says that UK officials were “involved in the authoring and agreement of this document prior to its submission for Council adoption.”

19.18 The Minister then says:

“As you are aware, Ministers are still considering the case for UK membership of the EDA with the aim of announcing the outcome of this review shortly. In the meantime, we will continue to participate in the EDA and will work with the EDA and key partners to improve the Agency’s effectiveness, including in prioritising effort on capability-driven outputs.”

19.19 The Minister then provides his assessment of policy implications against the substance of the report as set out below, making reference to the report contents.

**Capabilities**

“Air-to-Air Refuelling (AAR). The Agency has developed an overall approach to meeting the critical European capability requirement through: increasing overall capacity, reducing fragmentation of the fleet, and optimising the use of assets. The UK is content to endorse the roadmap on AAR, which sees the EDA addressing the European shortfalls in AAR capability indentified in recent NATO operations. The
UK’s contribution has been to offer unallocated Voyager hours, which would offset the overall cost of the Voyager PFI contract.

“Counter-IED. The Counter-IED laboratory continues to be successfully deployed in Afghanistan for operations within ISAF. Building on this, work has commenced on a follow-on project for a Joint Deployable Exploitation Analysis Laboratory. The UK is not participating actively in the project, as we already have a national capability integrated into ISAF. The UK will continue to encourage other Member States to participate in this project as we believe that better developed C-IED exploration expertise across Europe could potentially reduce the burden on the UK. We will continue to monitor the work with interest and provide encouragement and support, keeping our position under continual review.

“Helicopter Availability. The EU and NATO are working in a complimentary manner to address critical helicopter shortfalls. NATO runs a programme to upgrade airframes, whereas the EDA leads on aircrew training. This effort in the EDA includes: a synthetic-based helicopter tactics course; a helicopter tactics instructor training course, with 20 courses delivered so far; an operational English training course; basic helicopter training harmonisation; NH90 technical interoperability; and operational test & evaluation.

“Multinational Modular Medical Units (Field Hospitals). The UK is prepared to offer our experience / lessons identified through existing Multinational efforts on Medical in order to support the initiatives, and therefore does not make use of the capability developed under this work.

“European Satellite Communications Procureent Cell (ESCPC). The UK participates in the ESCPS, where Member States co-operate to secure better rates for commercial SATCOM as a means of augmenting military SATCOM. This initiative provides a procurement cell to manage the technical and financial aspects and undertake the necessary contracting function to realise these benefits. Paradigm, the UK’s contractor, will effectively provide services for the other Member States and the UK will receive service credits as third-party bandwidth is utilised.

“Maritime Surveillance (MARSUR). The UK has agreed to participate in the MARSUR Cat B project, subject to final wording of the Project Arrangement, and has signed the Technical Arrangement to participate in the live phase.

“Ammunition. The UK does not participate in this area of work.

“Remotely Piloted Aircraft Systems (RPAS). The UK does not intend to participate in the development of a European Medium Altitude Long Endurance (MALE) RPAS. However, not wishing to block other Member States to pursue this initiative, the UK has endorsed a Common Staff Target as the basis for those Member States who wish to participate in the subsequent programme to develop a Common Staff Requirement. While the UK does not intend to participate in the programme to develop a European MALE RPAS, we do see some merit in shared RPAS research, including Air Traffic Insertion (ATI) to allow the operation / transit of future RPAS through Civil airspace. The UK has confirmed its participation in a
Joint Investment Programme on RPAS ATI, which provides the framework for interested Member States to establish Cat B research projects.”

**Preparing for the Future**

“The UK is supportive of EDA efforts to develop this critical enabler to multinational capability development. We believe that the main driver has to be Military capability rather than civil applications. We also have concerns over Intellectual property/ownership. The UK will need to consider the terms of any agreements carefully.

“The UK will only participate in those projects that provide best value for UK Defence. We would also oppose a strategy of developing supply arrangements which would restrict the UK’s ability to source materials etc from the most beneficial supplier.

“**CBRN.** As the UK sees CBRN as a national capability, the UK will continue to encourage other Member States to participate in this area of research without committing to any EDA-led projects ourselves. We will continue to monitor the work with interest and provide encouragement and support, keeping our position under continual review.

“**Cyber Security.** The UK is content for the EDA to pursue an agenda of improved co-operation on Cyber Defence. Our involvement in Cyber defence is tempered by the sensitivities of our sovereign capability and resource limitations. There is no obvious direct benefit to the UK in engaging in EU cyber initiatives, other than to avoid duplication of effort with NATO (and the Estonian Centre of Excellence).

“**Single European Sky Air Traffic Management Research (SESAR).** The UK has successfully secured a UK Seconded National Expert, sponsored by Min(ISS), for the EDA Military Implementation of SESAR (MIOS) programme looking at integrating the military aspects of Single European Skies.

