House of Commons

European Scrutiny Committee

Thirty-second Report of Session 2014–15

Documents considered by the Committee on 4 February 2015, including the following recommendations for debate:

Investment plan for Europe

EU Charter of Fundamental Rights

HC 219-xxxi

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Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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

Euros

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

Further information

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

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

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

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Meeting Summary

The Committee considered the following documents:

EU Charter of Fundamental Rights

We consider a 2013 Commission Report on the application of the EU Charter of Fundamental Rights, which we last reported on in September 2014, when we were still considering the Government's Response to our Report entitled *The application of the EU Charter of Fundamental Rights: a state of confusion*. We therefore kept this Commission Report under scrutiny as we felt that relevant issues may arise in the course of our consideration of the Government's Response to our Report. Last month, we questioned the Secretary of State for Justice on the applicability of the Charter to the UK as part of an oral evidence session we held with both him and the Home Secretary. During this evidence session he told us he would be watching the question of the Charter's applicability to UK national law "like a hawk". We continue to have concerns about the scope of the Charter's application in the UK. We therefore recommend that this Commission Report be debated on the floor of the House, to provide Members with an opportunity to discuss this important matter.

Investment plan for Europe

This week we also consider a Commission Communication suggesting a three part plan to promote investment in the EU economy and a draft Regulation, which would create a legal framework for the first two strands of this plan, that is the European Fund for Strategic Investments and a European Investment Advisory Hub, so enabling the Commission to implement and deliver the investment plan jointly with the European Investment Bank. We also consider a Draft Amending Budget (DAB) which would provide the finance for these new bodies this year. The Government supports both the draft Regulation and the DAB, particularly noting that the draft Regulation would be fully financed within the Multiannual Financial Framework 2014–2020 and the DAB would have a budget neutral impact. We recommend all three documents for debate in European Committee, suggesting that among the issues Members may wish to raise are whether the European Investment Bank's involvement in the plan poses any risk to its credit standing, and what the suggested fast-tracking of the draft Regulation might mean for parliamentary scrutiny.

1 Investment plan for Europe

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; for debate in European Committee B
Document details	(a) Commission Communication about promoting investment in the EU (b) Draft Regulation on an EU investment fund (c) Draft Amending Budget concerning that fund
Legal base	(a) — (b) Articles 172, 173, 175(3) and 182(1) TFEU; co-decision; QMV (c) Article 314 TFEU; co-decision; QMV
Department	HM Treasury
Document numbers	(a) (36540), 16115/14, COM(14) 903 (b) (36605), 5112/15 + ADD 1, COM(15) 10 (c) (36607), 5317/15, COM(15) 11

Summary and Committee's conclusions

1.1 In November 2014 the Commission published this Communication suggesting a three part plan to promote investment in the EU economy. In January, when we last considered this document, we had from the Government a very brief account of its stance on the matter at the December 2014 European Council and answers to some of the questions we had asked previously (and to one we had not asked). We said that we were disappointed that the Government had rather carelessly failed to address, even cursorily, some of these points. As for the debate recommendation we had foreshadowed previously we said we were postponing consideration of that until we had the draft Regulation on a proposed European Fund for Strategic Investments for scrutiny. But in that connection we asked to have soon an answer to our earlier question as to the Government's assessment of what the Commission's suggestion of fast-tracking that draft Regulation might mean for national parliamentary scrutiny.

1.2 We now have under scrutiny this draft Regulation, which would create the legal framework for the first two strands of the investment plan set out in the Commission's Communication, that is, the European Fund for Strategic Investments and a European Investment Advisory Hub, so enabling the Commission to implement and deliver the investment plan jointly with the European Investment Bank. We also have under scrutiny this Draft Amending Budget for the 2015 EU budget to provide finance for the new bodies this year.

1.3 The Government tells us that it is supportive of both the draft Regulation and the Draft Amending Budget, particularly noting that the draft Regulation would be fully financed within the Multiannual Financial Framework 2014–2020 and the Draft Amending Budget would have a budget neutral impact.

1.4 **We think that the time is now right for the debate recommendation we have foreshadowed previously. Accordingly we recommend that the three documents be debated in European Committee B. We suggest that in the debate Members might explore:**

- **the likelihood of a leverage ratio of 1:15 from use of the European Fund for Strategic Investments;**
- **whether drawdowns from the EU budget for the EU guarantee fund would be a reasonable use of the programmes concerned;**
- **whether the European Investment Bank's involvement in the plan poses any risk to its credit standing;**
- **what additional risk the plan might pose for the other EU guarantees;**
- **what the suggested fast-tracking of the draft Regulation might mean for national parliamentary scrutiny; and**
- **what financial consequences there might be for the UK.**

Full details of the documents: (a) Commission Communication: *An investment plan for Europe*: (36540), 16115/14, COM(14) 903; (b) Draft Regulation on the European Fund for Strategic Investments and amending Regulations (EU) No. 1291/2013 and (EU) No. 1316/2013: (36605), 5112/15 + ADD 1, COM(15) 10; (c) Draft Amending Budget No. 1 to the General Budget 2015 accompanying the draft Regulation on the European Fund for Strategic Investments and amending Regulations (EU) No. 1291/2013 and (EU) No. 1316/2013: (36607), 5317/15, COM(15) 11.

Background

1.5 In November 2014 the Commission published this Communication, document (a), suggesting a plan to promote investment in the EU economy. The plan would have three strands:

- a European Fund for Strategic Investments (EFSI), to mobilise €315 billion (£245 billion) for investment;
- a pipeline of investment projects and investment advisory hub (to be known as the European Investment Advisory Hub or EIAH); and
- a wider package of reforms to improve the investment climate, including action to remove barriers in the single market and improve regulation.

1.6 When in December 2014 we first considered this document we had before us the Government's relatively positive, albeit nuanced, initial comments about the plan. We noted that we might well want to recommend that Members be given an opportunity to debate this proposed plan. However, we said that we would not decide on that until we had an account from the Government of the outcome of the forthcoming European Council discussion of the Commission's ideas. In addition to that account, we asked to have also the Government's assessment of a number points.

1.7 In January we had from the Government a very brief account of the Government's stance at the December 2014 European Council and answers to some of the questions we had asked (and to one we had not asked). We said that, although we recognised that some points could not be fully clarified until the Commission brought forward its implementing proposals, we were disappointed that the Government had rather carelessly failed to address, even cursorily, some of the points we had raised previously.

1.8 As for the debate recommendation we had foreshadowed previously we said we were postponing consideration of that until we had the draft Regulation on the proposed EFSI for scrutiny. But in that connection we asked to have soon an answer to our earlier question as to the Government's assessment of what the Commission's suggestion of fast-tracking that draft Regulation might mean for national parliamentary scrutiny.

1.9 Meanwhile the Communication remained under scrutiny.

The new documents

1.10 This draft Regulation, document (b), would create the legal framework for the first two strands of the investment plan set out in the Commission's Communication, that is, the EFSI and the EIAH, so enabling the Commission to implement and deliver the plan jointly with the European Investment Bank (EIB). (As for the third strand, a wider package of reforms to improve the investment climate, the Commission has published a set of actions in its 2015 Work Programme.[1])

1.11 The draft Regulation would establish the EFSI, supported by an EU guarantee fund, providing a maximum EU guarantee of €16 billion (£12.5 billion) for EIB financing and investment operations to support the development of infrastructure and investment in the EU as well as for small and medium size enterprises. The intention is that the appropriations required by this proposal would be fully financed within the Multiannual Financial Framework 2014–2020. The draft Regulation would require the Commission to conclude an agreement with the EIB on the establishment of the EFSI. Amongst the matters the EFSI Agreement would contain are:

- provisions governing the establishment of the EFSI, within the EIB, as a distinct, clearly identifiable and transparent guarantee facility and separate account managed by the EIB;
- the amount and terms of the financial contribution which would be provided by the EIB through the EFSI;
- the terms of the funding which would be provided by the EIB through the EFSI to the European Investment Fund;[2] and
- the governance arrangements concerning the EFSI.

1.12 The Commission proposes that:

1 (36589), 5080/15 + ADDs 1–4: Thirty-first Report HC 219-xxx (2014–15), chapter 1 (28 January 2015).

2 See http://www.eif.org/.

- in order to mitigate any potential impact on the EU budget, the EU guarantee fund would, in the first instance, meet the obligations of the guarantee in an event of default;
- the EU guarantee fund would reach an adequate level which, based on experience of the nature of these investments, is determined to be 50% (the target amount) of the EU's maximum guarantee obligation;
- from 2016 onwards, payments from the EU budget would gradually build up the endowment of the EU guarantee fund to reach the initial target amount of €8 billion (£6.2 billion) — the EIB would also contribute €5 billion (£3.9 billion) to the fund;
- the EU guarantee fund should reach the initial €8 billion target amount by 2020 with payments of €500 million (£389 million) in 2016, €1 billion (£779 million) in 2017, €2 billion (£1.6 billion) in 2018 and €2.25 billion (£1.8 billion) in both 2019 and 2020;
- of the €8 billion in payments, €6 billion (£4.7 billion) would be reallocated within Sub-Heading 1a of the EU Budget (in particular €3.3 billion (£2.6 billion) from the Connecting Europe Facility[3] and €2.7 billion (£2.1 billion) from Horizon 2020[4]);
- a further €2 billion (£1.6 billion) would be funded by making use of the Unallocated Margin including the Global Margin for Commitments;
- in order to reallocate the budget within Sub-Heading 1A, limited amendments to Regulation (EU) Nos. 1316/2013, establishing the Connecting Europe Facility, and 1291/2013, establishing Horizon 2020;
- the EU guarantee fund would, were defaults to occur, cover the associated costs in the first instance;
- the overall maximum EU guarantee would be reduced by the value of the default and the EU budget would then be required to return the EU guarantee fund to the target amount (50% of the maximum EU guarantee);
- should the EU budget be required to replenish the EU guarantee fund to the target amount, the relevant amount would be paid in annual tranches during a maximum period of three years starting on year n+1;
- the EU guarantee fund would be directly managed by the Commission; and
- where the EU guarantee fund was holding a surplus above the target amount, this amount could be held in the fund or returned to the EU general budget.

1.13 The Commission's draft Regulation would establish a governance structure for the EFSI as follows:

[3] See http://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32013R1316.

[4] See http://ec.europa.eu/programmes/horizon2020/en/what-horizon-2020.

- a Steering Board to determine the strategic orientation, the strategic asset allocation and the operating policies and procedures, including the investment policy of projects that EFSI could support and the risk profile of the EFSI;
- members of the Steering Board to be appointed by the contributors to the EFSI — in the first instance the only contributors would be the EU and the EIB;
- the number of members and votes within the Steering Board to be allocated on the basis of the respective size of contributions, either in cash or guarantees;
- where Member States, or other parties, wished to contribute to the EFSI the number of members and votes within the Steering Board to be reallocated based on the new respective size of contributions;
- the Steering Board to strive for consensus, but with, where necessary, the Board taking a decision by simple majority; and
- no decision of the Steering Board to be adopted if the Commission or the EIB were to vote against it.

1.14 The draft Regulation would establish an Investment Committee, consisting of six independent market experts and a Managing Director, responsible for examining potential operations and approving the support for operations. It would require projects to be selected on their own merits, without any sectorial or geographic pre-established allocation, so as to maximise the value added of the EFSI.

1.15 The draft Regulation would provide for:

- establishing, by building on existing EIB and Commission advisory services, an EIAH to provide advisory support for investment project identification, preparation and development;
- the EIAH to act as a single technical advisory hub (including on legal issues) for project financing within the EU, including project structuring, use of innovative financial instruments and use of public-private partnerships; and
- the EIAH to be primarily funded from existing envelopes for EIB technical assistance under existing EU programmes, with, if necessary, additional funding of up to €20 million (£15.58 million) annually.

1.16 During the course of a financial year the Commission presents Draft Amending Budgets (DABs) proposing increases or reductions for revenue and expenditure in the current EU general budget. Draft Amending Budget No.1 for the 2015 EU budget (DAB 1/2015), document (c), which accompanies the draft Regulation and the budgetary impact of which is neutral, would:

- create the budgetary structure for provisioning of the EFSI and possible calls on the EU guarantee;
- budget appropriations for provision of advisory support for investment project identification;

- make necessary changes to the budget nomenclature; and
- make corresponding expenditure reallocation for the year 2015, totalling €1.36 billion (£1.05 billion) in commitment appropriations and €10 million (£7.7 million) in payment appropriations, which would be required by the establishment of the EFSI.

1.17 A more detailed summary of the individual adjustments made by DAB 1/2015 is as follows:

Proposed changes to the budget nomenclature

- DAB 1/2015 would create three new budget articles to accommodate the budgetary implications of the establishment of the EFSI — two articles which would mirror the existing structure of the guarantee fund for external actions and a third article to include the EU contribution to the financing of the EIAH;
- the DAB therefore proposes inclusion of the following new lines in the budget nomenclature: Guarantee for the European Fund for Strategic Investments (EFSI), Provisioning of the EFSI Guarantee Fund and European Investment Advisory Hub (EIAH);

Reallocation of commitment appropriations for provisioning the guarantee fund in 2015

- the DAB would reallocate €1.35 billion (£1.05 billion) in commitment appropriations, required to provision the EU guarantee fund in 2015, to the new budget article 'Provisioning of the Guarantee Fund';
- this reallocation would be sourced from the Connecting Europe Facility, for €790 million (£615.3 million), Horizon 2020, for €54.5 million (£42.5 million) and the Joint Undertaking for the International Thermonuclear Experimental Reactor (ITER) and the Development of Fusion Energy, for €490 million (£381.7 million);
- the proposed reallocations from the Connecting Europe Facility and Horizon 2020 take into account proposals prepared under these programmes so that activities already planned for 2015 would not be undermined;
- with regard to the reallocation proposed from the Joint Undertaking for ITER and the Development of Fusion Energy, delayed commitment appropriation needs and the postponed signature of contracts, makes this possible;
- the Commission intends the ITER reduction in 2015 be offset by an equivalent increase in the ITER financial programming over the period 2018–2020, with an equivalent reduction of Horizon 2020 commitment appropriations for the period 2018–2020;

Funding the EIAH

- the DAB would budget €10 million (£7.7 million) in both commitment and payment appropriations on the new budget article for the EIAH;
- these amounts would be offset through a corresponding reduction of the ITER budget in commitments and payments; and
- they would be given back to ITER through an equivalent reduction of Horizon 2020 appropriations for the period 2018–2020.

The Government's view

1.18 In his Explanatory Memorandum of 28 January 2015 on the draft Regulation the Financial Secretary to the Treasury (Mr David Gauke) says that the Government welcomes the focus in the Commission Communication on reforms to raise growth prospects across the EU and the emphasis on increasing private sector investment. He comments, in relation to the three pillars of the investment plan, that, in particular, the Government welcomes specific steps on structural reforms to complete the single market and improve the investment climate which are essential for the EU's competitiveness and prosperity.

1.19 The Minister tells us that:

- the Government, alongside all other Member States, has participated in the preparatory work of the EIB/Commission-led Investment Taskforce to identify an indicative pipeline of investment projects;
- as part of this process it proposed an indicative pipeline of up to £60 billion of investment in 2015–17 that could potentially be eligible for support based on clear robust criteria that the Government would aim to see used at the EU level; and
- the Government considers that a rigorous project selection process is needed for the EU pipeline, focused on project viability and value for money.

1.20 In relation to the draft Regulation, the Minister comments further that:

- the Government supports the establishment of both the EFSI and EIAH;
- it welcomes the Commission statement that the "appropriations required by this proposal are to be fully financed within the Multiannual Financial Framework 2014–2020", which is an important principle;
- the Commission assesses that while grant financing from the Connecting Europe Facility and Horizon 2020 would be reduced, the multiplier effect generated by the EFSI would allow for a significant overall increase of investment in the policy areas covered by those two existing programmes;
- the Commission says that once the target amount is reached the EU guarantee fund and its profits would cover the costs of default; and

- a further €8 billion (£6.2 billion) remains as callable and would be met, in the first instance, from within the EU budget.

1.21 The Minister tells us that the Government is consulting the British Business Bank and the Green Investment Bank.

1.22 The Minister also tells us that:

- the Government is represented at the Council's 'Ad-Hoc Working Party on EFSI' that is currently examining this proposal further; and
- the Commission has set out its expectation that the Council and the European Parliament should agree on the text by June so that the EFSI could be operational by mid-2015.

1.23 In his second Explanatory Memorandum of 28 January 2015, on the DAB, the Minister repeats his paragraphs in support of the draft Regulation, the comments about the Government's welcome for the DAB having a budget neutral impact and that the draft Regulation being fully financed within the Multiannual Financial Framework 2014–2020 is particularly relevant to the DAB itself.

1.24 The Minister also says that:

- based on the adopted 2015 EU budget, the UK's post-abatement financing share of EU expenditure will be approximately 11.8%;
- it is not possible to calculate the exact amounts yet, as the amount will depend on actual budgetary outturns;
- the Council's Budget Committee first discussed this DAB on 20 January; and
- negotiation of the DAB is expected to be taken forward in parallel with the draft Regulation.

Previous Committee Reports

Twenty-seventh Report HC 219-xxvi (2014–15), chapter 7 (17 December 2014) and Thirtieth Report HC 219-xxix (2014–15), chapter 5 (21 January 2015).

2 EU Charter of Fundamental Rights

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; for debate on the floor of the House
Document details	*2013 Report on the application of the EU Charter of Fundamental Rights* (the Charter)
Legal base	—
Department	Ministry of Justice
Document numbers	(35971), 9042/14 + ADDs 1–3, COM(14) 224

Summary and Committee's conclusions

2.1 This report comprises the Commission's review of the application of the Charter within the EU (including by the national courts of Member States) for the year 2013 and was published in April 2014.

2.2 In our last Report of 3 September 2014, we said we were currently considering the Government's response to our Report following our inquiry entitled *The application of the EU Charter of Fundamental Rights in the UK: a state of confusion*[5]. We therefore intended to keep the current document under scrutiny as issues might arise in the course of our further deliberations which were relevant to this Commission report. Since then the Lord Chancellor and Secretary of State for Justice (Chris Grayling) has responded to our Report of 3 September (by a letter of 21 October) and has appeared with the Home Secretary on 12 January 2015 to give oral evidence to us on matters including the follow-up to our Charter inquiry.

2.3 **We thank the Secretary of State for Justice for the responses he has provided to us in the course of the scrutiny of the current document. We also thank him for the oral evidence he gave to us on 12 January and note the commitment he made to watching "like a hawk" the question of the Charter's application to UK national law.**

2.4 **In the meantime, we continue to have concerns about the scope of the Charter's application in the UK, which we have raised not only during our scrutiny of this document but also in our Charter Inquiry Report. Some of these questions have also been addressed by the Government in its Response to our Charter Inquiry Report[6] and in its *Balance of Competences Review of EU Fundamental Rights*[7], in the Minister's words "the most comprehensive Government assessment of the impact of EU**

5 Forty-Third Report HC979 (2013–14) (26 March 2014): *The application of the EU Charter of Fundamental Rights in the UK: a state of confusion*. http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/979/979.pdf.

6 Command Paper 8915: *Government Response to the House of Commons European Scrutiny Committee Report*, Forty-third Report HC979 (2013–14) (26 March 2014): *The application of the EU Charter of Fundamental Rights in the UK: a state of confusion*. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335759/application-of-the-eu-charter-of-fundamental-rights-in-the-uk-a-state-of-confusion.pdf

7 *Review of the Balance of Competences between the United Kingdom and the European Union: Fundamental Rights* (22 July 2014). https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/334999/review-of-boc-between-uk-eu-fundamental-rights.pdf

fundamental rights to date". But we have yet to learn how the Government intends to apply the assessments made in either of those documents.

2.5 **We therefore recommend that the current document be debated on the floor of the House to give all Members the opportunity to discuss these important issues.**

Full details of the documents: Commission Report: *2013 Report on the application of the EU Charter of Fundamental Rights*: (35971), 9042/14 + ADDs 1–3, COM(14) 224.

Background and previous scrutiny

2.6 The background to the Charter, this annual Charter Report and our scrutiny of previous annual Reports was set out in our First Report of this session and our Sixth Report of the 2013–14 Session[8].

2.7 In our Report of 3 September we sought to address some questions relating to the annual report and also relevant to our Charter Inquiry Report with the Minister. We:

- sought to address the Government's approach to two important UK cases concerning the application of the Charter in the UK (*ZZ v Secretary of State for the Home Department*[9] and *Benkharbouche & anr v Embassy of the Republic of Sudan*[10]);
- asked the Minister to respond with his view of the impact on business, taxpayers, national security and public safety of Charter-related litigation; and
- said that we would keep the current document under scrutiny pending our further consideration of the Government's response to our Charter inquiry Report

The Minister's letter of 21 October 2014

2.8 The Minister responded to our Report of 3 September in this letter by:

- referring us to the recent Balance of Competences review on EU Fundamental Rights as "the most comprehensive Government assessment of the impact of EU fundamental rights to date";
- repeating his response of 14 July that further queries about the *ZZ* case should be referred to the Home Secretary;
- confirming that the Government continues to monitor proceedings both before UK courts and the Court of Justice to identify a suitable case for intervention; and
- simply noting the dates that the Court of Appeal proceedings in the case of *Benkharbouche* were listed to be heard.

8 HC 83-vi (2013–14) chapter 6 (19 June 2013)

9 *ZZ (France) v Secretary of State for the Home Department Court of Appeal (Civil Division)*, 24 January 2014, [2014] Q.B. 820.

10 *Benkharbouche v Embassy of the Republic of Sudan*; *Janah v Libya*, *EAT*, 4 October 2013, [2014] 1 C.M.L.R. 40.

Our letter of 29 October 2014

2.9 In response, we said in our letter of 29 October:

> "As no new material points of information arise from your letter, the Committee does not propose to respond further until after completing its consideration of the Government's response to the Committee's Report, *The application of the EU Charter of Fundamental Rights in the UK: a state of confusion*."