**European Defence Technological and Industrial Base**

“The UK is broadly supportive of EDA efforts to increase the use of competition in the European defence market, which is one of our key priorities in this area. In particular, we welcome the EDA supporting the implementation of the Defence Procurement Directive and its focus on supporting SMEs through the implementation of its action plan, noting that activity here must be market-driven and take advantage of any synergies with the Commission. In addition, we are encouraged by the development of the Defence Procurement Gateway, which should improve market transparency and make it easier for defence industry to identify EU-wide opportunities via a single platform.

“Furthermore, the UK supports the revised Framework Arrangement (FA) on Security of Supply and the EDA’s efforts to improve confidence in security of supply across the EU, an important task in creating a more open and competitive European defence market. The FA places no legal obligation on Member States to comply with another Member State’s requests, other than to treat them “urgently and
sympathetically”. The UK is already a signatory to the Letter of Intent (LoI), between France, Germany, Italy, Spain and Sweden, which provides similar security of supply responsibilities amongst them.

“We generally welcome the development of strategies for key enabling technologies and critical technologies for European non-dependence as well as efforts to increase defence and civil research synergies and pooling of demand, where appropriate. On EDA work in the field of critical space technologies, we would stress that the EDA must rely on existing infrastructure / capabilities and respect national sovereignty.

Interaction with Key Stakeholders

“We recognise that the EDA has an associate role in working with the Commission Defence Task Force and that much of the work the EDA is doing has the potential to complement proposals from the Commission Communication.65 That said, the UK has made it clear consistently that this association must not be seen by the Commission as a replacement for direct consultation with Member States. There are many areas in which the detail has still to be developed and, as such, where we have concerns. It is therefore important that the EDA engages closely with Member States and the Commission to take account of and co-ordinate Member State views and prevent any duplication of activity going forwards, as well as ensuring that the commission does not encroach upon areas of the defence market which are already dealt with within the EDA at the inter-governmental level.”

The EDA 2014 Budget

19.20 In his second Explanatory Memorandum of 22 November 2013, the Minister says that the EDA draft budget for 2014 was discussed and rejected by Member States at the 19 November FAC, and that the EDA “will therefore revert to a frozen budget for 2014.”

19.21 The Minister then continues thus:

“Every year, the Council approves a Financial Framework for the EDA for the following three years. That Financial Framework shall set out agreed priorities associated with the Agency’s three-year Work Plan and shall constitute a legally-binding ceiling for the first year and planning figures for the second and third year. The High Representative (HR), in her capacity as the Head of the EDA, made her proposal for the 2014 Budget and the 2014 Staff Establishment Plan of the Agency, derogating from Article 4(4) of Council Decision 2011/411/CFSP by proposing a one-year budget only.

“In previous years, scrutiny of this document has been delayed due to the fact that public versions could not be provided to the Committees until they had been de-classified by the EDA and released by the Council Transparency Service. Despite the

65 The Minister refers here to Commission Communication 12773/13: “Towards a more competitive and efficient defence and security sector”, which covers a number of these issues in more detail. At our previous meeting, the Committee recommended this Communication for debate in European Committee B: see (35234) 12773/13: HC 83-xvii (2013–14), chapter ??? (11 December 2013).
Head of Agency Report being released on 31 October 2013 and made public on 8 November 2013 and the subsequent Explanatory Memoranda being submitted in November 2014, the budget document has yet to be made public. We therefore attach a copy informally until it is officially made public by the Council.

“Following the positive steps made last year with the Council in making PUBLIC versions of documents available at the earliest opportunity in order to support the scrutiny process, there has been a return to previous practices. Officials will therefore continue to push to re-establish this requirement in the Council.”

The Government’s view

19.22 The Minister says that there are no new policy implications arising from this document.

19.23 He continues as follows:

“On 23 October, Member States at the Foreign Relations Counsellors Working Party (RELEX) discussed the HR’s budget proposal but were unable to reach agreement. The proposed 2014 Budget was set at zero ‘real’ growth, corresponding to a total amount of €31.6M.

“The UK was successful in achieving a budget freeze for the EDA for 2013 of €30.5m (zero ‘nominal’ growth), the same as for 2010, 2011 and 2012. The EDA’s current proposals for 2014 are that the functional budget (running costs) should be set at €24.1M whilst the remaining €7.5M would be left for the operational budget (project preparations; feasibility studies).

“This proposal from the EDA for zero ‘real’ growth (which would take inflation into account) is supported by all other Member States, but the UK considered it unreasonable. The UK has consistently argued that the EDA needs to be realistic about its budget requirements, particularly in light of the financial challenges on defence spending that were faced by many of the participating Member States. We could only accept a 2014 budget frozen at 2013 levels (€30.5 million). The Foreign Affairs Council (FAC) on 19 November 2013 agreed to a ‘flat cash’ EDA Budget for 2014.

“The UK will continue to push for the EDA Budget to remain at zero ‘nominal’ growth.”

19.24 The Minister concludes by noting that, the EDA budget proposal having been rejected at “Defence” FAC, the revised budget is to “be presented at official level at Coreper II on 4 December 13 for formal adoption” and that “[n]o substantial changes are expected to arise from this process.”

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66 Zero ‘Nominal’ growth — effectively a flat lined budget with zero growth without inflation as opposed to Zero ‘Real’ growth which factors in inflation.

67 The Committee of Permanent Representatives (COREPER) is responsible for preparing Council meetings at ministerial level. All issues must pass through COREPER before they can be included on the agenda for a Council meeting. COREPER meets in two configurations, COREPER II and COREPER I, dealing with different subject areas. In COREPER
Conclusion

19.25 A year ago, we congratulated the Minister and his predecessor for having achieved a huge improvement in the scrutiny process. Even then, it was two cheers rather than three, since at that time we were still awaiting the 2013 budget. Then, although the total had been agreed, and the document concerned was to be adopted at a Council meeting on 20 December, he was unable to deposit it for prior scrutiny (and therefore intended to override scrutiny) because there remained the possibility that, between the date upon which he submitted his Explanatory Memorandum and that Council meeting, one or other participating Member State might attempt to reopen the detail, within that agreed total.

19.26 We accordingly suggested that, were this to be the case next year, a document on the budget be deposited that enabled it to be cleared on the basis of an agreed total: if the detail were to be subsequently changed, a revised version could then be deposited and cleared without further ado.

19.27 Now, there is no agreed total. We understand, however, that when the Minister says that “[n]o substantial changes are expected to arise from this process”, he means that he is confident that the Commission and all the other participating Member States are, if reluctantly, now persuaded to accept a 2014 budget frozen at 2013 levels (€30.5 million). We are accordingly prepared to clear the draft 2014 budget on that basis.

19.28 However, in line with the High Representative’s letter of 27 August 2012, we look forward to receiving the final version of the 2014 Budget in the very near future. We would like the Minister to deposit it along with a Supplementary Explanatory Memorandum, outlining any differences between it and the draft version and saying whether or not he is satisfied with its breakdown. We would also like him to deal with the two further issues outlined below.

19.29 The Minister says that there continues to be the consideration of the UK’s continuing membership of the Agency. As our report of a year ago relates, the Minister had mentioned as long ago as 7 November 2012 that the Government was “currently reviewing its membership of the EDA, with a decision due before the end of the Autumn”. We pointed out that, as he was no doubt aware, this had been first brought to our attention two years ago by his predecessor; most recently, in June 2011, when he recalled that the Government had agreed in 2010 to remain in the EDA for a period of two years, but if improvements in effectiveness and performance were not forthcoming, would consider withdrawing. His intention, he said, was to work with the EDA’s new Chief Executive and other participating Member States to increase the EDA’s value through delivering more in terms of addressing capability shortfalls and enhancing EDA co-ordination with NATO. He professed himself encouraged that more Member States now accepted the need not (his underlining) to duplicate NATO, “a position the current British Government has advocated very firmly from the outset of taking office.”

II, the Member States are represented by their permanent representatives, i.e. by their ambassadors at the permanent representations in Brussels. COREPER II deals with the following areas: General affairs and external relations; Economic and financial matters; Justice and home affairs; overall responsibility for preparation of summits.

68 See the annex to this chapter of our Report.
19.30 We noted that we were already aware of interest in both the House and elsewhere in the outcome, and concern that — because the Council Decision enables any member to withdraw without let or hindrance — the Government’s decision would be presented as a fait accompli; and that, though the matter was, strictly speaking, outwith our remit, the Committee nonetheless thought that he should be aware of this interest, and might value the opportunity to explain how the Government proposed to handle this, so that the House was able to indicate its views before the Government made its decision. With that in mind, we sent a copy of that letter to the Defence Committee.

19.31 Now, a year on, the Minister says “Ministers are still considering the case for UK membership of the EDA with the aim of announcing the outcome of this review shortly”. Again, he gives no indication of whether the Government has any intention of sharing its thinking with the House before any decision is taken. We would therefore like the Minister to say more precisely when he expects the Government to reach a decision; whether, and in what way, he intends to involve the House in this process; or whether he intends to present it with a fait accompli.