The Minister's oral evidence taken on 12 January 2015

2.10 The Justice Secretary gave evidence to us on a number of matters on 12 January, including the Charter. Although the Home Secretary also gave oral evidence relevant to the Charter, we confine this Report to the evidence of the Justice Secretary as the Minister responsible for the current document.

2.11 The Minister was first asked the following question on the Charter, which starts with an explanation of why we conducted our inquiry into it in the first place:

> "We have produced a report on this, because of the concern that the Committee has had about this over a long period of time, going back to when we acceded to the European Charter of Fundamental Rights. You will recall, Justice Secretary, that at that time we were told by those who were then responsible for these matters that the United Kingdom would enjoy an opt-out by virtue of Protocol 30.
>
> "However, since then, it has emerged quite clearly that Protocol 30 falls short of being an opt-out, and there is now some confusion, perhaps—if we use that word—as to where and when it would apply to UK law. This Committee, in its recommendations, suggested that we disapplied the Charter by way of an amendment to the European Communities Act. Since we made that recommendation, we have had further evidence on the confused situation as regards the application of the Charter to this country, not least when the Charter celebrated its fifth anniversary. On that day, 1 December, a senior legal adviser to the Fundamental Rights Agency wrote, with reference to this Committee's recommendation to unilaterally disapply the Charter—and I quote from what he said—"some hesitance at national level is due to the fact that it is not easy to understand where the Charter applies and where it does not, given the complexity of how legal powers are allocated to the different layers of governance." Home Secretary, do you not think that now is the time that we clarify this situation, and deal with the European Charter of Fundamental Rights?"[11]

2.12 The Justice Secretary responded:

> "If we start with the practicalities, we were hoodwinked over the Charter. We should never have been part of it in the first place. We were promised that it would be a meaningless document. The last Government led us up the garden path over it, and that should not have happened, and those who were involved at the time should be

[11] Q 38 [Mr Clappison] Oral evidence taken on 12 January 2015, HC 919 (2014–15).

ashamed about what they did; but they should have been ashamed of what they did over the Lisbon Treaty as well, where the same thing applied.

"The Charter did not create new rights in its own right, but what it did was codify a lot of things that either existed in bits and pieces of European law, or in custom and practice. It created for the Court a reference point that was a very clear, simple document, and my anxiety about documents like the Charter is that they effectively create blank-cheque jurisprudence. Sir William rightly said earlier that it takes a unanimous vote to overrule an ECJ judgment. It creates a tool for the ECJ to interpret the Charter in ways that impact right across the scope of European law. We will come on to the issue of the EU's accession to the ECHR in a moment, but it creates a point of conflict there as well.

"How does it affect us? The first thing it is important to say is that, yes, it does apply to the UK, and all the advice we have had so far and all of the evidence I have seen so far is that there is, genuinely, a stopping point. It does not permeate into matters that are genuinely wholly related to UK law, so you would not see the Charter applied in a UK criminal court, for example. But the question we have to ask is where the dividing line comes in areas where European law is fairly vague in scope, and there is no doubt that there are those in Brussels who would like to see the Charter permeate member state law. The previous Vice-President of the European Commission was very explicit about her desire to see the Charter permeate national law. She said she wanted to see the Charter applied at national level as well.

"We have to watch this like a hawk. I have to say that this is an area where there is not a great division across the coalition. Liberal Democrats have stood up in the House and also said that it is not their wish, either, to see the Charter become something that is applied in UK law as well, in the UK courts. Up to now, the references to the Charter in UK case law have been pretty few and far between, and I have not seen, as yet, evidence of the Charter really gaining a serious foothold, but I am watching this very carefully. I am very mindful of the view of this Committee; I share this Committee's concerns. If I feel the need to go to my colleagues in Government and say, "We have got a real problem here," then I will do so".[12]

2.13 Our Chairman then asked the Home Secretary a question about the application of the Charter to Temporary Exclusion Orders, proposed in the Counter-Terrorism and Security Bill, currently being considered by the House of Lords. The next question addressed to the Justice Secretary concerned the implications of the UK courts being bound by the case law of the Court of Justice on the Charter in the important area of immigration proceedings:

"On 7 April, the Supreme Court, constrained by the case law of the European Court of Justice, refused the Government permission to appeal this judgment—the case of *ZZ*—and in that case, the Charter was applied by the Court of Appeal in accordance with the case law of the European Court of Justice in a way that weakened national security procedures relating to immigration, something that people might find of

12 Q 38 [Chris Grayling]

> particular interest and concern just at this moment. Is there anything that can be done about this, Secretary of State?"[13]

2.14 The Justice Secretary, identifying the case itself as having a Home Office lead, referred this question to the Home Secretary, but first responded:

> "I do think it is a matter for concern. Fundamentally, the difficulty is that if we give to a court an unlimited jurisprudence, with little or no democratic override, you create a situation where decisions will be taken where the jurisprudence will develop mission creep into new areas that will leave us, as a nation, unable to do things about court decisions that materially affect us."[14]

2.15 There then followed an exchange between our Chairman and the Minister about what the former identified as the "completely different territory" of the Charter, compared with the European Convention on Human Rights (ECHR) and the Human Rights Act. This was because the Charter "applies in a similar framework of law, and thereby effectively puts us into an impossible position, in terms of policy making in our vital national interests".[15]

2.16 The next question we put to the Justice Secretary was "whether the Charter might make it harder to restrict EU migrants getting in-work benefits" such as "Article 21, regarding prohibition of discrimination on grounds of nationality, and Article 34(2), regarding entitlement to social security benefits and social advantages for everyone residing and moving legally throughout the EU".[16]

2.17 The Minister responded:

> "It is a genuine issue, as you describe. Fundamentally, we need to be able to protect our national interest. If the Court is really using the Charter to rewrite the rules agreed by member states, then the member states and the United Kingdom will have to respond to that. I absolutely accept what Sir William says, and we have to look at that very carefully, and I will ask the Home Secretary if I can take a look at her legal advice as well on that particular situation. We cannot have a situation where the laws of this land are being rewritten by an international court, and where we have no ability to do anything about it, in areas that are as sensitive as you describe".[17]

Previous Committee Reports

Ninth Report HC 219-ix (2014-15), chapter 22 (3 September 2014); First Report HC 219-I (2014–15), chapter 19 (4 June 2014).

13 Q 42 [Mr Clappison]
14 Q 42 [Chris Graylling]
15 Q 43 [Sir William Cash]
16 Q 44 [Jacob Rees-Mogg]
17 Q 44 [Chris Grayling]

3 Single-member private limited liability companies

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Draft Directive on single-member private limited liability companies
Legal base	Article 50 TFEU; ordinary legislative procedure: QMV
Department	Business, Innovation and Skills
Document numbers	(35953), 8842/14 + ADDs 1–5, COM(14) 212

Summary and Committee's conclusions

3.1 This proposal would require Member States to establish, as part of their national law, a specific form of single member private liability company (SUP, standing for *Societas Unius Personae*) which would be subject to standard and simplified rules for its formation and governance. A business, particularly any small and medium sized enterprises, would then have the option of using this form of company with a view to alleviating the extra burdens of carrying out cross-border business.

3.2 In our last Report on 10 December 2014 we drew attention to the fact that the Government accepted an internal market legal basis and we supported the Government's negotiating objectives. We asked for an update — particularly on the views of stakeholders and other interested parties — and on the Government's further consideration of the power for the Commission to adopt implementing legislation.

3.3 In a letter of 18 December the Minister for Employment Relations and Consumer Affairs and Minister for Women and Equalities (Jo Swinson) informed us that, being an optional company form, the SUP was unlikely to have any adverse consequences for UK business, that it would likely benefit companies looking to set up business in other Member States, and confirmed that anyone wishing to start a single member company in the UK would continue to be able to register in here.

3.4 She now provides further information on the views of stakeholders and on the subordinate legislation powers for the Commission envisaged in this proposal.[18] There continues to be little interest from stakeholders. Whilst the Government continue to argue against conferring delegated legislation powers on the Commission, the Government's analysis is that this power "would not present significant risks to subsidiarity". The conferral of implementing legislation powers on the Commission is central to the current ongoing negotiations.

[18] The delegated legislation procedure, set out more fully in Article 290 TFEU, essentially allows either the European Parliament or the Council to reject a Commission proposal for legislation. The implementing legislation procedure, set out in Article 291 and Regulation 182/2011, requires the Commission proposal to undergo scrutiny by a comitolgy Committee of the representatives of the Member States. In this case the Committee can, ultimately, reject a proposal if there is a qualified majority of Member States opposed to it.

3.5 **We are grateful for the prompt and helpful updates provided by the Minister. We should be grateful for a further update on the progress of negotiations if there are substantive matters to report or when a general approach in the Council becomes imminent.**

3.6 **We retain this document under scrutiny.**

Full details of the documents: Proposal for a Directive on single-member private liability companies: (35953), 8842/14 + ADDs 1–5, COM(14) 212.

Background

3.7 The key elements of the proposal are:

- Member States would be required to provide in their national legislation a company law form for single-member private limited liability companies. Member States would have the choice of how to introduce such a company form, e.g., by creating an additional form of single-member companies or by replacing an already existing form with SUP;
- Member States would be obliged to allow for direct on-line registration of SUPs, without the need for a founder to travel to the country of registration for this purpose;
- The proposal would provide for a standard template of articles of association, which would be identical across the EU, available in all EU languages and would contain the necessary elements to run a single-member private limited liability company. The use of the standard articles of association would be required if the SUP is registered electronically. If another form of registration is allowed by national law, the template would not have to be used, but the articles of association would need to comply with the requirements of the Directive; and
- Protection for creditors would be ensured, through a balance sheet test and a solvency statement.

The Minister's letter of 28 January 2015

3.8 The Minster expands on the views of stakeholders:

> "There still appears to be little interest from the business community. They remain of the view that they would be unlikely to use the SUP company form, particularly if setting up a company in the UK. They have confirmed that gaining access to markets and working in other Member States does not present a significant problem to them, although acknowledged that simplification of other Member States' rules would be of benefit.
>
> "One of the key elements of the proposal is that founding members of the company would not be required to physically meet with a notary or similar abroad prior to incorporation on line. Agreement to such a change would reduce costs for any UK companies wishing to set up an SUP in some Member States."

3.9 On the issue of subordinate legislation power conferred on the Commission:

> "Negotiations are on-going in relation to the conferral of powers on the Commission to make both delegated and implementing acts.
>
> "The proposal includes one power for the Commission to make delegated acts. Certain provisions of the Directive will apply to the types of private limited company listed in Annex 1 to the Directive. The proposed power would enable the Commission, where a Member State makes any change to the types of private limited company provided for in their national law affecting the contents of that Annex, to adapt the list of companies contained in the Annex.
>
> "The UK continues to argue against the inclusion of this power. However, our analysis is that such a power does not present significant risks to subsidiarity.
>
> "Under the current proposal, two powers would be conferred on the Commission to make implementing acts: (a) to adopt a uniform template of articles of association which can be used for the on-line registration of SUPs and (b) to establish a template to be used for the on-line registration of SUPs. These two issues are central to the current negotiations with a number of options under consideration."

Previous Committee Reports

Twenty-fifth Report HC 219-xxiv (2014–15), chapter 1 (10 December 2014); First Report HC 219-i (2014–15), chapter 3 (4 June 2014).

4 Regulation of medical devices

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Health Committee and the Science and Technology Committee
Document details	(a) Draft Regulation on medical devices; (b) Draft Regulation on *in vitro* diagnostic medical devices
Legal base	(Both) Articles 114 and 168(4)(c) TFEU; co-decision; QMV
Department	Health
Document numbers	(a) (34294), 14493/12 + ADDs 1–5, COM(12) 542 (b) (34295), 14499/12, COM(12) 541

Summary and Committee's conclusions

4.1 These 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.

4.2 The Government broadly welcomes the draft Regulations, subject to two principal 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, overly bureaucratic and delay patient access to life-changing medical technologies. Second, it questions the proposed 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.

4.3 Our earlier Reports, listed at the end of this chapter, provide a detailed overview of these important and complex draft Regulations, the Government's position, the outcome of a public consultation undertaken by the UK's Medicines and Healthcare products Regulatory Agency (MHRA), and the First Reading amendments agreed by the European Parliament in April 2014.

4.4 When we last considered the draft Regulations, at our meeting on 26 November 2014, we agreed to grant a scrutiny waiver to enable the Government to support a possible general approach at the December 2014 Health Council. If agreed, this would provide a mandate for the Council to start informal "trilogue" discussions with the European Parliament and the Commission. In granting a waiver, we noted that there was broad agreement in Council on the need for an exemption for "in house" *in vitro* diagnostic medical devices, with discussions focussing on ensuring that such devices meet minimum safety standards. We considered that the Government had set out clearly the terms on which it would be willing to support a compromise on pre-market scrutiny for higher risk medical devices and expressed support for its efforts to secure an outcome which was "clinically focussed", applicable to a narrowly defined range of products, and did not undermine the wider objective of improving the quality of *all* notified bodies.

4.5 In his latest letter, the Minister for Life Sciences (George Freeman) explains that the Italian Presidency was unable to secure a general approach at the December 2014 Health Council and sets out the next steps in the negotiating process.

4.6 **We are grateful for the Minister's update. The draft Regulations remain under scrutiny and the Government will need to request a further scrutiny waiver or clearance if the Latvian Presidency seeks to achieve a general approach within the Council, or a political agreement with the European Parliament, before the end of its term in June. As negotiations appear to be entering an important phase, we draw the latest developments to the attention of the Health Committee and the Science and Technology Committee. Meanwhile, we look forward to receiving regular progress**

reports on negotiations within the Council and on any informal trilogue discussions with the European Parliament.

Full details of the documents: (a) Draft Regulation on medical devices, and amending Directive 2001/83/EC, Regulation (EC) No. 1223/2009: (34294), 14493/12 + ADDs 1–5, COM(12) 542; and (b) Draft Regulation on *in vitro* diagnostic medical devices: (34295), 14499/12, COM(12) 541.

Background

4.7 In our earlier Reports, we indicated that we were content with the way in which the Government intended to approach negotiations. We shared the Government's concern that the introduction of additional pre-market scrutiny of higher risk medical devices might delay patient access to new technologies and increase costs for manufacturers without delivering any significant benefits for patient safety. We noted that the Government's consultation of stakeholders revealed mixed views on the need to maintain an existing exemption for high risk *in vitro* diagnostic devices developed and used within a single health institution (so-called 'in-house' tests). We asked the Government to inform us of any significant developments in the negotiations, particularly on these two issues, and to indicate what type of compromise the Government would be willing to accept to address shortcomings in the current regulatory system without introducing a further layer of pre-market scrutiny. We also welcomed the Government's efforts to increase transparency — a key concern raised by the Science and Technology Committee in its Report, *Regulation of medical implants in the EU and the UK*[19] — and the Minister's confirmation that the UK's efforts in this area would be reflected in the final agreed text.

4.8 The European Parliament (EP) formally agreed its First Reading position on both draft Regulations in April 2014. The EP proposed that certain high risk medical devices should be assessed by "special notified bodies" designated by the European Medicines Agency and that there should be a further tier of scrutiny, applicable on a case-by-case basis, to be carried out by an expert Assessment Committee for Medical Devices. The Government opposes these changes on the grounds that they may dilute responsibility for pre-market approval, create a longer and more uncertain approval process, and increase costs. It also opposes the EP's proposal to include new provisions on genetic testing, counselling and informed consent in the draft Regulation on *in vitro* diagnostic medical devices.[20]

The Minister's letter of 27 January 2015

4.9 The Minister (George Freeman) expresses his gratitude for the specific scrutiny waiver we granted last November, ensuring that "any last-minute negotiations on […] a 'general approach' at the Health Council would have been aligned with UK negotiating priorities, which have previously been established with your Committee".

4.10 He confirms that, in light of concerns expressed by some Member States, the Italian Presidency decided not to seek agreement to a general approach, but instead gave a short

19 Fifth Report of Session 2012–13, HC 163.

20 The main changes proposed by the EP are described in our Twenty-eighth Report of Session 2013–14.

progress report accompanied by a brief exchange of views on a few key issues. He adds that there are "no relevant updates to report on the UK's key negotiating objectives at this stage".

4.11 Turning to the timetable envisaged by the Latvian Presidency, the Minister indicates that there is the prospect either of a political agreement or a general approach on the draft Regulations at the Health Council on 19 June. He continues:

> "The Presidency's ideal goal would be to achieve a political agreement following informal trilogues between the European Commission, European Parliament and the Council. This would constitute Council's formal first reading position and — assuming agreement with the Parliament was achieved during trilogues — would then allow this text to be adopted by the Parliament in their second reading position.
>
> "Achieving a 'general approach' at Health Council is perhaps more realistic. In this outcome, the Council would not be adopting a formal first reading position. Instead the 'general approach' would form the basis for the Council's position in informal trilogues to begin under the incoming Luxembourg Presidency in the second half of 2015."

4.12 The Minister undertakes to inform us of any informal trilogue negotiations and to provide any further details we require on the substance or progress of negotiations. He adds:

> "More generally, I would like to take this opportunity to reassure you that I take the issue of ensuring rapid access to innovative therapies very seriously, which is why I have launched a major review of the pathways for the development, assessment, and adoption of innovative medicines and medical technology. This review will consider how to speed up access for NHS patients to cost-effective new diagnostics, medicines and devices, including cancer treatments and diagnostics. It will set out both short and long-term options for action by Government and relevant bodies, including the National Institute for Health and Care Excellence, the Medicines and Healthcare products Regulatory Agency and NHS England, and mark a major contribution to the policy debate."

4.13 During his visit to Brussels at the end of February, the Minister reiterates his intention to "highlight the need for Europe to embrace innovative medical technologies and to ensure that regulations in this sphere are fit for purpose".

Previous Committee Reports

Twenty-second Report HC 219-xxi (2014–15), chapter 4 (26 November 2014); Sixteenth Report HC 219-xvi (2014–15), chapter 2 (29 October 2014); First Report HC 219-i (2014–15), chapter 7 (4 June 2014); Twenty-eighth Report HC 83-xxv (2013–14), chapter 7 (18 December 2013); Thirty-ninth Report HC 86-xxxviii (2012–13), chapter 4 (17 April 2013); Thirty-fifth Report HC 86-xxxv (2012–13), chapter 8 (13 March 2013); Thirty-second Report HC 86-xxxii (2012–13), chapter 2 (13 February 2013); Twentieth Report HC 86–xx (2012–13), chapter 10 (21 November 2012).

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

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Council Decision: 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
Document number	(36616), —

Summary and Committee's conclusions

5.1 The EU established a Special Representative for South Caucasus (EUSR-SC) in 2003 and for the crisis in Georgia in September 2008. In 2011, the positions of EUSR for the South Caucasus and EUSR for the crisis in Georgia were combined.

5.2 The Minister for Europe (Mr David Lidington) expects the current mandate to be extended for eight months; but says that this is under review, and that he will update the Committee if there is any change to this. He has also yet to receive a draft budget.

5.3 The Minister reaffirms the Government's support for the work of the EUSR-SC. With regard to Ambassador Salber's role and performance, the Minister notes in particular:

— his regular access to the Presidents and Foreign Ministers of Armenia and Azerbaijan, enabling him to relay Member States' concerns, counter periods of rising tensions and deliver messages of restraint;

— how his role complements and supports the work of the OSCE Minsk Group, to try to encourage progress beyond the *status quo*, engaging as he does with key stakeholders in Moscow and Ankara and having responsibility for the EU Nagorno-Karabakh conflict prevention/reconciliation funds;

— his good working relationship with UK counterparts on this issue in particular;

— his lead role in the EU's work in respect of the conflicts in Georgia, where the EU continues to be the main international actor on the ground, and which helps to ensure that the EU's work in Georgia is "joined-up"; frequent trips to Georgia, including the breakaway regions, and being one of the co-chairs of the Geneva peace talks; and

— his important role in keeping the Geneva peace talks operational (the only forum to bring together all the parties to the conflict), especially given the difficult circumstances of the signing of the Russia-Abkhazia "Treaty on Alliance and Strategic Partnership".

5.4 The Minister again underlines the strategic importance of the region, and its stability, to the UK's prosperity and energy security goals.

5.5 **As noted in the "Background" section of our Report, Ambassador Selber's appointment in June 2014, after a five-month lacuna, reflected the wider tussle between the then High Representative and the European External Action Service (EEAS), and Member States, about the future of the EUSR "concept". That seems to have been resolved, though it is not clear why an eight-month renewal period has been proposed for this and other mandate renewals that we deal with elsewhere in this Report. Moreover, this is not the only one in which there seems to be some uncertainty over the time period; or in which no budgetary information is yet available.**

5.6 **In terms of the need for the job and the performance of the incumbent, no questions arise. We shall, however, continue to retain the Council Decision under scrutiny, pending receipt of clarification on the timing issue and information about the proposed budget.**

Full details of the documents: Council Decision extending the mandate of the European Union Special Representative for the South Caucasus and the crisis in Georgia: (36616), —.

Background

5.7 The EUSR-SC was first appointed on 20 February 2006. The role involves 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. In 2011, the "Georgia Crisis" mandate was incorporated into the EUSR-SC mandate.

5.8 The present mandate runs until 28 February 2015. The incumbent, Herbert Salber, was appointed in June 2014, following the unexplained resignation in January of his predecessor, Philippe Lefort (a senior and experienced French diplomat, most of whose career had been dedicated to the Caucasus and Russia, including as Ambassador to Georgia in 2004–2007). At that time, Mr Salber was Germany's Deputy Permanent Representative to NATO; he was described as having extensive knowledge of the former-Soviet region and the conflicts in the South Caucasus; and at one time had been the OSCE's Director of the Conflict Prevention Centre (CPC), which leads on the Nagorno-Karabakh conflict within the OSCE, at the time of the 2008 conflict between Georgia and Russia.

5.9 The Minister noted his support for the work of the EUSR, and commented thus:

> "The EUSR has regular access to the Presidents and Foreign Ministers of Armenia and Azerbaijan. The EUSR relays concerns of EU member states to counter periods of rising tensions and has delivered messages of restraint including around concerns of the opening of Nagorno-Karabakh airport. The EUSR has also engaged with key stakeholders 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 region is of strategic importance to the UK and the EU. Continued stability is also key for the UK's prosperity and energy security goals. BP is the single largest investor in the Azerbaijan economy investing more than £20 billion in the Shah Deniz gas field alone. BP also has 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. BP as part of the Shah Deniz Consortium (SDC), with a 28.8% stake, is the current operator of the Shah Deniz I gas field, one of the world's largest gas condensate fields. The SDC are 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 will remain a vital transit route for Azerbaijani oil and gas."

5.10 In clearing the Council Decision that authorised Mr Salber's appointment and a budget for the remainder of the current mandate,[21] the Committee noted that this process played into the much wider issue of whether, post-Lisbon, the EUSR as a "concept" was to be continued or (as the then HR had proposed) absorbed into the European External Action Service (EEAS) — the consequence being that Member States would no longer be able to approve the mandates of what are effectively the Council's special envoys to a variety of trouble spots affecting EU and national interests, or the job holder. Instead, such "special envoys" would effectively represent the HR/EEAS, and not the Member States through the Council. Under Member State pressure, the final decision was put off until a new HR was in post, with virtually all the present mandate renewals being timed so that they expired in February 2015:[22] yet some mandates have already effectively been taken over by the EEAS *pro tem,* or effectively suspended with the incumbent being appointed as the HR's Special Envoy.[23]

The draft Council Decision

5.11 The draft Council Decision seeks the extension of the present mandate.

5.12 In his Explanatory Memorandum of 29 January 2015, the Minister anticipates that the mandate will be extended for eight months, but then says that "this is under ongoing review" and that he "will update the Committees if there are any changes".

The Government's view

5.13 With regard to Ambassador Salber, the Minister comments as follows:

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21 (36143), —: Fourth Report HC 219-iv (2014–15), chapter 9 (25 June 2014).

22 The exception being the EUSR for Bosnia, whose mandate runs until June 2015.

23 See (35701), —: First Report HC 219-i (2014–15), chapter 27 (4 June 2014) for the full background to this wider issue.

"The UK supports the work of the EUSR. The EUSR has regular access to the Presidents and Foreign Ministers of Armenia and Azerbaijan. The EUSR relays concerns of EU Member States to counter periods of rising tensions and has delivered messages of restraint, including after the shooting down of an Armenian helicopter by Azerbaijan in November 2014. His work complements and supports the work of the OSCE Minsk Group, to try and encourage progress beyond the status quo. The EUSR also has responsibility for the EU Nagorno-Karabakh conflict prevention/reconciliation funds. The EUSR has engaged with key stakeholders 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. He is one of the co-chairs of the Geneva peace talks; the only forum to bring together all the parties to the conflict. 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.

"Since his appointment, Ambassador Salber has played an important role in keeping the Geneva peace talks operational, especially given the difficult circumstances of the signing of the Russia-Abkhazia 'Treaty on Alliance and Strategic Partnership'. The parties to the talks have welcomed his contribution and engagement. Ambassador Salber also made a recent visit to London to provide an update on his discussions on both Georgia and Nagorno-Karabakh and to give his early impressions since taking on the role."

"The UK is in favour of renewing Ambassador Salber's mandate as EUSR given the importance of the role."

5.14 With regard to the Financial Implications, the Minister says:

"We are yet to receive the draft budget and will update the Committees upon receipt. We will examine the budget in detail once it issues.

"The window for clearing the Council Decision is tight and it is expected to come up for adoption in the coming weeks. The current budget expires on 28 February 2015. Therefore we would like to ask that the Committees consider a prompt review of the Council Decision. Until the Committees have cleared the Decision, the UK's scrutiny reserve will remain in place."

Previous Committee Reports

None, but see (36143), —: Fourth Report HC 219-iv (2014–15), **chapter 9** (25 June 2014) and (35626),—: Twenty-eighth Report HC 83-xxv (2013–14), **chapter 17** (18 December 2013); also see (35701), —: First Report HC 219-i (2014–15), **chapter 27** (4 June 2014).

6 EU Special Representative (EUSR) in Afghanistan

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Mandate extension of the EU Special Representative (EUSR) in Afghanistan
Legal base	Articles 28, 31(2) and 33 TEU; QMV
Department	Foreign and Commonwealth Office
Document number	36623, —

Summary and Committee's conclusions

6.1 The EU established a Special Representative for Afghanistan in 2002. The mandate focuses on enhancing EU effectiveness and visibility in Afghanistan. It aims to contribute to the strengthening of democracy, rule of law, good governance, civilian capacity building, economic growth and respect for human rights in Afghanistan.[24]

6.2 This mandate was last renewed in June 2014. The incumbent since 2013 has been Ambassador Skjold Mellbin (a senior Danish diplomat with more than 25 years of experience, most recently as the Danish Special Representative for Afghanistan and Pakistan, with prior ambassadorial postings in Tokyo and Kabul, and with a strong security policy and development cooperation background). Looking ahead from last June, the Minister for Europe (Mr David Lidington) expected Ambassador Mellbin (who also heads the EU Delegation) to have an important role in supporting the then Government through transition and working with the new Government to shape their priorities; in delivering the outcomes of the NATO Summit and Afghan Development Conference later in 2014; and in delivering a new EU strategy, focussing on promoting peace and stability in the region, reinforcing democracy, encouraging economic development and the rule of law and a yet-to-be-signed EU-Afghan Cooperation Agreement on Partnership and Development (CAPD). But much uncertainty surrounded them both.

6.3 In our Report of 5 November 2014 we considered a Joint Communication: *Elements for an EU Strategy in Afghanistan 2014–16*, and a related Commission Staff Working Document on EU support in strengthening civilian policing and Rule of Law post-2014.[25] This latter centred on EUPOL Afghanistan.[26] Based on the evidence presented in the

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24 See Seventh Report HC 83-vii (2013-14), chapter 6 (26 June 2013), for the full background to this mandate.

25 See (35996), 9467/14, chapter 5 and (35190), 11109/13, chapter 8: Eighteenth Report HC 219-xvii (2014-15), (5 November 2014).

26 EUPOL Afghanistan was established on 30 May 2007 with a three-year mandate; this was extended in 2010 for another three years, until 31 May 2013. It was set up to:

- assist the Government of Afghanistan in implementing coherently its strategy towards sustainable and effective civilian policing arrangements, especially with regard to the Afghan Uniform (Civilian) Police and the Afghan Anti-Crime Police, as stipulated in the National Police Strategy;
- improve cohesion and coordination among international actors;
- work on strategy development, while placing an emphasis on work towards a joint overall strategy of the international community in police reform and enhance cooperation with key partners in police reform and training, including with the NATO-led mission ISAF and the NATO Training Mission and other contributors; and
- support linkages between the police and the wider rule of law.

Commission Staff Working Document, Member States agreed that the mandate extension should continue EUPOL Afghanistan's current structure of three broad lines of activity (advancing institutional reform in the Ministry of Interior, professionalisation of Afghan National Police, and connecting the police to the justice sector), within which support could be prioritised as necessary: all three strands of activity for the first year, with the third pillar (connecting the police to the justice sector) discontinued at the end of 2015. In its final year the mission would continue to support MOI reform and police professionalisation, with all activity transitioned to the Afghans or other multilateral actors by the mission end date of 31 December 2016.

6.4 Then, on 3 December 2014, we reported further on the latter, and cleared from scrutiny the latest Council Decision relating to EUPOL Afghanistan, which a set out plans for a new budget of €57,750,000 covering the period from 1 January 2015 to 31 December 2015 (by the end of 2014, the mission having cost over €220 million).[27]

6.5 All of this is relevant because, in underlining the importance of the EUSR's role and supporting Mr Mellbin's continuation in it over the next eight months, the Minister for Europe (Mr David Lidington) says that, with the country in the midst of a complex political transition, security still a challenge and the economic situation fragile:

— the EUSR will play an important role in supporting the new Government as it seeks to implement its reform agenda;

— in the wake of the London Conference on Afghanistan, the EUSR will be a leading voice and ally as he and his officials work to ensure the delivery of agreements ahead of a planned follow-up Senior Officials Meeting in June;

— he will be pressing the EUSR on the need to move at pace to build strong relationships with the new Government and focus on the priorities set by the UK and wider international community;

— the proposed mandate does not alter the work of the EUSR radically over the next eight months, meaning that he will continue to be a 'double-hatted' position, heading the EU Delegation and promoting the work of the Union;

— the mandate refers to the new EU strategy for Afghanistan and the role of the EUSR in the implementation of these objectives: the strategy focuses on promoting peace, stability and security in the region, reinforcing democracy, encouraging economic development and the rule of law; alongside overseeing the EU's political dialogue with Afghanistan, the strategy "broadly dictates the day to day activities of the EUSR";

— the Afghan Government has stated their readiness to resume negotiations on the EU–Afghan Cooperation Agreement on Partnership and Development and, if agreed in the next eight months, the EUSR would be heavily involved in taking it forward;

— with EUPOL Afghanistan being reduced from 27 rule of law personnel in 2014 to zero in 2016, it has been proposed that the EUSR'S office be augmented by up to three

[27] See (35190), 11109/13, chapter 7 and (36514), —, chapter 10: Twenty-fourth Report HC 219-xxiii (2014–15), (3 December 2014).

personnel to continue EU strategic support to rule of law (described as "deliberately minimal, to build on EUPOL's results", and though requiring an increase to EUSR staffing, "a significant net reduction in EU personnel in Afghanistan").

6.6 The Minister concludes by noting that:

— Afghanistan remains an important foreign policy priority for the UK;

— entering a crucial period in Afghanistan's history, the EUSR will be important in seeking to deliver a stable and secure Afghanistan;

— it is important that, alongside the international community, the gains made over the last 12 years are protected;

— the EU, through the work of the EUSR and its long-term financial commitment, continues to be a critical factor in supporting our objectives.

6.7 **Regarding the proposal to extend the EUSR responsibilities and oversight to include some Rule of Law activity currently undertaken by EUPOL Afghanistan:**

> **"No decisions have been taken, and without release of the budget figure for the 2015 mandate, it is not yet clear what impact additional rule of law responsibilities would have on the size and required resource of the EUSR's office, though we expect any additional resource to be minimal. We have pressed to ensure any such cost is matched by savings elsewhere in the EU's spending in Afghanistan."**

6.8 **That being so, it is not easy to understand quite how strengthening the EUSR's office as EUPOL Afghanistan enters its final phase will lead to "a significant net reduction in EU personnel in Afghanistan". Though in other respects minded to clear this Council Decision from scrutiny, pending receipt of greater clarity on this point and other budgetary information, we shall continue to retain it under scrutiny.**

6.9 **We also remind the Minister that the Joint Communication, *Elements for an EU Strategy in Afghanistan 2014–16*, remains under scrutiny, pending the report we asked from him on the outcome of the London Conference, including his assessment in the light thereof of the prospects for the EU achieving its objectives over the next three years, including the extent to which it will depend on the commitments of the Afghan government and of other members of the International Community, and the likely impact of the post-2014 security environment.[28] Since it is now two months since the conference took place, we are surprised not to have heard from him, and expect to do so within the next ten working days.**

Full details of the document: Council Decision extending the mandate of the European Union Special Representative in Afghanistan: (36623), —.

[28] See (35996), 9467/14: Eighteenth Report HC 219-xvii (2014-15), chapter 5 (5 November 2014).

Background

6.10 Having been first established in 2002, the mandate has been carried out since 22 July 2013 by Ambassador Skjold Mellbin. At that time, the Minister for Europe said:

> "Ambassador Skjold Mellbin will take over as EUSR at a critical point in the security and political transition in Afghanistan. The UK welcomes him as a very credible and well-qualified candidate for this role. The EUSR will be important in trying to deliver a stable and secure Afghanistan, in line with the aims of the UK Government and wider international community. We anticipate that Ambassador Skjold Mellbin will discharge this role effectively."

6.11 The most recent Council Decision authorised the extension of his mandate until February 2015. The proposed mandate did not alter the work of the EUSR substantially over the following eight months but proposed some additional responsibilities, specifically the delivery of the implementation of a new EU strategy. The EUSR role was to continue to be a "double-hatted" position, heading the EU Delegation and promoting the work of the Union.

6.12 The Minister's "performance report" on Ambassador Skjold Mellbin over the preceding year was, as he put it, encouraging — especially as he envisaged an important role for him in supporting the current Government through transition and working with the new Government to shape their priorities, and in delivering the outcomes of the NATO Summit and Afghan Development Conference later in 2014.

6.13 The Minister also looked ahead to:

- the afore-mentioned new EU Strategy, focussing on promoting peace and stability in the region, reinforcing democracy, encouraging economic development and the rule of law; and
- yet-to-be-signed EU-Afghan Cooperation Agreement on Partnership and Development (CAPD).

6.14 The EUSR would be heavily involved in their implementation. In separate correspondence, the Minister indicated that he expected the Strategy to be ready for endorsement later in the year; we looked forward to receiving it.[29] But much uncertainty surrounded both it and the CAPD. He did not expect the CAPD, upon which he said that little progress had been made with the current Afghan Government, to be finalised with the new Government until towards the end of year; he would deposit the draft Council Decisions to sign and conclude the CAPD for parliamentary scrutiny in the normal way, when drafts became available.

6.15 Though the Minister did not say so, there was a further uncertainty: the stand-off between the Council and the then HR (Baroness Ashton) about whether, post-Lisbon, the EUSR as a "concept" was to be continued or (as the then HR had proposed) absorbed into

[29] See (35996), 9467/14: Eighteenth Report HC 219-xvii (2014–15), chapter 5 (5 November 2014) and the Committee's consideration of the Joint Communication: *Elements for an EU Strategy in Afghanistan 2014-16:* Third Report HC 219-iii (2014–15), chapter 5 (18 June 2014).

the EEAS — the consequence being that Member States would no longer be able to approve the mandate of what are effectively the Council's special envoys to a variety of trouble spots affecting EU and national interests, or the job holder.

6.16 At that juncture, one key mandate — to the Middle East Peace Process — had been terminated and two others — to Central Asia and the Southern Mediterranean — had been set aside; and, in the meantime, been effectively replaced by what were in effect the HR's own Special Envoys — in the latter two cases, apparently without discussion with the Council and contrary to the arrangement whereby the bone of contention between her and the Council would be set on one side until her successor has been appointed. It was therefore not surprising that the Minister and like-minded Member States had "highlighted the need for greater transparency in the EUSR process and requested a discussion on the future of the EUSRs for MEPP, Southern Mediterranean and Central Asia in the near future". We asked the Minister to tell us the outcome when this discussion had taken place.

6.17 The Government's position — which the Committee endorsed — was crystal clear: Member States must retain at least their present degree of control over the establishment of each position, the mandate and the job-holder.[30]

6.18 The EUSR in Afghanistan (and other counterparts) were accordingly "holding the fort", pending the resumption of discussions when the next HR was appointed in November 2014; hence the shortened mandate.

6.19 In the meantime, we cleared the draft Council Decision.[31]

The draft Council Decision

6.20 The draft Council Decision proposes to extend the EUSR's mandate for the European until 31 October 2015; the incumbent, Mr Franz Michael Mellbin, would remain *in situ*.

6.21 In his Explanatory Memorandum of 29 January 2015, the Minister says that the proposed mandate contains no substantial changes and focuses on enhancing the EU's visibility and role in Afghanistan; but also says:

> "However, there is a proposal to extend the EUSR responsibilities and oversight to include some Rule of Law activity currently undertaken by the EU Policing Mission in Afghanistan (EUPOL).
>
> "No decisions have been taken, and without release of the budget figure for the 2015 mandate, it is not yet clear what impact additional rule of law responsibilities would have on the size and required resource of the EUSR's office, though we expect any additional resource to be minimal. We have pressed to ensure any such cost is matched by savings elsewhere in the EU's spending in Afghanistan."

30 See our Report on the EU Special Representative for the Middle East Peace Process and wider EUSR issues: First Report HC 219-i (2014–15), chapter 27 (4 June 2014) for the full background to this issue.

31 (36033), —: Second Report HC 219-ii (2014–15), chapter 11 (11 June 2014).

The Government's view

6.22 The Minister says that the Government supports the work of the EUSR in Afghanistan, and describes Mr Mellbin's performance thus:

> "He works closely with the UK and other international partners to ensure a cohesive approach in delivering the international community's priorities in Afghanistan, including by regularly chairing a meeting of EU Heads of Mission. His work and support for shared UK and EU objectives has been encouraging. The EUSR has played a significant role in the international community's approach to the recent Presidential elections which for the first time in Afghanistan's history saw a peaceful transfer of power to a new President. The EUSR is also a strong voice on human rights and security sector reform and an influential partner when dealing with senior members of the new Afghan Government.
>
> "It remains a challenging time for Afghanistan. The country is in the midst of a complex political transition and despite important progress over the last 12 months, security still remains a challenge and the economic situation fragile. Over the next eight months, the EUSR will play an important role in supporting the new Government as it seeks to implement its reform agenda. In the wake of the London Conference on Afghanistan, the EUSR will also be a leading voice and ally as we work to ensure the delivery of agreements ahead of a planned follow-up Senior Officials Meeting in June.
>
> "Over the next eight months, we will be pressing the EUSR on the need to move at pace to build strong relationships with the new Government and focus on the priorities set by the UK and wider international community. The proposed mandate does not alter the work of the EUSR radically over the next eight months. The EUSR role will continue to be a 'double-hatted' position, heading the EU Delegation and promoting the work of the Union.
>
> "The mandate references the new EU strategy for Afghanistan and the role of the EUSR in the implementation of these objectives. The new EU strategy focuses on promoting peace, stability and security in the region, reinforcing democracy, encouraging economic development and the rule of law. Alongside overseeing the EU's political dialogue with Afghanistan, the strategy broadly dictates the day to day activities of the EUSR.
>
> "The Afghan Government has stated their readiness to resume negotiations on the EU–Afghan Cooperation Agreement on Partnership and Development. If agreed in the next eight months, we would expect the EUSR to be heavily involved in taking forward this agreement.
>
> "EUPOL will draw down from 27 rule of law personnel in 2014 to zero in 2016. It has been proposed that the EUSR'S office be augmented by up to three personnel to continue EU strategic support to rule of law. The proposal is deliberately minimal, to build on EUPOL's results. Though this would require an increase to EUSR staffing, it remains a significant net reduction in EU personnel in Afghanistan.

> "Afghanistan remains an important foreign policy priority for the UK. As we enter a crucial period in Afghanistan's history, the EUSR will be important in seeking to deliver a stable and secure Afghanistan. It is important that we, alongside the international community, protect the gains made over the last 12 years. The EU, through the work of the EUSR and its long-term financial commitment, continues to be a critical factor in supporting our objectives."

Previous Committee Reports

None, but see (36033), —: Second Report HC 219-ii (2014-15), chapter 11 (11 June 2014); (35053), —, chapter 16 and (35128), —, chapter 20: Ninth Report HC 83-ix (2013–14), (10 July 2013). Also see (35996), 9467/14 chapter 5 and (35190), 11109/13, chapter 8: Eighteenth Report HC 219-xvii (2014-15), (5 November 2014); and (35190), 11109/13, chapter 7 and (36514), —, chapter 10: Twenty-fourth Report HC 219-xxiii (2014-15), (3 December 2014).

7 EU Special Representative for Kosovo

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Council Decision extending the mandate of the EU Special Representative in Kosovo
Legal base	Articles 31 (2) and 33 TEU; QMV
Department	Foreign and Commonwealth Office
Document number	(36626), —

Summary and Committee's conclusions

7.1 This Council Decision renews the mandate and budget of Samuel Žbogar as EU Special Representative (EUSR) in Kosovo for (the Minister for Europe, Mr David Lidington, expects) a further eight months, from 28 February 2015 until 31 October 2015. He will also continue his role as acting as head of the EU Office in Pristina.

7.2 At the time of the last mandate renewal in June 2014, the Minister illustrated various ways in which Mr Žbogar (a former Slovene Foreign Minister) had continued to make a positive contribution in an extremely challenging situation, particularly with regard to the EU's largest and most longstanding rule-of-law mission, EULEX Kosovo;[32] this was especially important at this juncture because EULEX Kosovo faced a very difficult transition, in which Mr Žbogar would no doubt continue to play a leading role.

[32] EULEX Kosovo is focused on local ownership and capacity building, through mentoring, monitoring and advice; aimed at advancing the goal of a stable, viable, peaceful, democratic, multi-ethnic Kosovo, contributing to regional cooperation and stability, and committed to the rule of law and to the protection of minorities.

7.3 The proposals for EULEX over the next two years outlined in that Report emanated from a European Court of Auditors report and an EEAS Strategic Review: an unwieldy EULEX would be down-sized, specialising in the areas which would make the most impact in the next two years; its Executive division — covering policing and sensitive criminal cases — would remain in both the north and south of Kosovo, but in a smaller way, while most of EULEX's current capacity-building activities would be taken on by Commission-funded project work (reflecting a key recommendation of the European Court of Auditors' earlier report).

7.4 The Minister explained that some relevant changes had accordingly been made to the EUSR's mandate (his italics): to ensure consistency and coherence of Union action in Kosovo, *including in guiding locally the EULEX transition*; to support Kosovo's progress towards the Union, in accordance with the European perspective of the region, through targeted public communication and Union outreach activities designed to ensure a broader understanding and support from the Kosovo public on issues related to the Union, *including the work of EULEX*; and to contribute to the development and consolidation of respect for human rights and fundamental freedoms in Kosovo, including with regard to women and children *and protection of minorities,* in accordance with the Union's human rights policy and Union Guidelines on Human Rights.