19.32 The Council Conclusions to which the Minister refers (c.f. paragraph 19.15 above) were on Common Security and Defence Policy. When the Minister for Europe (Mr David Lidington) wrote to us about them on 4 December, he said that, whilst he and Dr Murrison were content with the vast majority of the original text presented to the 18-19 November Foreign Affairs Council, one of the proposals did not fit with their vision for an open, competitive defence market: but that, following further negotiations at senior official level, a satisfactory agreement was reached and formally endorsed at the 25 November Education, Youth and Culture Council. The Minister said that they now reflected UK priorities; that he and Dr Murrison had “successfully protected all of our red lines including the prevention of an EU Operational Headquarters, and the Commission owning and operating military capabilities; and that the Conclusions were likely to be endorsed at the December European Council, where Heads of Government would “set out their strategic vision for European defence.”

19.33 Against this background, we should also be grateful if the Minister would explain if the decision to substitute these Council conclusions for the customary Council guidelines for the following year’s activity is a “one off”, coincidental with the “Defence” European Council on 18-19 December (the first for five years); and confirm whether, in twelve months time, we can expect to receive the normal “three documents” package.

19.34 We also now clear the Head of Agency report.

19.35 We are also drawing this chapter of our Report to the attention of the Defence Committee.

Annex: the High Representative’s response of 27 August 2012

“[Dear Gerald]

“Thank you for your letter of 3 July in which you set out the difficulties of meeting your parliamentary scrutiny obligations arising from Limité documents.

Such documents remain Limité until a request is received to make them Public. This is done on a case-by-case basis. The originator may also decide to make them Public regardless of whether a request has been made or not. But this would need to take into account the views of all Member States.

“For the future I propose that, once a document of the European Defence Agency (EDA) has been agreed by the Council, the EDA should routinely and quickly establish whether or not it can be made Public and, if so, arrange with the originator for it to be downgraded without delay. The EDA will also arrange for the originator to include in its notification to the General Secretariat of the Council (GSC) a request that the UK Representation should be automatically informed once a document is published.

“Finally, you wanted to know why it took so long for documents to be made public. The GSC advises that, apart from legislative files, they only act upon request, be it a request by a citizen or by the originator of a document. Up until now, there has appeared to be no reason to make these documents public ex officio, not least because, from an EU perspective, there is nothing to prevent a national administration from giving Limité documents to its parliament as long as they are not published. For the future, however, and as I indicated above, the GSC will accommodate the UK’s need with regard to public access to documents.

“[Sincerely,]

“[Cathy]

“Catherine Ashton”
20 Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House

Department for Business, Innovation and Skills

(35493) 14167/13 SWD(13) 380

(35527) Court of Auditors Report on the annual accounts of the Innovative Medicines Initiative Joint Undertaking for the financial year 2012 together with the Joint Undertaking's replies.

(35548) Court of Auditors Report on the annual accounts of the ENIAC Joint Undertaking for the financial year 2012 together with the Joint Undertaking's replies.

(35549) Court of Auditors Report on the annual accounts of the Artemis Joint Undertaking for the financial year 2012 together with the Joint Undertaking's replies.

(35591) Court of Auditors Report on the annual accounts of the European Joint Undertaking for ITER and the Development of Fusion Energy for the financial year 2012 together with the Joint Undertaking's replies.

(35596) Court of Auditors Report on the annual accounts of the Clean Sky Joint Undertaking for the financial year 2012 together with the Joint Undertaking's replies.

Department for Culture, Media and Sport

(35557) 16646/13 COM(13) 804
Commission Report on the implementation, functioning and effectiveness of the .eu Top-Level Domain.

Department for Education

(35490) 15777/13 COM(13) 714

(35545) Court of Auditors Report on the annual accounts of the European Schools for the financial year 2012 together with the Schools' replies.
Department for Environment, Food and Rural Affairs

(35615) 17087/13 COM(13) 819 Draft Council Implementing Decision establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

Department for Transport

(35600) 16517/13 — Court of Auditors Report on the annual accounts of the SESAR Joint Undertaking for the financial year 2012 together with the Joint Undertaking’s replies.

Department for Work and Pensions

(35530) 16220/13 COM(13) 803 Draft Council Decision on guidelines for the employment policies of the Member States.

Home Office


Formal minutes

Wednesday 18 December 2013

Members present:

Mr William Cash, in the Chair

Andrew Bingham
Mr James Clappison
Nia Griffith
Kelvin Hopkins

Chris Kelly
Stephen Phillips
Jacob Rees-Mogg
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 2.3 read and agreed to.

Paragraph 2.4 read, amended and agreed to.

Paragraphs 2.5 to 2.11 read and agreed to.

Paragraph 2.12 read, amended and agreed to.

Paragraphs 3.1 to 20 read and agreed to.

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

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

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[Adjourned till Wednesday 8 January 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, Seaford 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)