7.5 Despite his success and the importance of continuity, the Minister explained why Mr Žbogar's mandate was being extended only until 28 February 2015, viz., the uncertainty over the future of the EUSR role *per se*, in the face of a proposal by the High Representative to absorb them into the EEAS — a proposal that the Government was, rightly, resisting, and the final determination of which had been postponed until a new High Representative is in post.[33]

7.6 Then, in August 2014, the Minister reported that that changes in EULEX Kosovo's structure had been agreed along the lines expected, which would enable it "to reduce in size intelligently and operate effectively", so as to focus on capacity-building and security throughout Kosovo, and the implementation of agreements reached in the Belgrade-Pristina dialogue in the north; start to phase out its executive functions in the justice sector as part of a phased handover of responsibility to Kosovo; and complete its work on ongoing serious cases: Kosovo had agreed, in principle, to create a special court to hear any trials arising from EULEX's Special Investigative Taskforce, which has been investigating the allegations against senior Kosovo political figures in the 2010 Marty Report[34]; and EULEX would have an important role in assisting Kosovo with the operation of this court.

7.7 As we would be hearing more from the Minister about Mr Žbogar's role early in 2015, we asked the Minister to bring us up to date then on how the changes to his mandate had worked in practice.[35]

33 See (36034), —: Third Report HC 219-iii (2014–15), chapter 11 (18 June 2014).

34 Produced for the Council of Europe by Senator Dick Marty, it alleged that after the end of hostilities with Serbia in 1999, high-ranking members of the Kosovo Liberation Army (KLA) had been involved in the murder of mostly Serbian prisoners, whose organs were then trafficked.

35 See (36259) —: Ninth Report HC 219-ix (2014–15), chapter 43 (3 September 2014).

7.8 **The Minister now illustrates the continuing importance of the EUSR role and how well Mr Žbogar continues to fulfil his brief — which is all too the good, given not only the inherent challenges (which, if mishandled are always capable of undercutting the welcome progress being made) but also those posed by the down-sizing and re-focussing of EULEX Kosovo over the 18 months, and the corruption allegations that have arisen since the EUSR's mandate was renewed (and about which we expect shortly to hear from the Minister).**[36]

7.9 **The EUSR's budget has yet to be fully finalised; and the eight month duration has yet to be officially confirmed. Though we would be minded to clear this Council Decision from scrutiny, we shall continue to retain it under scrutiny pending confirmation of the length of Mr Žbogar's mandate and receipt of information about the budget.**

Full details of the document: Council Decision extending the mandate of the European Union Special Representative in Kosovo: (36626), —.

Background

7.10 The EU has had a central role in post-conflict Kosovo: firstly, as part of the UN Interim Administration Mission in Kosovo, or UNMIK; and latterly, through the EU Special Representative/Head of the EU Delegation and the EU's largest and most longstanding civilian ESDP mission, EULEX Kosovo.

7.11 The EUSR's mandate stems from the 14 December 2007 European Council underlining the EU's readiness to play a leading role in strengthening stability in the Western Balkans, including by contributing to a European Security and Defence Policy mission and to an International Civilian Office as part of the international presence in Kosovo. Joint Action 2008/123/CFSP adopted on 4 February 2008 established an EU Special Representative for Kosovo. Kosovo declared independence on 17 February 2008.

7.12 As our earlier Reports detail, until May 2011 the EUSR mandate was combined with that of the International Civilian Representative (ICR; appointed by an International Steering Group, of which the UK is a member, and the ultimate supervisory authority over the implementation of the UN Special Envoy's Comprehensive Settlement Proposal:

[36] See (36259), —: Twenty-fifth Report HC 219-xxiv (2014–15), chapter 14 (10 December 2014) for full background. In essence, on 6 November 2104, the Minister wrote concerning recent allegations of corruption within EULEX's ranks made by a UK national seconded to EULEX as a prosecutor, and "secondary allegations" relating to "EULEX's handling of this issue and of the UK staff member concerned". He noted that the UK, along with other Member States, had quickly made it clear to EEAS that a thorough response was needed, which not only investigated the allegations but also ensured that public confidence was maintained in EULEX's handling of such cases. EU High Representative/Vice-President Mogherini then announced on 10 November that an external investigation would take place led by Mr. Jean Paul Jacqué, a distinguished law professor and former Director of the Council Secretariat legal services, who had been asked to provide a report and recommendations within four months.

On 10 December 2014, we asked the Minister to write in two months' time on:

- both the Jacqué investigation and the others that he anticipated, updating us on how matters stand and whether they have fulfilled his criteria, viz., a "thorough response" in terms of independence, timeliness, transparency and "much-needed external scrutiny";
- the matters affecting UK secondees, including the UK national seconded to EULEX as a prosecutor who made the original allegations; and
- the establishment of the special "out of country" court, which is central to the effective execution of the remainder of the EULEX mandate and indicative of the commitment of the Kosovar political establishment to its work.

Kosovo committed itself to that proposal as part of its declaration of independence). The ICR had no direct role in the day to day administration of Kosovo, but retained strong executive and corrective powers to ensure the successful overall implementation of the Settlement. The ICR's mandate was to continue until the ISG determined that Kosovo had implemented the terms of the Settlement.

7.13 Previous Council Decisions cleared by the Committee:

— ended that arrangement, leaving the incumbent as the ICR;

— set out a new mandate that combined the EUSR role with that of heading a new Liaison Office in Belgrade, which had been set up as part of the EU-sponsored (and UN-endorsed) Dialogue between Pristina and Belgrade;

— appointed Fernando Gentilini as EUSR (an Italian diplomat, now a member of the EEAS and closely involved with the Pristina/Belgrade Dialogue since its inception) until he became the EEAS Director for the Western Balkans; and

— as of 1 February 2012, appointed Samuel Žbogar for the position (and thus also as Head of the EU Office in Pristina).

7.14 The Minister noted that by appointing Mr Žbogar — a former Slovenian Minister of Foreign Affairs, Ambassador to the United States and EU Political Director — the EU would be able to draw on deep knowledge of the region and its personalities, as well as extensive diplomatic and EU experience, and send a firm signal of the EU's commitment to Kosovo's European future.

7.15 In his subsequent Explanatory Memorandum of 12 June 2014, the Minister recalled that, on 24 April 2014, the then High Representative (Baroness Ashton) had informed Member States that she did not propose to extend any EUSR mandates expiring in that year beyond February 2015, in order to allow her successor the necessary time for follow-up decisions; and therefore proposed to extend the mandate and budget of Mr Žbogar, as EUSR Kosovo, only for another eight months. He welcomed the recommendation; outlined various ways in which Mr Žbogar had added value to the EU's work in Kosovo; and explained how, to build on these successes and ensure that the EUSR's work continued to deliver on UK objectives, a number of changes to the mandate had been secured in relation to the EU's largest and most longstanding rule-of-law mission, EULEX Kosovo:[37]

> "These include a role for the EUSR in guiding the transition from EULEX when the mission's renewed mandate expires in 2016, a very important issue given the expectation that the EU Office will take on certain responsibilities for monitoring and

[37] EULEX Kosovo is focused on local ownership and capacity building, through mentoring, monitoring and advice; aimed at advancing the goal of a stable, viable, peaceful, democratic, multi-ethnic Kosovo, contributing to regional cooperation and stability, and committed to the rule of law and to the protection of minorities. According to its website:

"EULEX supports Kosovo on its path to a greater European integration in the rule of law area. EULEX's skills and expertise are being used to supports the key EU aims in the visa liberalization process, the Feasibility Study and the Pristina-Belgrade Dialogue. EULEX also supports the Structured Dialogue on the rule of law, led by Brussels. EULEX continues to concentrate on the fight against corruption and works closely with local counterparts to achieve sustainability and EU best practices in Kosovo. EULEX prioritises the establishment of the rule of law in the north"; see http://eulex-kosovo.eu/en/front/ for full information.

assistance. A further change is codifying the EUSR's role in using public diplomacy to build support for EULEX, which will continue to be a challenge as EULEX steps up its rule of law work.

"The policy objectives in the proposed mandate include: playing a leading role in promoting a stable, viable, peaceful, democratic and multi-ethnic Kosovo; strengthening stability in the region and contributing to regional cooperation and good neighbourly relations in the Western Balkans; promoting a Kosovo that is committed to the rule of law and to the protection of minorities and of cultural and religious heritage; supporting Kosovo's progress towards the Union in accordance with the European perspective of the region and in line with the relevant Council Conclusions.

"The mandate calls for Mr Žbogar to do the following (changes italicised):

- "offer the Union's advice and support in the political process;
- "promote overall Union political coordination in Kosovo;
- "strengthen the presence of the Union in Kosovo and ensure its coherence and effectiveness;
- "provide local political guidance to the Head of the European Union Rule of Law Mission in Kosovo (EULEX KOSOVO), including on the political aspects of issues relating to executive responsibilities;
- "ensure consistency and coherence of Union action in Kosovo, including in guiding locally the EULEX transition;
- "support Kosovo's progress towards the Union, in accordance with the European perspective of the region, through targeted public communication and Union outreach activities designed to ensure a broader understanding and support from the Kosovo public on issues related to the Union, including the work of EULEX;
- "monitor, assist and facilitate progress on political, economic and European priorities, in line with respective institutional competencies and responsibilities;
- "contribute to the development and consolidation of respect for human rights and fundamental freedoms in Kosovo, including with regard to women and children and protection of minorities, in accordance with the Union's human rights policy and Union Guidelines on Human Rights;
- "assist in the Implementation of the Belgrade-Pristina dialogue facilitated by the Union".

The draft Council Decision

7.16 In his Explanatory Memorandum of 29 January 2015, the Minister recalls that, against the background outlined above, the new High Representative, Frederica Mogherini, now proposes to extend the mandate; that he expects its length to be eight months, until 31 October 2015; and that he will update the Committee when this is confirmed.

The Government's view

7.17 The Minister welcomes this recommendation and remains "fully supportive of the work of the EUSR in Kosovo". He says that, since his appointment in in December 2011, Mr Žbogar has used his extensive diplomatic and EU experience to add value to the EU's work in Kosovo in the following ways:

- "Being a high profile EU voice in Kosovo supporting the work of the EU Member State diplomatic representatives, with whom Mr Žbogar actively coordinates. He is visible, active and well-known throughout Kosovo, including in the north where he is seen to be representative of both Kosovo Albanians and Kosovo Serbs;

- "Mr Žbogar has been playing a key role in enabling Kosovo to move forward to the next stage of EU integration. He led the EU Office in Kosovo through effective and speedy negotiations of the Stabilisation and Association Agreement — Kosovo's first contractual relationship with the EU — which has now been initialled;

- "As an intermediary between Brussels and Kosovo, his positive relationships with the Serb Mayors in north Kosovo, and the Kosovo government Minister who leads on the Serbia-Kosovo Dialogue-negotiations, have helped to encourage progress on the implementation of the agreements reached in the Serbia-Kosovo Dialogue. This includes ensuring Kosovo Serb participation, particularly north of the Ibar, in the local and national elections;

- "Building important relationships, in particular with Serbs in Kosovo, and thereby promoting a genuine multi-ethnic approach to building Kosovo as a country for all communities. Mr Žbogar has maintained an EUSR/EU Office team in North Mitrovica to engage with, and listen to, the needs of the Kosovo Serb population;

- "Mr Žbogar has worked hard to build an effective relationship with the EU's rule of law mission in Kosovo (EULEX) and given sound political advice to the EULEX Head of Mission (formerly Mr Bernd Borchardt and now Mr Gabriele Meucci). They coordinate activities through their joint chairing of the Joint Rule of Law Coordination Board, which facilitates a high-level dialogue with Kosovo government officials on reforming the rule of law in Kosovo

- "To build on these successes and to ensure that the EUSR's work continues to deliver on UK objectives, UK officials, with the support of several like-minded EU Member States, secured a number of changes to the mandate in relation to EULEX at the last renewal. These include a role for the EUSR in guiding the transition from EULEX when the mission's renewed mandate expires in 2016, a very important issue given the expectation that the EU Office will take on certain responsibilities for monitoring and assistance. A further change is codifying the EUSR's role in building support in Kosovo for EULEX, which will continue to be a challenge as EULEX steps up its rule of law work. These will be major areas of work in the coming year."

7.18 The Minister notes that:

— the policy objectives in the proposed mandate include:

> "playing a leading role in promoting a stable, viable, peaceful, democratic and multi-ethnic Kosovo; strengthening stability in the region and contributing to regional cooperation and good neighbourly relations in the Western Balkans; promoting a Kosovo that is committed to the rule of law and to the protection of minorities and of cultural and religious heritage; supporting Kosovo's progress towards the EU in accordance with the European perspective of the region and in line with the relevant Council Conclusions"; and

— that this mandate calls for Mr Žbogar to continue to:

- offer the EU's advice and support the political process;
- promote overall EU political coordination in Kosovo;
- strengthen the presence of the EU in Kosovo and ensure its coherence and effectiveness;
- provide local political guidance to the Head of EULEX, including on the political aspects of issues relating to executive responsibilities;
- ensure consistency and coherence of EU action in Kosovo within the EU office/EUSR's office, and guiding locally the EULEX transition;
- support Kosovo's progress towards the EU, in accordance with the European perspective of the region, through targeted public communication and Union outreach activities designed to ensure a broader understanding and support from the Kosovo public on issues related to the EU, including the work of EULEX;
- monitor, assist and facilitate progress on political, economic and European priorities, in line with respective institutional competencies and responsibilities;
- contribute to the development and consolidation of respect for human rights and fundamental freedoms in Kosovo, including with regard to women and children and protection of minorities, in accordance with the EU's human rights policy and EU Guidelines on Human Rights; and
- assist in the implementation of the Serbia-Kosovo Dialogue facilitated by the EU, working closely with local actors, and colleagues in Belgrade and Brussels to improve coordination and delivery.

7.19 The Minister concludes his comments thus:

> "I believe that this new mandate will enable the EUSR to continue to promote Kosovo's European perspective, in particular as we hope that Kosovo's SAA with the EU to [sic] be signed in the coming months."

7.20 With regard to the Financial Implications, the Minister says:

— he has yet to receive the draft budget [funded from Heading 4 of the EU budget, which covers the EU's external spend], but will examine it in detail on receipt and forward it to the Committee; and

— in the meantime, with a scrutiny reserve in place, his officials have stressed the need for a budget to be circulated as soon as possible, given that the EUSR's mandate expires on 28 February.

Previous Committee Reports

None, but see (36034), —: Third Report HC 219-iii (2014–15), chapter 11 (18 June 2014) and (36259), —: Twenty-fifth Report HC 219-xxiv (2014–15), chapter 14 (10 December 2014); also see (33609), —: Fifty-second Report HC 428–xlvii (2010–12), chapter 24 (18 January 2012); (33170), —: Forty-second Report HC 428-xxxvii (2010–12), chapter 22 (12 October 2011); (33066), —: Fortieth Report HC 428-xxxv (2010–12), chapter 13 (7 September 2011); (32738), — and (32590), —: Twentieth-eighth Report HC 428-xxvi (2010–12), chapter 10 (11 May 2011) and (32590), — (32601), — (32602), — and (32603), —: Twenty-third Report HC 428-xxi (2010–11), chapter 4 (23 March 2011); also see (32505), —: Nineteenth Report HC 428-xvii (2010–11), chapter 12 (16 February 2011).

8 EU Special Representative for the Horn of Africa

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Council Decision: Extending the mandate of the EU Special Representative for the Horn of Africa
Legal base	Articles 28, 31 (2) and 33 TEU; QMV
Department	Foreign and Commonwealth Office
Document number	(36627), —

Summary and Committee's conclusions

8.1 For these purposes, the Horn of Africa is defined as the countries belonging to the Inter-Governmental Authority on Development (IGAD[38]) — Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, South Sudan and Uganda.

8.2 Our 2013 Report and those referred to therein provide full background on the rationale for the creation of this EUSR role, and of the creditable performance of the incumbent, Mr

38 The Intergovernmental Authority on Development (IGAD) in Eastern Africa was created in 1996 to supersede the Intergovernmental Authority on Drought and Development (IGADD) which was founded in 1986. The IGAD mission is to assist and complement the efforts of the Member States to achieve, through increased cooperation: Food Security and environmental protection; promotion and maintenance of peace and security and humanitarian affairs; and economic cooperation and integration. See http://www.africa-union.org/root/au/recs/igad.htm for full information on IGAD.

Alexander Rondos (a Greek diplomat with extensive experience in African matters, and who had worked in East Africa during his career).[39]

8.3 The EUSR has four policy objectives:

— support the continued stabilisation process in Somalia, in particular the regional dimension of the conflict;

— support the process towards the peaceful coexistence of Sudan and South Sudan as two viable, stable and prosperous states with robust and accountable political structures;

— resolve current conflicts and avoid potential conflicts between or within countries in the region; and

— support political and economic regional cooperation.

8.4 The Minister for Europe (Mr David Lidington) supports renewal of this mandate for another eight months. He again describes it as closely aligned with the UK's policy objectives (the Horn of Africa remains a key UK foreign policy priority), and remains supportive and appreciative of the EUSR's engagement to date — illustrating the positive role the EUSR has played in galvanising EU member state support for action in the Horn of Africa and as a member of the International Community (IC) Troika in South Sudan, where he has successfully co-ordinated EU engagement on Somalia, working closely with the UK; characterising his excellent access to key partners, consistency in the role and knowledge of complex issues as a real asset for EU member states; and highlighting his use of his personal relationships in the region, including within the IGAD and African Union, to add analytical value and strengthen lobbying. Though Somalia made progress in 2014 on both the political and security tracks, considerable challenges remain in 2015-16, which will continue to require active, firm and consistent IC engagement, including from the EU. Balancing his engagement between Somalia and the Sudans will remain a challenge for the EUSR, and there are inevitable tensions between the two roles: but, given the expense and impracticality of separating the EUSR's mandates, the Minister's "firm judgement" is that continuation of the combined mandate will "bring continued, substantive benefit to HMG objectives on both Somalia and Sudan"; he will "continue to engage actively with the EUSR in order to ensure he is dedicating sufficient time to each, alongside continued co-operation with MS, UNSC members and the UN".

8.5 So far, so good. But, as with the other EUSR mandate renewals that we consider elsewhere in this Report, this draft Council Decision is (as the Minister puts it) "lacking full financial information". He undertakes, once he has received it, to "ensure it represents good value to the taxpayer while effectively resourcing the EUSR to deliver important UK objectives in the Horn of Africa". He expect the EEAS to do so shortly; UK officials "have been in regular contact with the EEAS about the late circulation of this budget", and he will write with further information as soon as it is provided.

8.6 Also, while expecting the length of the mandate to be eight months, he adds that it is "under ongoing review" and that he will "update" the Committee if there are any changes.

39 See (35337),—: Seventeenth Report HC 83-xvi (2013–14), chapter 22 (9 October 2013).

8.7 Nonetheless, he expects the draft Council Decision to be tabled for agreement at the 17 February 2015 Foreign Affairs Council.

8.8 **As noted in the "Background" section of our Report, the tying-in of most other EUSR mandate renewals to end-February 2015 reflected a wider tussle between the then High Representative and the European External Action Service (EEAS), and Member States, about the future of the EUSR "concept", resolution of which was postponed until the arrival of the new HR last November. That seems to have been resolved, though it is debatable whether an eight-month renewal period, which is bound to include a summer break, is sufficient to evaluate all EUSR roles and performance. Moreover, though the Minister provides this interpretation in connection with another EUSR mandate renewal, in the case of both this and other EUSRs whose mandate renewal we consider elsewhere in this Report, he talks of the eight-month renewal period being "under review".**

8.9 **To add to the uncertainty, again no budgetary information is yet available. In this instance, too, the Minister refers to the late circulation of documents by the EEAS. Yet, though he has noted in that other case that this will result in a short gap between the 2013–14 and 2014–15 mandates, he also notes that a mechanism exists to allow the EUSR to continue operating during this period.[40] However, in this instance he seems to expect to complete the scrutiny process in less than two weeks. The questions thus arise: is this late circulation the result of the EEAS having had to await the new HR's determination of the wider policy issue, and then being faced with a lot of work at the last minute? In that case, the new HR is guilty of not taking sufficient cognisance of the need for timely parliamentary scrutiny. Or is it, once again, the EEAS's failure alone?**

8.10 **In terms of the need for the job and the performance of the incumbent, no questions arise. But there is too much uncertainty surrounding this proposal, and the other mandate renewals in question, as to the reason for the short extension and how firm it is, and about the cost. We shall, therefore, continue to retain the Council Decision under scrutiny, pending clarification of the timing issues and the proposed budget.**

Full details of the document: Council Decision extending the mandate of the European Union Special Representative for the Horn of Africa: (36627), —.

Background

8.11 The EUSR has four policy objectives:

— support the continued stabilisation process in Somalia, in particular the regional dimension of the conflict;

— support the process towards the peaceful coexistence of Sudan and South Sudan as two viable, stable and prosperous states with robust and accountable political structures;

40 See (36629), — at chapter 9 of this Report which relates to the draft Council Decision extending the mandate of the EUSR for the Sahel

— resolve current conflicts and avoid potential conflicts between or within countries in the region; and

— support political and economic regional cooperation.

8.12 The second tiret reflects the fact that, in October 2013, the existing mandate was merged with that of the EUSR for Sudan and South Sudan. Council Decision 2013/527/CFSP thus extended the mandate of the EUSR for the Horn of Africa for 12 months, to 31 October 2014, and expanded it to include elements of Sudan and South Sudan, when the mandate for the EUSR for Sudan and South Sudan expired on 31 October 2013. It had initially been extended for four months, to ensure that, before the merger was formally proposed, the High Representative and her staff could demonstrate that the enlarged responsibilities could be managed so that the EU maintained its engagement on both Somalia and the Sudans. By the time the Minister submitted his Explanatory Memorandum, it was clear that the concerns that he had expressed in June of that year, which we felt were justified, had been satisfied. We were also reassured by the proposal to review the mandate in April 2014 to consider whether it was working effectively; and asked the Minister to write to us then with information about the scope of the review, its findings and his views thereon. In the meantime, we cleared the mandate amendment and extension.[41]

8.13 Then, last July, the mandate was then extended until 28 February 2015. The Minister provided a number of instances of how the EUSR had added value, and how the EUSR had led the EU response to several notable events in the Horn of Africa. Further background is set out in our previous Report.

8.14 We had reported previously on other similar short-term EUSR mandate extensions — most recently in the First Report of this session.[42] They all played into the much wider issue considered there: whether, post-Lisbon, the EUSR as a "concept" was to be continued or (as the then EU High Representative had proposed) absorbed into the European External Action Service (EEAS) — the consequence being that Member States would no longer be able to approve the mandates of what are effectively the Council's special envoys to a variety of trouble spots affecting EU and national interests, or the job holder. Instead, such "special envoys" would effectively represent the High Representative/EEAS, and not the Member States through the Council. In the event, the final decision had been put off until a new HR was in post (from 1 November 2014), and virtually all the present mandates had been timed, like this one, so that they came up for renewal in February 2015. In the meantime, the Committee:

— noted that some mandates had already effectively been taken over by the EEAS *pro tem,* or have been effectively suspended while the incumbent had been appointed as the HR's Special Envoy;[43] and

41 See (35337),—: Seventeenth Report HC 83-xvi (2013–14), chapter 22 (9 October 2013).

42 See (35701),—: First Report HC 219-i (2014–15), chapter 27 (4 June 2014).

43 The exception being the EUSR for Bosnia, whose mandate runs until June 2015.

— again endorsed what the Minister has said thus far about the need for Member States to retain at least their present degree of control over the establishment of each position, the mandate and the job-holder.

8.15 We cleared the Council Decision.[44]

The draft Council Decision

8.16 This draft Council Decision further extends the EUSR's mandate. The four policy objectives remain the same.

8.17 In his Explanatory Memorandum of 29 January 2015, the Minister says that he expects the mandate to be extended for eight months "and will update the Committees if there are any changes".

The Government's view

8.18 The Minister supports the renewal on this basis, and again describes the mandate as "closely aligned with the UK's policy objectives for the Horn of Africa, a region which remains a key foreign policy priority for the UK".

8.19 He continues his comments as follows:

> "The UK remains supportive and appreciative of the EUSR's engagement to date. He has played a positive role in galvanising EU member state support for action in the Horn of Africa - for example, engaging with the PSC on further EU support to the African Mission in Somalia (AMISOM), a key HMG objective. He remains an effective member of the International Community (IC) Troika in South Sudan and has successfully co-ordinated EU engagement on Somalia, working closely with the UK. His excellent access to key partners, consistency in the role and knowledge of complex issues is a real asset for EU member states.
>
> "He has co-ordinated closely as part of the Troika on both Sudan and South Sudan's peace processes, using his personal relationships in the region, including within the Intergovernmental Authority on Development (IGAD) and African Union, to add analytical value and strengthen lobbying.
>
> "Somalia made progress in 2014 on both the political and security tracks, but considerable challenges remain in 2015-16, which will continue to require active, firm and consistent IC engagement, including from the EU (which, in addition to significant development spend, has three CSDP missions committed to Somalia, is building a Mission in Mogadishu and remains a key political actor, acting closely in concert with HMG and other major IC players).
>
> "Balancing his engagement between Somalia and the Sudans will remain a challenge for the EUSR, and there are inevitable tensions between the two roles. But, given the expense and unfeasibility of splitting the roles out into two separate EUSRs

[44] See (36032), —: Sixth Report HC 219-vi (2014–15), chapter 8 (9 July 2014).

mandates, our firm judgement is that continuation of the combined mandate will bring continued, substantive benefit to HMG objectives on both Somalia and Sudan. We will continue to engage actively with the EUSR in order to ensure he is dedicating sufficient time to each, alongside continued co-operation with MS, UNSC members and the UN.

"In 2014, the EUSR appointed an (ex FCO) UK funded secondee as his Chef de Cabinet. His remit is to increase capacity and improve the strategic direction of the office of the EUSR, and tighten EUSR coordination with other IC actors."

8.20 With regard to the *Financial Implications*, the Minister says:

"This Council Decision is lacking full financial information but the Office of the EUSR informed the COAFR on 16 January that they would not be pushing for an increase in resources, but would need to maintain current resources if the very broad mandate was to be delivered. The EUSR's budget from 25 June 2012 to 30 June 2013 was €4.9 million. Once we receive the financial information from the next mandate we will examine closely and ensure it represents good value to the taxpayer while effectively resourcing the EUSR to deliver important UK objectives in the Horn of Africa. Although we expect the length of the mandate to be eight months, this is under ongoing review and we will update the committees if there are any changes."

"The EEAS has not yet provided a budget for the proposed four month [sic] extension but is expected to do shortly. UK officials have been in regular contact with the EEAS about the late circulation of this budget, and I will write with further information as soon as it is provided.

"The Decision noted above is expected to be tabled for agreement at the Foreign Affairs Council on 17 February 2015."

Previous Committee Reports

None, but see (36032), —: Sixth Report HC 219-vi (2014–15), **chapter 8** (9 July 2014) and (35337), —: Seventeenth Report HC 83-xvi (2013–14), **chapter 22** (9 October 2013).

9 EU Special Representative for the Sahel

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Council Decision extending the mandate of the EU's Special Representative for the Sahel
Legal base	Articles 31(2) and 33 TEU; QMV
Department	Foreign and Commonwealth Office
Document number	(36629), —

Summary and Committee's conclusions

9.1 The Sahel region is defined in this context as Mali, Mauritania and Niger. The mandate was initiated in 2013. It is based on the EU's policy objectives, i.e., to contribute actively to regional and international efforts to achieve lasting peace, security and development in the region. The EUSR's job involves enhancing the quality, intensity and impact of the EU's multi-faceted engagement in the Sahel region, including the *EU Strategy for Security and Development in the Sahel*, and to participate in coordinating all relevant instruments for EU actions. Initial priority was given to Mali and to the regional dimensions of the conflict there. The EUSR's specific tasks are detailed in the "Background" section below.

9.2 A year on, the Minister for Europe (Mr David Lidington) supported renewal. Mr Reveyrand had performed satisfactorily, and there was broad consensus that his mandate be extended for a further 12 months. It had been "tweaked" to reflect the (broadly positive) political developments in the Sahel since February 2013 (the signing of the Ouagadougou Accords in June, the deployment of the UN Mission (MINUSMA) to Mali in July, and the successful presidential and legislative elections in Mali) and now included language on the need for the EUSR to push for further progress on the Malian peace process, and to "keep a weather eye on Niger and Burkina Faso, which will hold important elections in 2015–16." Following what the Minister called a "light-touch "refresh" of the EU's Sahel Strategy (which in future would also cover Chad and Burkina Faso), a further (fifth) Policy Advisor would be funded by savings made elsewhere in the budget. The Minister also noted that the 12-month extension until February 2015 would bring it into line with the majority of other EUSR mandates, which were to be renewed "for only 8 months from June 2014 to February 2015".

9.3 The Minister now reports that Mr Reveyrand has generally performed effectively; after a period of illness, he resumed an energetic programme in autumn 2014, continuing to travel widely across the Sahel region and engaging with a wide range of interlocutors. His annual report was, the Minister says, welcomed by the PSC,[45] and Member States are

[45] Political and Security Committee: the committee of ambassador-level officials from national delegations who, by virtue of article 38 TEU, under the authority of the High Representative for Foreign Affairs and Security Policy (HR) 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.

supportive of his continuing in the role. Mr Reveyrand has continued to chair periodic meetings of a core group of Member States which have an interest in the Sahel, including the UK.

9.4 With regard to what he describes as a "near-final draft", the Minister says:

— the proposed mandate for EUSR Sahel is unchanged from 2014–15, and he believes this gives sufficient latitude for Mr Reveyrand to adapt his role to evolving events in the Sahel region;

— the UK has proposed in Brussels Committee discussions that Mr Reveyrand should monitor the Mali negotiations even more closely in future, and report back regularly to Member States in order that they can formulate their positions accordingly;

— Mr Reveyrand's new mandate will be for a period of eight months rather than a year, in tune with other EUSRs, and will therefore expire on 31 October 2015;

— he understands that the shorter mandates for all EUSRs have been proposed by the new High Representative/Vice President (Federica Mogherini) "to allow her to become acquainted with the individuals and evaluate their roles and performance".

9.5 **As noted in the "Background" section of our Report, the tying-in of most other EUSR mandate renewals to end-February 2015 reflected a wider tussle between the then High Representative and the European External Action Service (EEAS), and Member States, about the future of the EUSR "concept", resolution of which was postponed until the arrival of the new HR last November. That seems to have been resolved, though it is debatable whether an eight-month renewal period, which is bound to include a summer break, is sufficient to evaluate all EUSR roles and performance. Moreover, though the Minister provides this interpretation here, in the case of other EUSRs whose mandate renewal we consider elsewhere in this Report, he talks of the eight-month renewal period being "under review".**

9.6 **In this instance, the draft is not yet final; and, again, no budgetary information is yet available. In this instance too, he refers to the late circulation of documents by the EEAS, which will result in a short gap between the 2013–14 and 2014–15 mandates, though a mechanism exists to allow the EUSR to continue operating during this period. The questions thus arise: is this late circulation the result of the EEAS having had to await the new HR's determination of the wider policy issue, and then being faced with a lot of work at the last minute? In that case, the new HR is guilty of not taking sufficient cognisance of the need for timely parliamentary scrutiny. Or is it, once again, the EEAS's failure alone?**

9.7 **In terms of the need for the job and the performance of the incumbent, no questions arise. We shall, however, continue to retain the Council Decision under scrutiny, pending clarification of the final terms of the mandate, the timing issues and the proposed budget.**

Full details of the documents: (36629), —: Council Decision extending the mandate of the European Union's Special Representative for the Sahel

Background

9.8 Council Decision 2013/133/CFSP of 18 March 2013 appointed Michel Reveyrand-de Menthon as the new European Union Special Representative (EUSR) for the Sahel.[46] The Sahel region is defined as in the *EU Strategy for Security and Development in the Sahel*, i.e. Mali, Mauritania and Niger.[47] Further background is set out in our previous Reports.

9.9 As with the already established EUCAP SAHEL Niger mission,[48] we shared the Minister's concern not so much about the case for this additional EUSR (which was well-made) but about ensuring Value for Money (VFM). Looking ahead, we said that we expected the salary and other VFM aspects of the EUSR role to be given full consideration in the forthcoming EUSR review, which we looked forward to scrutinising in due course.[49]

9.10 Given that the EUSR Sahel was to have few staff, a small budget and no executive responsibilities, we found it difficult to see the justification for an annual remuneration of a quarter of a million Euros, or for it to be the same as that of counterparts with palpably bigger responsibilities.

9.11 We trusted that the Minister's officials' engagement in addressing the salary and other VFM aspects of the EUSR role would include ways in which the EUSRs' individual performances could be better measured, given that (as in this instance) their tasks were defined in such terms that a high "box marking" was almost guaranteed, and looked forward to hearing more from the Minister about his approach.[50]

The 2014 Council Decision

9.12 This Council Decision renewed Mr Reveyrand's mandate for one year, until 28 February 2015. The Minister reported that Mr Reveyrand had performed satisfactorily, having: played an important role in the process that facilitated presidential and legislative elections in Mali; travelled widely in the Sahel-Sahara region over the last year; and been

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46 EUSRs promote the EU's policies and interests in troubled regions and countries and play an active role in efforts to consolidate peace, stability and the rule of law. They support the work of the High Representative of the Union for Foreign Affairs and Security Policy (HR), in the regions concerned, and provide the EU with an active political presence in key countries and regions, acting as a "voice" and "face" for the EU and its policies. See http://eeas.europa.eu/policies/eu-special-representatives/index_en.htm for full details.

47 The EU Strategy for Security and Development in the Sahel has four key themes:

- that security and development in the Sahel cannot be separated, and that helping these countries achieve security is integral to enabling their economies to grow and poverty to be reduced;
- that achieving security and development in the Sahel is only possible through closer regional cooperation. This is currently weaker than it needs to be, and the EU has a potential role to play in supporting it;
- all the states of the region will benefit from considerable capacity-building, both in areas of core government activity, including the provision of security and development cooperation; and
- that the EU therefore has an important role to play both in encouraging economic development for the people of the Sahel and helping them achieve a more secure environment in which it can take place, and in which the interests of EU citizens are also protected.

See http://eeas.europa.eu/africa/docs/sahel_strategy_en.pdf for full information.

48 EUCAP SAHEL Niger is designed to build the capacity of Nigerien security forces to fight terrorism and organised crime. With a first year budget of €8,700,000, a 24-month mandate and, at full operational capability, up to 78 people, the aim of the mission is to enable the Nigerien authorities to implement the security dimension of their Strategy for Security and Development, as well as improving regional coordination in tackling common security threats and contributing to the development of an integrated, sustainable, and human rights-based approach to the fight against terrorism and organised crime.

49 See Thirty-third Report HC 86-xxxiii (2012–13), chapter 13 (27 February 2013) for the full background.

50 See (34702), —: Thirty-fourth Report HC 86-xxxiv (2012–13), chapter 11 (6 March 2013) for the Minister's response.

energetic in building dialogue with regional and international contacts on the issues facing the Sahel. EU Member States appreciated his collaborative approach; agreed that the EUSR could play an important role in helping Sahelian states to address the wide-ranging challenges affecting the region; and saw his co-ordinating function as helpful in mobilising the range of EU instruments available to assist in the region and coordinating the EU's work with that of other international actors such as the UN, World Bank, African Union and ECOWAS. Consequently there was broad consensus that Reveyrand's mandate be extended for a further 12 months.

9.13 The Minister drew attention to some amendments to the mandate, in order to reflect the (broadly positive) political developments in the Sahel since February 2013 (the signing of the Ouagadougou Accords in June, the deployment of the UN Mission (MINUSMA) to Mali in July, and the successful presidential and legislative elections in Mali); the need the EUSR to push for further progress on the Malian peace process; and the need to keep a weather eye on Niger and Burkina Faso, which were to hold important elections in 2015–16. Also, following the "light-touch 'refresh'" of the EU's Sahel Strategy (which in future would also cover Chad and Burkina Faso), the EUSR had proposed to expand his team to include a further (fifth) POLAD (Policy Advisor) who would be based in Brussels, and which (after resistance from the UK and others) would not involve any financial increase. All in all, the Minister was content with the outcome.

9.14 The Minister also noted that the extension of Mr Reveyrand's mandate until February 2015 would bring it into line with the majority of other EUSR mandates, which were also to be renewed, but only for only eight months from June 2014. This touched on the general issues — the review of current guidelines on EUSRs and the apparent tussle between the HR and Member States over their future — that the Committee raised in a separate chapter of the same Report, on the (former) EUSR to the Middle East Peace Process and the then recent resignations of the EUSRs to the South Caucasus and Georgia and to Central Asia.[51]

9.15 So far as this mandate extension was concerned, however, no questions arose. We therefore cleared this Council Decision from scrutiny.[52]

The draft Council Decision

9.16 In his Explanatory Memorandum of 2 February 2015, the Minister says that this "near-final draft" proposes that Mr Reveyrand's mandate be renewed once again, on this occasion for a further eight months; that a draft Budget Impact Statement for the new mandate has not yet been circulated, "but we expect this soon"; and that he supports the renewal of Mr Reveyrand's mandate.

The Government's view

9.17 The Minister continues his comments as follows:

51 See (35701), —: Thirty-seventh Report HC 83-xxxiv (2013–13) chapter 19 (26 February 2014).

52 See (35800), —: Thirty-seventh Report HC 83-xxxiv (2013–14), chapter 21 (26 February 2014).

"Despite a period of illness which restricted his activity in 2014, Mr Reveyrand has generally performed effectively in the EUSR role in 2014–15. Once recovered from his illness, Mr Reveyrand resumed an energetic programme in autumn 2014. This was timely given the commencement of the Mali peace negotiations in Algiers, and that Mr Reveyrand is the EU's eyes and ears, and instrument of influence on that process.

"Mr Reveyrand has continued to travel widely across the Sahel region, engaging with a wide range of interlocutors. His annual report was welcomed by the PSC, and Member States are supportive of his continuing in the role. Mr Reveyrand has continued to chair periodic meetings of a core group of Member States which have an interest in the Sahel, including the UK. The UK has offered to host the next of these gatherings in London in March 2015. The UK's Special Representative to the EU [sic], the Rt Hon Stephen O'Brien MP,[53] will act as principal host."

9.18 With regard to the "near-final draft", the Minister says:

"The proposed mandate for EUSR Sahel is unchanged from 2014–15, and we believe this gives sufficient latitude for Mr Reveyrand to adapt his role to evolving events in the Sahel region. The UK has proposed in Brussels Committee discussions that Mr Reveyrand should monitor the Mali negotiations even more closely in future, and report back regularly to Member States in order that they can formulate their positions accordingly.

"Mr Reveyrand's new mandate will be for a period of eight months rather than a year, in tune with other EUSRs. It will therefore expire on 31 October 2015. We understand that the shorter mandates for all EUSRs have been proposed by the new High Representative/Vice President (Federica Mogherini) to allow her to become acquainted with the individuals and evaluate their roles and performance."

9.19 Finally, on the Financial Implications, the Minister says:

"We have not yet seen a budget for the new mandate. It is expected to be circulated to Member States soon, and we will provide an update to the Committees once it arrives. The late circulation of documents by the EEAS will result in a short gap between the 2013–14 and 2014–15 mandates, though a mechanism exists to allow the EUSR to continue operating during this period.

"The PSC is expected to instruct COAFR to discuss and agree the mandate and budget during the week beginning 2 February. RELEX will consider the budget during the week of 9 February 2015. It is hoped that the Council will clear the new mandate and budget during the week of 2 March 2015.

"Given that there will be a gap between mandates, a retroactivity clause will allow the EUSR to continue his work during this period, using funds that remain unspent under the 2014-15 mandate."

[53] Mr O'Brien was appointed Special Representative for the Sahel at the Foreign and Commonwealth Office on 26 September 2012. He previously served as Parliamentary Under-Secretary of State for International Development from May 2010 to September 2012.

Previous Committee Reports

None, but see (35800), —: Thirty-seventh Report HC 83-xxxiv (2013–14), **chapter 21** (26 February 2014).

10 Protecting the EU's financial interests

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Draft Directive on the fight against fraud to the Union's financial interests by means of criminal law
Legal base	Article 83(2) TFEU; co-decision; QMV
Department	HM Treasury
Document numbers	(34091), 12683/12 + ADDs 1–4, COM(12) 363

Summary and Committee's conclusions

10.1 EU institutions and Member States share responsibility for countering fraud affecting the financial interests of the EU. The proposed Directive (commonly known as the PIF[54] Directive) aims to enforce these responsibilities by harmonising fraud related criminal offences and sanctions.

10.2 The original text of the proposal contained provisions on minimum custodial sentences, VAT and extraterritorial jurisdiction to which the Government was opposed. It was also based on Article 325 TFEU but, since the agreement of a General Approach in June 2013 it has been replaced in the text by a JHA legal base, Article 83(2) TFEU. Also at that General Approach, the provisions on minimum custodial sentences and VAT were removed from the text (though extraterritorial provisions remained).

10.3 One of the scrutiny issues resulting from the General Approach was the Government's ongoing failure to clarify whether it agreed with the Council Legal Service that the three month opt-in period provided by JHA Protocol 21 was triggered by the change to a JHA legal base or whether it asserted that the process was triggered by the original publication of the proposal.

10.4 Instead the Government told us that it did not intend to opt into the proposal prior to adoption but would ensure that we were able to scrutinise any post-adoption opt-in. Since the General Approach, the Government has updated us on the first reading position of the European Parliament. This supported the change to a JHA Title V legal base and the removal of provisions relating to minimum terms of imprisonment, but, contrary to the

[54] The PIF acronym is derived from the French for protecting financial interests.

Government's view, also supported inclusion of VAT fraud provisions. The Government continues to regard the latter as a matter for national competence.

10.5 The Government now updates us on developments in trilogue negotiations since they began in September. It also provides some clarity on the application of the JHA Protocol to the proposal, though not enough on the question of when the three month opt-in period was actually triggered.

10.6 **We thank the Minister for this helpful update which has clarified most of the issues which we raised for his attention in our last Report of 3 September 2014. We look forward to receiving further updates on developments as trilogues progress during the Latvian Presidency.**

10.7 **We note that the Minister has confirmed that, applying the Government's policy set out in the letter of 3 June 2014 from the Home and Justice Secretaries:**

i) **the Government considers that the PIF Directive is a "whole JHA measure" to which Protocol 21 applies; and**

ii) **in relation to legislative measures containing JHA content but not citing a Title V legal base, Government policy is to assert the opt-in and seek a formal change to the legal base.**

10.8 **However, the Minister does not specifically address the question which we have been asking of his department ever since there was a change to a Title V JHA legal basis at the agreement of a General Approach on this proposal: does the Government agree with the Council Legal Service that the three month opt-in period was triggered at that point? We refer the Minister to the letter of 25 July 2014 from the Home and Justice Secretaries in which they stated:**

> **"You note that the Council Legal Service has expressed the view that the three month period for the exercise of the opt-in begins when the Council decide to inform the European Parliament of a proposed new Title V legal basis. We do not agree. The Government considers that the JHA opt-in is triggered on the basis of JHA content and therefore we consider that the three month period for asserting the opt-in begins on the date of publication of the last-language version of a proposal that contains such content. At most, we would consider reiterating an earlier opt-in decision at the point where the legal base is formally changed. The 8 week period for Parliament to consider whether the UK should opt-in to the measure also begins on the date of publication of the last language version."**

10.9 **Although the period for opting into the negotiations on this particular measure has, in any view, passed, could the Minister now clarify, for future reference, when the Government considers a change in legal base to be formal and how this might apply in the case of the current proposal? Does the Government consider that a legal base only becomes formal upon the adoption of a measure? In which case, what is the difference between this and a post adoption-opt in?**

10.10 **We continue to retain the document under scrutiny.**

Full details of the document: Draft Directive on the fight against fraud to the Union's financial interests by means of criminal law: 34091, 12683/12, + ADDs 1–4, COM(12) 363.

Background and previous scrutiny

10.11 The background to the proposal, an outline of its provisions and the Government's view of it, are set out in our Twelfth Report of 2012–13.[55]

10.12 The history of the negotiation of this proposal and of scrutiny issues (including the scrutiny override at General Approach and the application of the JHA opt-in Protocol to the proposal) is long and complicated. Only those aspects directly relevant to the issues addressed by our last Report and the response that the Minister now writes are outlined here: greater detail is set out at paragraphs 14.10–14.21 of our Ninth Report of 3 September.

The Minister's letter of 2 February 2015

10.13 The Financial Secretary to the Treasury (Mr David Gauke) first sets out an update on EU discussions of the proposal:

> "Trilogue discussions under the Italian Presidency began in September 2014 and reached a concluded position in December 2014. These discussions focussed on the scope of the directive, the definition and scope of offences covered by the directive and extra-territorial provisions.
>
> "Throughout these discussions, the UK has remained focussed on eliminating the unacceptable elements of the draft directive. I am pleased to report that many Member States continue to support the UK's stance on a number of issues, including the approach to defining "serious offences" and our views on reporting obligations. Most importantly, Member States have sought to stick closely to Council's General Approach which the Committee may recall the UK was able to support.
>
> "The Latvian Presidency has indicated their intention to push for adoption of the PIF directive during their term. Trilogue discussions are scheduled to restart in February and will focus on outstanding issues, including VAT. As the Committee is aware, the UK remains firmly opposed to the inclusion of VAT within the PIF directive's scope and will work with other Member States to avoid its inclusion.

10.14 He then addresses specific provisions in the original proposal on which we requested further information in our last Report. He says that:

- the removal of provisions on extra-territorial jurisdiction "remains an important negotiating objective for the UK";
- the Government agrees with the view stated in the ECA Opinion 8/2012 that "[VAT] fraud cannot be tackled at national level alone. An effective fight against

[55] Twelfth Report HC 86-xii (2012–13), chapter 10 (12 September 2012).

VAT fraud thus requires efficient cooperation between Member States" since HMRC continues to work closely with other Member States and international agencies to combat fraud, including cross border fraud; but

- the Government maintains that while "VAT fraud has an indirect impact on Member States' contributions to the EU budget, the consequences of VAT fraud are overwhelmingly felt by Member States". In the UK, 97% of VAT revenue is retained by the Exchequer making this first and foremost a fraud against UK tax revenues. This is why the Government remains opposed to the inclusion of VAT in the proposal.

10.15 On the question of the application of the JHA opt-in Protocol to the proposal, the Minister says:

> "I would like to apologise to the Committee for the circumstances that have led to the unfortunate delay in providing a definitive response on this issue. As set out by the then Economic Secretary in her letter of 28 October 2013, the PIF dossier has raised complex questions which have now been resolved.
>
> "The joint letter from the Home Secretary and the Secretary of State for Justice of 3 June 2014 confirms that the Government's policy on legislative measures containing JHA content but not citing a Title V legal base is to assert the opt-in and seek a formal change to the legal base. In light of this position, I can confirm that the UK does consider the draft PIF directive to be a whole JHA measure which falls within the scope of Protocol 21 of the Lisbon Treaty. As the Committee is aware, Protocol 21 allows the UK to choose whether to opt into proposed JHA legislation.
>
> "Given the Government's reservations concerning elements of the draft PIF directive, the UK therefore did not opt in to the PIF directive during the initial three month period allowed for in Protocol 21 but will consider the case for a post-adoption opt-in should our concerns with the draft text be addressed. We have been clear during negotiations that this is the case and will continue to work towards securing a formal change to the PIF directive's legal base. The Committee may recall that Council supported a change of legal base and that the European Parliament endorsed this element of Council's General Approach in their first reading position."

Previous Committee Reports

Ninth Report HC 219-ix (2014–15), chapter 14 (3 September 2014); Twenty-second Report HC 83-xx (2013–14), chapter 13 (6 November 2013); Thirteenth Report HC 83-xiii (2013–14), chapter 18 (4 September 2013); Twelfth Report, HC 86-xii (2012–13) chapter 10 (12 September 2012); Also see (34549) 17670/12: Thirty-eighth Report HC 86-xxxvii (2012–13), chapter 9 (26 March 2013).

11 Financial services: money market funds

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	(a) Draft Regulation concerning money market funds; (b) European Central Bank Opinion on the draft Regulation
Legal base	(a) Article 114 TFEU; co-decision; QMV; (b) —
Department	HM Treasury
Document numbers	(a) (35298), 13449/13 + ADDs 1–2, COM(13) 615 (b) (36321), 12713/14, —

Summary and Committee's conclusions

11.1 Money market funds (MMFs) are open-ended funds that invest in short-term debt securities such as treasury bills and commercial paper. They take one of two forms — constant net asset value (CNAV) MMFs, which seek to maintain a fixed value of units in the fund so that the redemption values of investors' holdings do not change, and variable net asset value (VNAV) MMFs, which have a floating unit value that fluctuates with changes in the value of the underlying assets.

11.2 This draft Regulation would introduce rules specific to MMFs. It would deal with investment policies, risk management, valuation rules, CNAV MMFs and external support. We considered the draft Regulation in October 2013 when we said that, given the Government's reservations about aspects of the proposal, we would not consider this proposal further until we heard about progress in Council working group discussion (which we recognised would not be for some time) on these issues. We asked also to hear about the Government's estimate of the costs of the proposal, once established.

11.3 In August 2014 the European Central Bank published this Opinion on the Draft Regulation, seeking to influence negotiation of the text. We asked how the Opinion was playing into the negotiation.

11.4 The Government now tells us that:

- on 17 December 2014, the Italian Presidency circulated a revised Presidency compromise text of the draft Regulation, which amends the Commission's proposals in an attempt to reach a compromise between the different views expressed by Member States in Council discussions;
- the proposed text has not been approved by Council and the Latvian Presidency has not indicated whether it wishes to use this text as a basis for further discussions; but
- it may wish to make progress in the second half of its term.

11.5 The Government outlines, and comments on, several aspects of the proposal as now modified by the Presidency. It also tells us about some of the possible financial implications of the revised proposal. However, the Government does not mention the European Central Bank Opinion.

11.6 **We are grateful to the Government for this account of where matters now stand on this draft Regulation. We look forward to hearing about further consideration of the proposal, whether under the Latvian Presidency or subsequently, and for the Government's assessment of any text that might be nearing agreement by the Council. However we remind the Government that we wish to hear also how the European Central Bank Opinion is playing into the negotiation. Meanwhile the documents remain under scrutiny.**

Full details of the documents: (a) Draft Regulation on Money Market Funds: (35298), 13449/13 + ADDs 1–2, COM(13) 615; (b) European Central Bank Opinion on a draft Regulation on money market funds: (36321), 12713/14, —.

Background

11.7 Money market funds (MMFs) are open-ended funds that invest in short-term debt securities such as treasury bills and commercial paper. Through these investments MMFs provide short term finance to financial institutions, corporations and governments. For investors they represent highly liquid, stable, short term cash management tools. They provide a safe place to invest in easily accessible cash-equivalent assets characterised as low-risk, low-return investments.

11.8 MMFs take one of two forms:

- constant net asset value (CNAV) MMFs seek to maintain a fixed value of units in the fund so that the redemption values of investors' holdings do not change — they achieve this in part by rounding the net asset value per unit to the nearest percentage point; and
- variable net asset value (VNAV) MMFs have a floating unit value that fluctuates with changes in the value of the underlying assets.

11.9 MMFs are currently regulated either under the Undertakings for Collective Investment in Transferable Securities Directive (UCITS) or, for some MMFs, indirectly under the Alternative Investment Fund Manager Directive. The Committee of European Securities Regulators (CESR) also issued guidelines on MMFs in 2010, which were fully implemented by the Financial Services Authority.

11.10 This draft Regulation, document (a), would introduce rules specific to MMFs. It would deal with investment policies, risk management, valuation rules, CNAV MMFs and external support. We considered the draft Regulation in October 2013 when we said that, given the Government's reservations about aspects of the proposal, related to capital buffers, repurchase agreements and eligible securitisations and credit rating agencies, we would not consider this proposal further until we heard about progress in Council working group discussion (which we recognised would not be for some time) on these issues. We

asked also to hear about the Government's estimate of the costs of the proposal, once established. Meanwhile the document remained under scrutiny.

11.11 In August 2014 the European Central Bank (ECB) seeks, with this Opinion, document (b), to influence and inform negotiation of the draft Regulation. The Bank supports the proposals. It outlines alternative drafting in some technical areas and makes additional points from a policy perspective. We asked that when the Government reported back to us with the information we have asked for in relation to the draft Regulation, to tell us how the Opinion was playing into negotiation of that proposal. Meanwhile this document also remained under scrutiny.

The Government's Supplementary Explanatory Memorandum

11.12 In her Supplementary Explanatory Memorandum of 23 January 2015 the Economic Secretary to the Treasury (Andrea Leadsom) first tells us that:

- on 17 December 2014, the Italian Presidency circulated a revised Presidency compromise text of the draft Regulation;
- the Presidency's text amends the Commission's proposals in an attempt to reach a compromise between the different views expressed by Member States in Council discussions;
- the proposed text has not been approved by Council; and
- the Latvian Presidency has not indicated whether it wishes to use this text as a basis for further discussions, but it may wish to make progress in the second half of its term.

The revised text

11.13 The Minister says on investment policies of MMFs that:

- Articles 7–20 set out what would be the permissible investment policies of MMFs;
- these include stipulations as to the types of assets that they could hold, requirements for diversification of investments, and rules on the portion of an MMF that could be held by a single client;
- these rules are designed to ensure that MMFs would be suitably diversified and invested only in assets of high credit quality;
- they would also limit the amount of exposure MMFs could have to a single issuer of money market instruments or to a single counter-party;
- these rules would require MMFs to develop internal assessments of the credit quality of investments held, so as to reduce reliance on external ratings agencies; and
- the Presidency compromise text proposes several changes to the Commission's original draft, including requirements for allowing MMFs to invest in repurchase

agreements, broadening the scope of eligible securitisations, requirements for allowing MMFs to invest in units or shares of other MMFs and specific provisions to allow proportionate credit assessments to be carried out by small MMF asset management firms.

11.14 The Minister says on risk management of MMFs that:

- Articles 21–25 set out requirements to ensure that MMFs would have sufficient liquidity and would be able to plan for and accommodate investor redemption requests;
- rules include enhanced liquidity requirements, stress testing and "know your customer" requirements;
- MMFs would be precluded from soliciting or paying an external ratings agency to rate their products;
- different rules would be introduced for short-term and standard MMFs;
- the former would be required to hold more liquid assets with shorter maturity limits and greater diversification;
- standard MMFs would face somewhat looser requirements, but would only be able to operate under the VNAV model; and
- the Presidency compromise text proposes changes to the way the weighted average life of a short-term MMF would be calculated when a financial instrument embeds a put option.

11.15 The Minister says on valuation rules that Articles 26–28 would set out how MMFs net asset value per share should be calculated and how their investment assets should be valued.

11.16 The Minister says on CNAV MMFs that:

- the Presidency compromise text makes a number of changes to the Commission's proposals;
- the Commission's Articles 29–34 set out detailed requirements for MMFs that operate under the CNAV model;
- CNAV MMFs were to be required to hold a cash capital buffer equal to 3% of the total value of their assets;
- this buffer was intended to be used solely to compensate for deviations between the fixed unit value offered to investors and the value of the underlying assets held by the fund;
- additional rules on the authorisation of CNAV MMFs and how the buffer was to be used and operated were included in this section;

- the Presidency compromise removes the CNAV buffer from the draft Regulation; and
- in its place, the Presidency has proposed introduction of a 'small professional CNAV MMF' along with liquidity fees and redemption gates.

11.17 The Minister says on external support that:

- historically, sponsors of MMFs have provided discretionary support to MMFs that have faced difficulty;
- Articles 35–26 would prohibit such support, save for the mandatory 3% buffer for CNAVs, in most scenarios; and
- the Presidency compromise text further limits the circumstance in which sponsors of MMFs could provide support.

The Government's view of the present position

11.18 The Minister says that the draft Regulation would provide additional protections that would benefit investors and would help improve competitiveness by providing a level playing field across the EU; and that as such the Government welcomes many of the proposals including enhanced liquidity requirements, new "know your customer" rules and improved transparency. She then explains in greater detail a number of issues as follows.

11.19 On capital buffers the Minister says that:

- the Government recognises that MMFs provide an important function to businesses, investors and the wider economy — they are important providers of short term finance to financial institutions, corporations and governments;
- for investors MMFs represent highly liquid, stable, short term cash management tools — they provide a safe place to invest in easily accessible cash-equivalent assets characterized as low-risk, low-return investments;
- this important role gives rise to prudential concerns that under stressed market conditions MMFs could pose a source of systemic risk;
- the Government acknowledges that further safeguards need to be put in place with regard to MMFs to address prudential concerns;
- the Commission's proposed capital buffer and the mandatory conversion of CNAV MMFs to VNAV MMFs may, however, be unduly burdensome on business, especially considering new EU measures that already exist (that is CESR Guidelines on MMFs) and existing market dynamics;
- imposition of a capital buffer is more suited to the banking sector and should not be imposed upon investment funds, given the fundamental differences between the banking sector and collective investment schemes — MMFs are highly regulated

and unleveraged by nature, making them safer, more liquid and transparent than banks;

- the Presidency compromise text proposes that small professional investors should continue to be able to invest in CNAV MMFs — this represents around 15-20% of the existing CNAV MMF market;
- the Presidency argued that, because small professional investors are less prone to reacting instantly to price changes, a capital buffer is unnecessary;
- to strengthen the resilience of small professional CNAV MMFs against significant redemptions, the Presidency proposed introducing liquidity fees and redemption gates — liquidity fees require funds to impose a fee on redemptions once liquidity within the fund has reduced below a certain threshold;
- in effect, this fee would ensure that those redeeming during a period of stress were unable to benefit from redeeming at a higher unit price than the underlying asset value, thus removing first mover advantage; and
- in its progress report of 17 December 2014, the Italian Presidency noted that further work is needed to establish a suitable regime for the remaining CNAV market — any proposal should seek to maintain some of the utility of CNAV MMFs while dealing appropriately with systemic risk concerns.

11.20 In relation to repurchase agreements and eligible securitisations the Minister says that:

- it is appropriate that MMFs' exposure to inappropriate asset classes and excessive risk be controlled;
- the Government therefore welcomes the Commission's general aim of restricting the types of investments that MMFs may make;
- however, the proposals go further than is necessary to meet this aim and underestimate the wider economic impact of preventing MMFs from making certain investments;
- in particular, the draft Regulation provides strict rules as to what assets could be provided as collateral under a reverse repurchase agreement — under such agreements MMFs will purchase securities with an agreement that they will be repurchased by the seller at an agreed time and price, and as part of this agreement the seller may put up collateral to reduce risk in the event of a counter-party default;
- the draft Regulation seeks to limit the types of collateral that may be provided by the seller under such agreements to Government debt and assets which could otherwise be ordinarily held by an MMF (so called money market instruments or MMIs) — MMIs are subject to strict maturity requirements designed to ensure they are sufficiently liquid;

- the Government believes that since collateral provided under a reverse repurchase agreement is only realised in the event of a default, in which case it would be sold, the liquidity requirements are unnecessary;
- the Commission's proposals also sought to limit the types of securitised assets which MMFs could hold — in particular, Article 10a states that MMFs would only be able to hold securitisations where the underlying asset was corporate debt;
- securitisation of assets is an important way by which companies can enhance their liquidity and as such securitisation plays a significant role in financing economic growth in the real economy;
- however, the majority of securitisations include exposures to both corporate and consumer debt — MMFs are significant investors in this asset class and as written the Commission proposals would prevent them holding such assets;
- given that the draft Regulation already required the debt underlying securitisations to be both high quality and liquid for an MMF to invest, the additional limitation to corporate debt appeared unnecessary and likely to remove an important source of funding to the economy; and
- the Presidency compromise proposal broadens the scope of eligible securitisations and seeks to align the criteria with other EU legislation.

11.21 The Minister says on credit ratings agencies that the proposed rules would prevent MMFs from financing or soliciting a rating by a third party credit ratings agency and, given the important role such agencies play in the investment guidelines used by investors, this appears unwarranted and could prove damaging.

11.22 On sponsor support the Minister says that the Presidency compromise proposal would place further limits on when a fund sponsor (often a bank) could provide support to a MMF facing difficulties, so that it should be justified for financial stability. She comments that sponsor support could potentially be a source of contagion to the rest of the financial sector, so limiting the circumstances when support could be given would help limit the broader systemic risk posed by MMFs.

11.23 Turning to financial implications the Minister says that:

- EU CNAV MMFs would be subject to significant additional costs as a result of having to hold the 3% capital buffer;
- this could make many CNAV funds uneconomical and lead to significant consolidation within the industry, potentially driving up costs for investors;
- few CNAV funds are located in the UK, though many are managed from here and UK corporations make up a significant portion of their investor base;
- the Government is currently working with stakeholders to establish an estimate of the cost of switching from CNAV to VNAV funds for both fund managers and investors;

- if a significant portion of CNAV funds ceased to continue operating and their investors chose to reallocate their money elsewhere this could reduce the amount of money available to support short term financing in the EU; and
- the proposed rules on eligible securitisations would potentially remove an important source of financing for the real economy as MMFs would be restricted in their ability to hold such assets.

Previous Committee Reports

Nineteenth Report HC 83-xviii (2013–14), chapter 12 (23 October 2013) and Fifteenth Report HC 219-xv (2014–15), chapter 9 (22 October 2014).

12 Financial services: benchmarks

Committee's assessment	(a) Legally and politically important (b) Politically important
Committee's decision	(a) Not cleared from scrutiny but scrutiny waiver granted under paragraph (3)(b) of the scrutiny reserve resolution; further information requested; (b) Cleared from scrutiny
Document details	(a) Draft Regulation about benchmarks used in the financial services sector; (b) Opinion of the European Central Bank on document (a)
Legal base	(a) Article 114 TFEU; co-decision; QMV (b) —
Department	HM Treasury
Document numbers	(a) (35328), 13985/13 + ADDs 1–2, COM(13) 641 (b) (36347), —

Summary and Committee's conclusions

12.1 The draft Regulation (document (a)), held under scrutiny since October 2013, concerns indices used as benchmarks[56] in financial instruments, financial contracts or to measure the performance of investment funds. It seeks to improve governance of the benchmark process, prevent conflict of interests of benchmark administrators[57] and contributors,[58] enhance the quality and accuracy of input data and methodologies used by

[56] Defined in the proposal as "any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument is determined or an index that is used to measure the performance of an investment fund".

[57] Defined in the proposal as "the natural or legal person that has control over the provision of a benchmark". In practical terms this means those responsible for the establishment, design, production and dissemination of a Benchmark.

[58] Defined in the proposal as "a natural or legal person contributing input data". This is data used by the administrator to determine the benchmark.

administrators and ensure adequate protection for consumers and investors using benchmarks.

12.2 The House of Commons is the only national parliament to have issued a Reasoned Opinion on this proposal (in November 2013). This challenged the supposed benefits of EU level action — the enhancement of the single market, the promotion of cross-border transactions and the protection of consumers — as being outweighed by potential disadvantages. Disbenefits included the unsuitability of harmonised rules to a wide variety of specific benchmarks, non-alignment with the International Organisation of Securities Commissions (IOSCO) standards, increased regulatory burdens on benchmark administrators and contributors, the risk to the independence of national statistics authorities and the lack of provision for third country benchmarks. In January 2014, the ECB published an Opinion which favoured the original proposal and its wide scope.

12.3 The Government now writes to inform us of the production of a new compromise text by the Latvian Presidency which contains significant improvements over the previous version and which it wishes to support in a General Approach. In view of this, it requests that we either clear the current document or grant a scrutiny waiver, though there is no official confirmation yet of when a General Approach might be sought. We note however that the next ECOFIN Council is on 17 February.

12.4 **We thank the Minister for continuing to keep us well-informed of progress on the negotiation of the proposal (document (a)). We welcome the improvements, which the Minister says are reflected in the compromise text: the focus on a limited number of "critical benchmarks" and the reduced role for ESMA in favour of national supervisory authorities.**

12.5 **However, it is premature for us to clear the current document (a) from scrutiny given that:**

a) **we have not yet had the chance to fully review the compromise text which has been made available to us (we understand that timing constraints prevent the deposit of the General Approach text with an Explanatory Memorandum); and**

b) **this is a proposal on which we issued a Reasoned Opinion and which we would therefore wish to retain under scrutiny at this stage.**

12.6 **However, we are prepared to grant a scrutiny waiver in relation to document (a), pursuant to paragraph 3(b) of our scrutiny reserve resolution. This is to enable the Government to support a General Approach in Council in line with the improvements in the compromise text as described by the Minister. We look forward to hearing from her in due course as to the outcome of the relevant Council meeting.**

12.7 **Given the progress made on the proposal, we are now content to clear document (b), the ECB's Opinion.**

Full details of the documents: (a) Draft Regulation on indices used as benchmarks in financial instruments and financial contracts: (35328), 13985/13 + ADDs 1–2, COM(13) 641; (b) Opinion of the European Central Bank of 7 January 2014 on

indices used as benchmarks in financial instruments and financial contracts (CON/2014/2): (36347), —.

Background and previous scrutiny

12.8 The background to document (a), an account of its provisions, the draft Reasoned Opinion and our assessment of the Commission's response are set out in our Twentieth, Twenty-third, Thirty-ninth and Forty-seventh Reports of 2013–14. The debate on the Reasoned Opinion took place on 28 November 2013.[59] An account of the ECB Opinion (document (b)) is provided in our Fifteenth and Twenty-second Reports of 2014–15.[60]

12.9 In our last Report we noted the encouraging progress towards a more proportionate approach to regulating benchmarks, in line with IOSCO standards. We said that we expected the Minister to report to us before any General Approach was agreed. We also asked for her to include in that update the Government's view on press reports that the compromise text (a version of 9 September 2014) included Institutions for Occupational Retirement Provision (IORPS) under the definition of "supervised entities", thereby restricting their use of benchmarks to those "which are robust" and "provided by administrators that meet prescriptive requirements": was this a prudent development for holders of pensions or an unwelcome constraint on investment in pensions? We also requested the Minister, in the event of rapid progress in negotiations and significant changes proposed to the original text, to consider depositing with us the proposed General Approach text together with an Explanatory Memorandum as this would provide better transparency.

Minister's letter of 2 February 2015

12.10 The Economic Secretary to the Treasury (Andrea Leadsom) provides the following update on progress in the negotiations of the Regulation. She says:

> "The Latvian Presidency of the Council of the European Union has proposed a new compromise text on the EU Benchmarks Regulation. This text contains significant improvements over the previous version.
>
> "Most importantly, the text changes the balance between national competent authorities and the European Securities and Markets Authority (ESMA) in favour of the former. The circumstances in which ESMA can take binding decisions in relation to the regulation of benchmarks has been very tightly constrained, and the ability of supervisors to retain control of supervision of benchmarks in their jurisdictions is maintained.
>
> "On the important issue of which benchmarks are designated as critical, our objective in negotiations has been to ensure that this is a small and clearly defined category. The present Council text achieves this objective, with a benchmark only able to be defined as 'critical' on an EU-wide basis if they meet a high quantitative

[59] *Stg Co Deb,* European Standing Committee B, 28 November 2013, cols. 3-10.

[60] Fifteenth Report, HC 219-xv (2014–15), chapter 8 (22 October 2014).

criteria, alongside a slightly lower quantitative threshold for benchmarks that can meet a set of cumulative qualitative criteria.

"In your letter you raise the issue of the benchmarks that Institutions for Occupational Retirement Provision (IORPS) should use. The Government strongly believes that given their responsibility for the savings of pension holders, it should be ensured that the benchmarks IORPS use are robust and are held to high standards.

"I have written regularly to update the Committee as negotiations have progressed and significant changes to the Commission's original proposal have been clearly highlighted and explained. I will ask my officials to share the Council text as it currently stands with your Committee. It is worth noting that this text is likely to be subject to further minor changes before General Approach is agreed.

"Overall, the Council text has significantly improved over its several iterations and on the issues of greatest interest to the UK in this negotiation. Therefore, the Government is prepared to support a General Approach on the basis of the current proposed text, and I hope that on the basis of the information provided, the Committee will able to clear or waive scrutiny on this document."

Previous Committee Reports

(a) (35328), 13985/13: Twenty-eighth Report HC 219-xxvii, (2014–15), chapter 7 (7 January 2015); Twenty-second Report HC 219-xxi, (2014–15), chapter 8, (26 November 2014); Fifteenth Report HC 219-xv (2014–15), chapter 8 (22 October 2014); Forty-seventh Report HC 83-xlii (2013–14), chapter 12 (30 April 2014); Twenty-third Report HC 83-xxi (2013–14), chapter 5 (20 November 2013); Twentieth Report HC 83-xix (2013–14), chapter 4 (30 October 2013); (b) (36347), —: Twenty-eighth Report HC 219-xxvii, (2014–15), chapter 7 (7 January 2015),Twenty-second Report HC 219-xxi, (2014–15), chapter 8, (26 November 2014); Fifteenth Report HC 219-xv (2014–15), chapter 8 (22 October 2014).

13 Forced labour

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	(a) Draft Council Decision authorising Member States to ratify the Protocol of 2014 to the Forced Labour Convention 1930 of the International Labour Organisation with regard to matters related to social policy; (b) Draft Council Decision authorising Member States to ratify the Protocol of 2014 to the Forced Labour Convention 1930 of the International Labour Organisation with regard to matters related to judicial cooperation in criminal matters
Legal base	(a) Articles 153(1)(a) and (b) and 218(6)(a)(v) TFEU; QMV; EP consent; (b) Articles 82(2) and 218(6)(a)(v) TFEU; QMV; EP consent
Department	Home Office
Document numbers	(a) (36329), 13158/14, COM(14) 563; (b) (36328), 13157/14, COM(14) 559

Summary and Committee's conclusions

13.1 The purpose of these draft Decisions is to authorise Member States to ratify a new Protocol to the Forced Labour Convention. The aim of the Convention is to "suppress the use of forced or compulsory labour in all its forms within the shortest possible period".[61] It was agreed by the General Conference of the International Labour Organisation (ILO) in 1930 and has been ratified by all Member States. The Protocol, agreed in June 2014, contains additional measures for the prevention and elimination of the use of forced labour and the protection of victims.

13.2 Membership of the ILO is only open to state parties. The EU participates as an observer, without voting rights. The Commission considers that the EU has exclusive competence in the areas covered by the Protocol and that, as a consequence, EU authorisation is necessary to enable Member States to ratify the Protocol. It has proposed two draft Decisions, the first — document (a) ("the social policy Decision") — concerning the working environment and working conditions, and the second — document (b) ("the judicial cooperation Decision") — concerning judicial cooperation in criminal matters, in particular human trafficking and the rights of victims of crime.[62] Document (b) includes a Title V (justice and home affairs) legal base. The Commission considers that the UK is

61 Article 1 of the Convention.

62 Two Council Decisions are needed because all Member States are bound by the EU's social policy *acquis* and are therefore entitled to vote for the first Council Decision, document (a). By contrast, a different decision making procedure, excluding Denmark, applies to the second draft Decision, document (b), as it is a Title V (justice and home affairs) measure.

automatically bound, by virtue of its participation in EU Directives on human trafficking and the rights of victims of crime, and that the UK's opt-in does not apply.

13.3 The Government rejects the Commission's analysis. It contends that the EU does not have exclusive competence for any matters covered by the Protocol and, as a consequence, there is no requirement for the EU to authorise Member States to ratify it. The Government also contends that, if the draft Decisions are to proceed, the judicial cooperation Decision (document (b)) is subject to the UK's Title V opt-in. It has confirmed that it has decided not to opt into that Decision, and to vote against the social policy Decision (document (a)). The Government nevertheless supports the Protocol and intends to ratify it in its own right.

13.4 In her latest update, the Minister for Modern Slavery and Organised Crime (Karen Bradley) responds to questions raised in our Twenty-eighth Report, agreed on 7 January 2015, and explains how she expects the Latvian Presidency to take forward discussions.

13.5 **We thank the Minister for her latest update. As we have stated in our earlier Reports, until there is greater clarity as to the Presidency's intentions, the form in which any revised proposals are put forward for adoption, and the Council's position on the extent of EU competence in relation to the Protocol, we wish to retain the draft Decisions under scrutiny. We ask the Minister to continue to provide progress reports on the negotiations. In the event that the draft Decisions are adopted on the basis that the EU has exclusive external competence, we also ask the Minister to provide a copy of the minute statement made by the UK, which in our view should cover both the Commission's assertion of exclusive competence and its assertion that the UK opt-in to the judicial cooperation measure is not engaged.**

Full details of the documents: (a) Draft Council Decision authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation with regard to matters related to social policy: (36329), 13158/14, COM(14) 563; (b) Draft Council Decision authorising Member States to ratify, in the interest of the European Union, the Protocol of 2014 to the Forced Labour Convention, 1930, of the International Labour Organisation with regard to matters related to judicial cooperation in criminal matters: (36328), 13157/14, COM(14) 559.

Background

13.6 Our earlier Reports, listed at the end of the chapter, describe the basis on which the Commission seeks to assert that the EU has exclusive competence to authorise Member States to ratify the Protocol, as well as the Government's reasons for believing that Member States alone are entitled to do so, without requiring prior authorisation from the EU.

13.7 As we have already made clear, we consider that the Government has good grounds for arguing, in this case, that the criteria for establishing exclusive EU external competence for the matters covered by the Protocol have not been met, given that the relevant EU *acquis* and the Protocol itself are based on minimum standards. The Government's position is, in our view, weakened by its acquiescence, on previous occasions, in the

assertion of exclusive EU external competence in relation to other ILO Conventions which suggests a lack of consistency for which no convincing explanation has yet been given.

13.8 We last considered the draft Decisions at our meeting on 7 January 2015. We asked the Minister to:

- clarify whether there had been further discussions or agreement on the proposals at the end of the Italian Presidency and, if not, how she expected the incoming Latvian Presidency to take matters forward; and
- explain whether other Member States agreed with the Commission's analysis that the UK's Title V opt-in did not apply to the judicial cooperation Decision and whether the Government would consider the UK to be bound by it, if adopted.

13.9 We also reminded the Minister that, if the draft Decisions were to be adopted at a future Council, contrary to the Government's wishes, we expected to hear what steps the UK intended to take, within the Council and within the ILO, to record its objection to the assertion of exclusive EU external competence and to make clear that the UK would be ratifying the Protocol on its own behalf.

The Minister's letter of 28 January 2015

13.10 The Minister confirms that compromise proposals prepared by the Italian Presidency, which sought to limit the judicial cooperation Decision to areas of exclusive EU external competence, were opposed by a number of Member States and were not considered by the Council in December. She adds:

> "The UK led this opposition on the basis that we do not consider there is any exclusive EU competence arising from the Protocol."

13.11 Whilst the Latvian Presidency is "keen to move forward" and has been willing to offer drafting changes, the UK continues to make clear that it sees no need for the draft Decisions, as the EU lacks exclusive competence and any shared competence should be undertaken by Member States.

13.12 The Government continues to argue that the UK's Title V (justice and home affairs) opt-in applies "in all cases where a Title V legal base is cited, even where there is exclusive EU external competence". She continues:

> "Most Member States do not engage in these discussions, and there is no overt support for the UK's position on this issue. The Government considers that the UK would not be bound by the judicial cooperation Decision, if adopted in its current form, as the UK has asserted the opt-in and not opted in."

13.13 Finally, the Minister explains that if the draft Decisions are adopted in their current form, on the basis that the EU has exclusive external competence, the UK will "put down a minute statement setting out its position". She invites us to clear the proposals from scrutiny.

Previous Committee Reports

Twenty-eighth Report HC 219-xxvii (2014–15), chapter 10 (7 January 2015); Twenty-fifth Report HC 219-xxv (2014–15), chapter 8 (10 December 2014); Twentieth Report HC 219-xix (2014–15), chapter 6 (19 November 2014) and Thirteenth Report HC 219-xiii (2014–15), chapter 24 (15 October 2014). Also see (35961), 8988/14: Second Report HC 219-ii (2014–15), chapter 18 (11 June 2014) and Fiftieth Report HC 83-xlv (2013–14), chapter 9 (14 May 2014).

14 European Private Company

Committee's assessment	Legally important
Committee's decision	Cleared from scrutiny
Document details	Draft Council Regulation on a European private company
Legal base	Article 352 TFEU; unanimity
Department	Business, Innovation and Skills
Document numbers	(32863), 9713/11, —

Summary and Committee's conclusions

14.1 This proposal for a European Private Company (or SPE, standing for *Societas Privata Europaea*) was intended to complement the existing European Company Statute. It would allow companies to be formed following the same company law provisions across Member States. It aimed to reduce the compliance costs for the creation and operation of business which arise from the disparities between national rules both on formation and on the internal operation of companies. The SPE would have been optional for businesses.

14.2 It was first proposed in 2008. In July 2011 the then Hungarian Presidency tabled a compromise text which we retained under scrutiny. Further details are set out in our Report of 19 July 2011. The proposal gave rise to significant issues relating to the level of capital needed to establish an SPE, determining the seat (and therefore the applicable law) of an SPE, and employee participation.

14.3 The Minister for Employment Relations and Consumer Affairs and Minister for Women and Equalities (Jo Swinson) informs us, by letter of 28 January 2015, that the proposal has been withdrawn by the Commission. She also reminds us that the current proposal on single member private limited companies, which is reported at chapter 3, has similar objectives.

14.4 **As this proposal has now been withdrawn by the Commission, we formally clear it from scrutiny.**

Full details of the documents: Draft Council Regulation on a European private company: (32863), 9713/11, —.

Previous Committee Reports

Thirty-eighth Report HC 428-xxxiv (2010–12) chapter 2 (19 July 2011); see also in respect of this proposal (29790), 11252/08: Thirty-fourth Report HC 16-xxx (2007–08), chapter 10 (8 October 2008).

15 Opening up education: innovative teaching and learning through new technologies

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Commission Communication: *Opening up Education: Innovative teaching and learning for all through new Technologies and Open Educational Resources*
Legal base	—
Department	Business, Innovation and Skills
Document numbers	(35336), 14116/13 + ADD 1, COM(13) 654

Summary and Committee's conclusions

15.1 The Commission Communication examines the impact of new digital technologies and open learning environments on education and training systems across the EU. Concerned that the EU is falling behind the USA and some Asian economies which are already using ICT-based strategies and open educational resources (OER[63]) to transform their education systems, the Commission proposes a number of actions to support education and training institutions in adopting and adapting these technologies, not least to help to achieve broader EU objectives, notably competitiveness and growth, a more skilled workforce and increased employment. The Communication identifies three priority areas in which the impact of new digital technologies merits further consideration and support:

- the development of open learning environments in which all educational institutions, teachers and learners have the capacity to exploit new technologies and digital content and to promote innovation;

63 Open Educational Resources (OER) are digital materials that can be used, re-used and repurposed for teaching, learning, research and more, made freely available online through open licences such as Creative Commons. OER include a varied range of digital assets from course materials, content modules, collections, and journals to digital images, music and video clips.

- the increased use of OER to expand access to educational materials and encourage more personalised learning; and
- investment in local ICT infrastructure and the promotion of open frameworks and standards for interoperability and portability of digital educational content.

15.2 The Commission advocates a more integrated approach by Member States across all of these areas and describes how EU funding (notably, from the *Erasmus* +, Horizon 2020 and European Structural and Investment Funds) can be used to support further action. The Commission does not propose any new legislation. Rather, it encourages Member States and other stakeholders to work with it, and one another, to meet the challenges and policy goals described in the Communication.

15.3 The Government considers that the UK is at the forefront of digital education. Whilst describing the actions contained in the Communication as "reasonable", it also noted that a "one-size-fits-all strategy" would be inappropriate and that it should be for Member States to develop and implement national solutions. In particular, the Government:

- made clear that the EU should not attempt to set up any EU-wide quality assurance initiatives for OER;
- questioned the need for an EU role in relation to teachers' professional development by means of open online courses; and
- cautioned against the use of Council Conclusions to prescribe particular actions to be taken by Member States in schools.

15.4 We agreed with the Government that the Commission should concentrate on those areas in which the EU could add demonstrable value to activities undertaken at national level, avoid a "one-size-fits-all" approach, and retain a degree of flexibility in "an extremely fast-moving area". Noting that the Council was expected to agree Conclusions based on the Communication, we asked the Government to report back to us on the outcome of discussions at the (then) forthcoming Education, Youth, Culture and Sport Council and to indicate how its concerns were to be reflected in the anticipated Conclusions. We also asked the Government to explain what it meant by its reference to "non-binding" Council Conclusions — the implication being that they might, in other circumstances, be binding. The Minister who was at the time responsible for Universities and Science (Mr David Willetts) sent a prompt response in December 2013.

15.5 **The delay in reporting the Minister's response to the House is due to an administrative oversight on our part, for which we apologise. The delay has, however, enabled us to consider the Conclusions agreed by the Council last February. We are satisfied that the Government has been able to achieve its objectives. The Conclusions do not encroach on areas of Member State competence or seek to prescribe a "one-size-fits-all" approach to the challenges presented by the rapid development of new online technologies. We are therefore content to clear the Communication from scrutiny.**

Full details of the documents: Commission Communication: *Opening up Education: Innovative teaching and learning for all through new Technologies and Open Educational Resources*: (35336), 14116/13 + ADD 1, COM(13) 654.

Background

15.6 Our Twenty-third Report, agreed on 20 November 2013, provides a detailed overview of the Communication and the Government's accompanying Explanatory Memorandum.

The Government's response

15.7 In a letter dated 12 December 2013, the Minister then responsible for Universities and Science (Mr David Willetts) describes the discussions that took place at the Education, Youth, Culture and Sport Council on 25 November 2013. The Minister notes:

> "All Member States were keen to develop open educational platforms at national level but equally there was a strong feeling that the importance of traditional teaching should not be overlooked. It was felt that the sector was still evolving and any regulation at this stage would be premature and run the risk of hindering and not helping developments.
>
> "There was general agreement that the role of Governments — and by extension the EU — should be one of assisting educational establishments to explore how best to use the new technologies. The *Erasmus* + programme was cited as a possible vehicle to support open education initiatives and projects."

15.8 The Minister expected Council Conclusions to be drafted and considered during the Greek Presidency (January to June 2014) and added:

> "Based on the November debate, my view is these Conclusions will be general in nature and ones which we would support. There was no support for EU-wide action. Rather, the majority of Member States did feel the EU might add value, potentially in funding, quality assessment or qualification recognition and it is likely therefore these areas are where the Conclusions might concentrate.
>
> "On the specific issue of schools, although there was some concern over the ability of teachers to make best use of the new technology, again there was no support for any EU-wide action. I think it fair to say therefore my concerns in this area have receded significantly."

15.9 Turning to the reference made in the Minister's Explanatory Memorandum to "non-binding" Conclusions, the Minister explains:

> "It is of course correct that all Council conclusions carry equal weight, although they cannot require Member States to take action. Our intent was simply that our position would be to try and ensure that the Conclusions would not be drafted in such a way that they would be seen by the European Commission as a call or encouragement to develop regulatory proposals."

The Council Conclusions

15.10 The Education, Youth, Culture and Sport Council agreed a set of Conclusions on *Efficient and Innovative Education and Training to invest in Skills — supporting the 2014 European Semester* at its meeting on 24 February 2014. The Communication is one of a

number of education and training-related documents referred to in the Conclusions. These include a general commitment to modernise and improve educational methods by supporting investment in ICT infrastructure, promoting new technologies and digital content, and encouraging continuing professional development in the use of digitally supported teaching methods.

15.11 The Conclusions invite Member States ("with due regard for the principle of subsidiarity and in accordance with national circumstances") to:

- support education and training institutions in exploiting the potential of new technologies and digital content;
- help teachers acquire a high level of digital skills and adopt innovative teaching practices; and
- make use of *Erasmus* + and European Structural and Investment Funds to achieve these objectives.

15.12 Member States are also invited to work with the Commission to:

- encourage partnerships at national and EU level between creators of educational content with a view to increasing the supply of open educational resources and other digital educational materials in a variety of languages;
- make use of the new *Open Education Europa* portal as a reference point for existing open educational resources produced in the EU; and
- organise a summit on the challenges posed by new technologies and open educational resources, with a particular focus on quality assurance and assessment and certification of skills acquired through new modes of learning.

Previous Committee Reports

Twenty-third Report HC 83-xxi (2013–14), chapter 6 (20 November 2013).

16 Fisheries: catch quotas and effort limitation for 2015

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Draft regulation regarding fishing opportunities in 2015 for EU vessels for fish stocks in EU and non-EU waters
Legal base	Article 43(3) TFEU; QMV
Department	Environment, Food and Rural Affairs
Document numbers	(36469), 14590/14, COM(14) 670

Summary and Committee's conclusions

16.1 The EU Total Allowable Catches (TACs) for particular fish stocks need to be agreed by the Council before the start of the calendar year to which they apply, but the requirement to take into account scientific advice means that official texts have often been available too late to be considered properly before their adoption. This has been a particular problem for those stocks (including a number of importance to the UK in the North Sea) which are jointly managed with third countries, notably Norway, since the EU share has to be negotiated with them.

16.2 Even though no figures were available for jointly managed stocks, or those subject to management by regional fisheries organisations, the Commission put forward on 28 October 2014 this draft Council Regulation which sought to set TACs for 2015, as well as effort (days at sea) limits for certain stocks, with the proposals reflecting scientific advice, the EU's commitment to restore stocks to levels which will achieve maximum sustainable yields, and the CFP objectives of ensuring that EU fisheries are ecologically, economically and socially sustainable. The hope was that the proposals would be agreed by the December Fisheries Council, and, in our Report of 19 November 2014, we said that, in view of the desirability of establishing the TACs in question before the start of 2015, the best we could do at that stage was to report the current position to the House, and to ensure that as many Members as possible had a chance to raise points with the Government before any decision was taken.

16.3 In particular, we noted that this had in recent years been achieved by means of a general debate on fisheries on the Floor of the House (or, occasionally, in Westminster Hall), and we expressed the hope that it would again be possible for such a debate to be held this year, well in advance of the December Council. We added that, if that were the case, we would be prepared to grant a waiver under paragraph 3(b) of the Scrutiny Reserve Resolution, in advance of the Council, whilst continuing to hold the proposals under scrutiny, pending any further information from the Government, particularly on those stocks subject to joint management.

16.4 **The debate in question took place on the Floor of the House[64] on 11 December 2014, and we have subsequently received from the Government an account of the agreement reached in the Fisheries Council on 15–16 December 2014.[65] In the light of this, we are now content to clear the document.**

Full details of the document: Draft Council Regulation fixing for 2015 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union vessels, in certain non-Union waters and repealing Council Regulation (EU) No. 779/2014: (36469), 14590/14, COM(14) 670.

Background

16.5 The EU TACs for particular fish stocks in the following calendar year are based on scientific advice, and then have to be agreed by the Fisheries Council following a proposal

64 *HC Deb*, 11 December 2014, Cols. 1003–1055.

65 Now confirmed in Council Regulation (EU) No. 2015/104 (OJ No. L 22, 28.01.15, p.1.).

from the Commission. Since agreement is ideally needed before the start of the calendar year to which the proposal applies, this has habitually presented scrutiny difficulties, in that the requirement to take into account the scientific advice means that official texts have often been available too late to be considered properly beforehand: and this has been a particular problem for those stocks (including a number of importance to the UK in the North Sea) which are jointly managed with third countries, notably Norway, since the EU share has to be negotiated with them.

The current proposal

16.6 Even though no figures were yet available for jointly managed stocks, or those subject to management by regional fisheries organisations, the Commission sought as far as was possible to set out in this draft Council Regulation the relevant fishing opportunities for 2015, including annual catch limits and effort (days at sea) limits for the management of certain stocks. We noted, that, according to the Commission, the TACs proposed reflected both the scientific advice, and the EU's commitment to bring the stocks to levels which will achieve maximum sustainable yields by 2015 (or 2020 at the latest); that, where appropriate, they were set in line with the multi-annual management plans which have been adopted for a number of key stocks; and that, where the necessary data was limited, a precautionary approach had been adopted.

16.7 We went on to note that the Government's objectives were to obtain the best possible outcome for the UK consistent with following scientific advice, achieving maximum sustainable yields by 2015, where possible, and no later than 2020, and minimising discards. We also drew attention to a number of detailed comments it had made as regards the maximum sustainable yield; the proposed effort (days at sea) restrictions; the arrangements proposed for data limited stocks; those for fully documented fisheries (intended to test a catch-quota system where all catches are landed and counted against quota in order to avoid discards); the coastal state negotiations on mackerel, blue whiting and herring; and other provisions relating to mackerel, blue whiting, Atlanto-Scandian herring, and bass.

Subsequent developments

16.8 In the event, a general debate on fisheries took place on the Floor of the House on 11 December 2014, thereby triggering the scrutiny waiver, and the Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs (George Eustice) wrote to us on 18 December, setting out the basis of the agreement reached at the Council meeting earlier that week (which also took into account the outcome of the negotiations with Norway and Faroes on shared stocks).

16.9 The Minister says that he was able to secure a fair and balanced deal which supports the fishing industry and the sustainability of UK fisheries, involving increases for some stocks whilst accepting reductions where the science indicated that this was necessary to support stock recovery. He adds that his top priority had been to ensure that the current level of days at sea for fishermen remained the same, and that this was achieved, along with much needed rollovers for a number of data limited stocks.

16.10 A full list of all the agreed quotas is at the Annex, in addition to which the Minister describes the key outcomes for the UK as being:

North Sea

- TAC increases for cod (5%), haddock (6%), Nephrops (15%), plaice (15%) and anglerfish (20%)
- Rollover of 2014 TAC for sole, megrim, dab and flounder and ling
- TAC cuts for whiting (-15%), saithe (-15%) and herring (-5%)

Celtic Sea and Channel

- TAC increase for Western Channel sole (2%)
- Rollover for monkfish, megrim, pollack and Bristol Channel plaice
- TAC reductions for Celtic Sea cod (-26% instead of -64%), Celtic Sea haddock (-12% instead of -41%), Eastern Channel sole (-28% instead of -60%) and sole in the Bristol Channel (-15% instead of -35%)

Irish Sea

- A 3% increase for Nephrops instead of a -14% cut
- A rollover for haddock instead of a -20% cut
- TAC cuts for cod (-20%) and herring (-8%)

West of Scotland

- TAC increases for haddock (14%), monkfish (20%) and megrim (1%)
- Rollovers for plaice, sole and pollack
- TAC reductions for Nephrops (-7%), saithe (-15%) and herring (-19%)

All areas

- A maintenance of the effort (days at sea) freeze for all areas covered by the Cod Recovery Plan for a third year so as to give fishermen the time they need to fish sustainably.
- An 11% increase for Northern Hake, on top of a 49% increase last year.

16.11 However, the Minister also says that, despite pressing hard for measures to address declining sea bass levels, he was disappointed that an agreement could not be reached on specific measures to protect the stock (although he was able to secure a commitment from the Commission to work with Member States to reduce fishing pressure at the start of the main fishing season next year — an issue which he says will be a priority for him in the coming weeks).

16.12 Finally, the Minister says that the Presidency reported progress on the negotiations with the European Parliament on the so called 'Omnibus' dossier, which facilitates the implementation of the landing obligation under the reformed CFP by removing contradictory rules from the EU statute book. He notes that no agreement had been reached in the first trilogue on 3 December, and that discussions were expected to continue in the New Year, with the Commissioner being committed to publishing guidance on the implementation of the pelagic landing obligation, so as to mitigate any potential confusion about the rules in the absence of an agreed Regulation.

Previous Committee Reports

Twentieth Report HC 219-xix (2014–15), chapter 2 (19 November 2014).

Annex

	2014	2015	% change	UK quota
North Sea				
Cod	23,073	24,227	+5	11,369
Haddock	32,079	33,947	+6	28,576
Saithe	36,917	31,383	-15	5,249
Whiting	15,233	13,060	-15	8,739
Sole	11,890	11,890	0	510
Plaice	104,117	119,690	+15	34,066
Hake	2,874	3,190	+11	574
Monkfish	7,833	9,390	+20	7,641
Megrim	2,083	2,083	0	2,006
Dab and flounder	18,434	18,434	0	1,588
Lemon sole	6,391	6,391	0	3,904
Ling	2,428	2,428	0	1,869
Turbot and brill	4,642	4,642	0	717
Nephrops	15,499	17,843	+15	15,456
Northern prawn	2,446	3,270	+34	720
Sprat	135,000	218,000	+58	8,271
Skates and rays	1,256	1,256	0	814
Eastern Channel				
Cod	1,620	1,701	+5	157
Plaice	5,322	4,787	-10	1,393
Sole	4,838	3,483	-28	670
Western Channel				
Cod	6,848	5,072	-26	354
Haddock	9,479	8,342	-12	834
Whiting	20,668	17,742	-14	1,890
Hake	45,896	50,944	+11	9,155
Pollack	13,495	13,495	0	2,353

Sole (English Channel)	832	851	+2	501
Sole (Bristol channel)	1,001	851	-15	239
Sole (Western approaches)	382	382	0	64
Plaice (Bristol Channel)	461	461	0	65
Plaice (Western approaches)	135	135	0	17
Monkfish	33,516	33,516	0	6,027
Skate and rays	8,032	8,032	0	2,076
Irish Sea				
Cod	228	228	-20	52
Haddock	1,181	1,181	0	566
Plaice	1,220	1,098	-10	281
Sole	95	90	-5	23
Nephrops	20,989	21,619	+3	7,092
West of Scotland				
Cod	0	0	0	0
Whiting	292	263	-20	150
Haddock	3,988	4,536	+14	3,532
Monkfish	4,432	5,313	+20	1,635
Plaice	658	658	0	388
Ling	8,464	8,464	0	2,863
Megrim	4,074	4,129	+1	1,295
Nephrops	15,287	14,190	-7	13,554
Saithe	7,545	6,348	-15	3,022
Blue ling	2,240	4,746	+112	912
Pelagic stocks				
North Sea herring	282,022	267,197	-5	62,292
Eastern Channel herring	51,704	48,986	-5	4,673
Irish Sea herring	5,251	4,854	-8	3,590
West of Scotland herring	28,067	22,690	-19	13,711
Blue whiting	185,525	197,195	+6	39,065
Mackerel	611,205	519,612	-15	302,000
Norwegian waters				
Cod	20,524	20,524	0	9,622
Haddock	1,200	1,200	0	789
Faroese waters				
Cod and haddock	950	950	0	817
Saithe	3,000	3,000	0	696

17 EU-Turkmenistan relations

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Draft Council and Commission Decision on the Conclusion of a Partnership and Cooperation Agreement (PCA)
Legal base	Articles 91, 100(2), 207, 209 and Article 218(6)(a) TFEU; Article 101 of the Treaty establishing the European Atomic Energy Community; QMV
Department	Foreign and Commonwealth Office
Document number	(36553), —

Summary and Committee's conclusions

17.1 Partnership and Co-operation Agreements (PCAs) were introduced as an instrument for developing the EU's relationship with third countries in the early 1990s. They were primarily targeted at the countries of the former Soviet Union, though more recently their geographical scope has widened. These agreements provide a broad framework for developing the EU's political and economic relations with the countries in question, and establish an institutional basis within which these relations can be discussed regularly.

17.2 Turkmenistan is the only one of the five Central Asian States that does not have a PCA with the EU. An EU-Turkmenistan PCA was signed on 25 May 1998, and ratified by Turkmenistan in 2004. It will come into force when ratified by each Member State and concluded (ratified) by the EU. The purpose of this Decision is to enable the EU to do this, once the European Parliament has signified its consent.

17.3 In the absence of a full PCA, an Interim Trade Agreement (ITA), dating back to 2009, currently exists between Turkmenistan and the European Union.

17.4 Our first Report of 17 December 2014 sets out the background in more detail. In our second, of 14 January 2015, we expressed our disagreement with the Government that the UK opt-in was engaged in respect of the provisions of the PCA on Mode IV services,[66] but noted that this disagreement had little practical effect in this case.

17.5 We also expressed the view that it was unacceptable for the text of this Decision to retain its *limité* classification, and thus of only limited use for scrutiny by this House, once it was made available to the European Parliament.

17.6 Finally we sought further clarification on the issue of EU competence.

[66] ie., services provided by the movement of the service provider across borders and which therefore interact with immigration law.

17.7 **We are pleased that the Government has now secured the removal of the *limité* classification of this text. In our view the Council was not justified to retain this classification for as long as it did.**

17.8 **Whilst the PCA does not raise any substantive issues of policy, it does raise legal issues. That which is outstanding is one which arises frequently in relation to external agreements which are entered into by both the EU and the Member States. This draft Decision lacks clarity as to the exercise of competence. It does not identify the provisions of the PCA in respect of which the EU (as opposed to the Member States) is acting; nor does it make it clear the extent to which the EU is acting in respect of matters for which it has *exclusive* competence, where competence *shared* with the Member States, or for which the EU and Member States have *parallel* competence.[67] Our main concern is that the EU should not, without strong reason, act in areas of *shared* competence in preference to the Member States.**

17.9 **In relation to this concern, the Minister for Europe (Mr David Lidington) indicates that the PCA principally covers matters for which the EU has exclusive competence (under the EU's common commercial policy and in respect of EURATOM matters) or parallel competence (insofar as it relates to development co-operation). It is only in respect of the relatively minor aspect of the PCA, trade in transport services, where there is some shared competence.**

17.10 **Although he does not refer to this in his letter, it is also evident from the third recital to the Decision that, even in this area, some of the competence is exclusive to the EU by virtue of the fact that the PCA would affect existing EU internal legislation.[68] This recital is also consistent with the EU acting only where it has exclusive or parallel competence.**

17.11 **Additionally we have been informed by FCO officials that the Government intend to make a minute statement to address the residual PCA provisions on trade in transport services that are subject to shared competence.**

17.12 **In the light of these factors and the extended history of this matter we are prepared to clear this document from scrutiny on a matter which raises no substantive policy issue. We ask, however, to be provided with a copy of the minute statement in the form it is lodged.**

Full details of the documents: Draft Council and Commission Decision on the conclusion by the European Union and the European Atomic Energy Community of the Partnership and Cooperation Agreement establishing a Partnership between the European Communities and their Member States, of the one part, and Turkmenistan, of the other part: (36553), —.

67 Where the EU has exclusive competence only it can act. Where competence is shared with Member States, either can act, although Government policy is that normally the choice should be in favour of the Member States. Where competence between the EU and the Member States is parallel, either can act, but EU action does not prevent Member States exercising their competence, as is the case where competence is shared.

68 Article 3(2) TFEU.

The Minister's letter of 16 January 2015

17.13 In respect of making the proposed Decision publicly available the Minister informs the Committee:

> "I am pleased to say that, subsequent to the Committee's most recent correspondence, our repeated requests to EU interlocutors seeking a publicly releasable text of the draft Council and Commission Decision have finally borne fruit. We received confirmation from the Secretariat on 15 January that the draft document would be declassified, and passed a copy to the Committee the same day. I hope that this will assist the Committee in their further consideration of the matter."

17.14 He deals with the question of competence as follows:

> "On the question of competences, the Committee sought additional clarity as to the respective exercise of competence between the EU and its Member States. As I previously explained, the Council Decision on Conclusion reflects the fact that the EU will principally be exercising exclusive competence in respect of its common commercial policy (as well as in relation to the Euratom Treaty) but also shared competence in respect of trade in transport services and parallel competence in respect of development co-operation. Aside from that, there is no explicit statement in respect of each Article as to whether the EU or Member States or both will be entering into the relevant obligations. As this is a mixed agreement and on the basis that the Council Decision on conclusion does not authorise the EU to enter into any remaining shared competences, we are proceeding on the basis that these will be for the Member States to assume. We are satisfied that the content of the Agreement and the Council Decision authorising the EU to conclude it are generally consistent with similar Partnership and Co-operation Agreements. In any event, as stated in previous correspondence, officials will scrutinise how the agreement is implemented, including in relation to issues of competence and will seek to ensure that the EU acts only in relation to competences authorised by the Council Decision."

17.15 On the question of whether the UK opt-in is engaged, on which we expressed our view in our Report of 14 January, he states:

> "I note the Committee's views in relation to the Opt-in, but can only reiterate that given that the UK is already compliant with the Mode IV provisions of the PCA and the fact that the Commission would be very unlikely to accept such an application, we have taken the decision not to seek a post-adoption opt-in."

Previous Committee Reports

Twenty-ninth Report HC 219-xxviii (2014–15) chapter 6 (14 January 2015), Twenty-seventh Report HC 219-xxvi (2014–15) chapter 5 (17 December 2014).

18 EU Special Representative for Human Rights

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Draft Council Decision extending the mandate of the EU Special Representative for Human Rights
Legal base	Article 31(2) and 33 TEU;QMV;—
Department	Foreign and Commonwealth Office
Document number	(36628), —

Summary and Committee's conclusions

18.1 The office of the European Union Special Representative for Human Rights (the EUSR) was established by Council Decision 2012/440/CFSP of 25 July 2012. Mr Stavros Lambrinidis, a former Foreign Minister of Greece, assumed the role on 1 September 2012. He acts under the authority of the High Representative of the Union for Foreign Affairs and Security Policy, Mrs Federica Mogherini. He is mandated to contribute to the implementation of the Union's external human rights policy, enhance dialogue with governments in third countries and contribute to better coherence and consistency of the Union's policies and actions on human rights.

18.2 The EUSR's original mandate was due to expire on 30 June 2014 but was subsequently extended to 28 February 2015. Although the EUSR budget was reduced for those eight months of the extended mandate, this compared with an overall budget increase for the previous year. During our scrutiny of all of the corresponding Council Decisions (see paragraph 18.7), we noted the Government's overall support for Mr Lambrinidis' fulfilment of his mandate. The Government now writes to inform the Committee that the current document proposes to grant him a further 24 month mandate running from 1 March 2015 to 28 February 2017. The Government also commits to providing us with further information on the financing of the proposed extension to the mandate. It has yet to receive the draft budget in relation to the first 12 months of the new mandate, but commits to arguing for it to be kept, pro-rata, at the same reduced levels as the last eight month extension.

18.3 **In line with the views we expressed in our first Report of this session[69], we recognise that Mr Lambrinidis appears to have been an effective promoter of UK human rights priorities in his role as EUSR. We therefore consider it important for the Government to be able to support his retention in that role before his current mandate expires on 28 February. We also recognise the benefits of his continuity of service during the ongoing transition to the new EU High Representative for Foreign Affairs.**

18.4 **However, given the potential for duplication with the work of the Council of Europe and the continued need for budgetary restraint, we strongly agree with the**

[69] (36035),—: First Report HC 219-i (2014–15), chapter 29 (4 June 2014).

Government that the budget for this proposed extension to the mandate should not, on a pro-rata basis, exceed the reduced levels applied in the budget for the last (and current) eight month extension. We note that the Minister has committed to keeping us informed of developments on this issue.

18.5 **On that basis, we now clear this document from scrutiny.**

Full details of the documents: Draft Council Decision extending the mandate of the EU Special Representative for Human Rights: (36628), —.

Background and previous scrutiny

18.6 When the office of the EUSR for human rights was first proposed in 2012, there were ten existing EUSRs in different countries and regions of the world, promoting the EU's policies and interests in those areas. The EUSR for human rights represented the first thematic appointment.

18.7 We reported on Council Decision 2012/440/CFSP which originally established the EUSR mandate in June 2013 and a detailed account of the scope, content and background of the mandate is set out in that Report.[70] That Council Decision was also debated on the floor of the House in July 2012 together with the proposed Action Plan on Human Rights and Democracy.[71] In June 2013 we reported on the subsequent Council Decision to amend (and increase) the budget of the EUSR's office for the remaining year of his original mandate[72] and in June 2014 on the Council Decision to extend the EUSR's mandate until 28 February 2015[73] (with a reduced budget for those eight additional months).

The Government's view

18.8 The Minister for Europe (Mr David Lidington) in his Explanatory Memorandum of 30 January 2015 provides his assessment of Mr Lambrinidis' continued performance as EUSR for human rights:

> "Lambrinidis has continued to perform well as EUSR since the extension of his mandate in 2014 and we would like to see him continue in this role for another 24 months."

18.9 The Minister says that the Government's continued support of Mr Lambrinidis lies in his extensive engagement with "countries that face serious human rights challenges and countries that have an important role in international and multilateral human rights fora". The Minister then sets out the following examples of the EUSR's engagement, including his:

- discussion of human rights developments in Burma with the Presidential Office Minister U Soe Thane in January;

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70 (33955),—: Fifth Report HC 86-v (2012–13), chapter 2 (20 June 2012). Draft Council Decision appointing the EU Special Representative for Human Rights.

71 *HC Deb*, 12 July 2012.

72 (35044), —: Seventh Report HC 83-vii (2013–14), chapter 13 (26 June 2013).

73 (36035), —: First Report HC 219-i (2014–15), chapter 29 (4 June 2014).

- taking part in EU bilateral dialogue on human rights with China in December and with South Africa in November; and
- visiting Egypt and Pakistan in October.

18.10 The Minister expands on the example of Egypt and Pakistan as follows:

> "In Egypt, Lambrinidis was received by several key Ministers and institutions with responsibility for human rights issues. This enabled the EUSR to put across useful messages at high level on issues including the importance of safeguarding civil society space, freedom of assembly and association, prison conditions, procedures to investigate torture allegations and pre-trial detentions.
>
> "In Pakistan, the EUSR was received at high level by Ministers, parliamentarians and civil society organisations with responsibility for human rights issues. This enabled him to have in-depth discussions on a range of important issues, including the implementation of domestic laws to address major human rights challenges such as freedom of religion or belief, application and misuse of the blasphemy laws, access to justice, women's and children's rights, freedom of expression, labour standards and the death penalty."

18.11 Mr Lambrinidis' active representation of EU policies in multilateral and international fora, on key themes for the UK such as "the death penalty, freedom of religion or belief, freedom of expression online and offline, business and human rights and women's rights" is highlighted by the Minister. In 2014, Mr Lambrinidis supported:

> "the UK-hosted Global Summit to End Sexual Violence in Conflict and the Girl Summit, as well as representing the EU at United Nations (UN) events including the 3rd UN Forum on Business and Human Rights, the first World Conference on Indigenous Peoples and the 58th session of the Commission on the Status of Women. He also lent his support to initiatives to stop torture on the occasion of the 30th anniversary of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

18.12 The Minister notes that the EUSR has also continued to coordinate his work with Member States through exchanges with "the EU Human Rights Working Group and implementation reports to the Political and Security Committee". The Government welcomes "his emphasis on meeting and engaging with civil society, human rights defenders and representatives of national human rights institutions". Mr Lambrinidis has also contributed to EU policy, including the EU human rights guidelines.

18.13 Summing up, the Minister says:

> "At a time when human rights, fundamental freedoms and democracy are under such pressure in many countries, I believe that renewal of the EUSR's mandate is a desirable signal of the EU's commitment to the promotion of human rights through its external policy and represents good value for the UK. Having a senior representative dedicated to human rights strengthens the EU's capacity to bring the collective influence of the Member States to bear on multiple third countries, through in-depth exchanges at senior level."

Budget for the new mandate

18.14 The Minister explains that although the draft mandate proposes financing from 1 March 2015 to 28 February 2016, it does not specify the amount. Although the Government has yet to receive the draft Budget, the Minister commits to:

- examining it in detail on receipt and forwarding it to us;
- arguing for budgetary provision to be restricted to the level of the last eight month extension (extrapolated to cover the period until 28 February 2016); and
- updating us should the proposed mandate or financing arrangements change during negotiations.

18.15 He notes that funding from 28 February 2016 to 28 February 2017 will be subject to a further Council Decision.

Timing

18.16 The Minister tells us that the EEAS will seek to adopt the proposed Council Decision before the expiry of the current EUSR mandate (28 February) in order to ensure Mr Lambrinidis' continuity of service.

Previous Committee Reports

None, but see (36035),—: First Report HC 219-i (2014–15), chapter 29 (4 June 2014); (35044), —: Seventh Report HC 83-vii (2013–14), chapter 13 (26 June 2013); and (33955), —: Fifth Report HC 86–v (2012–13), chapter 2 (20 June 2012).

19 Financial management

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny, drawn to the attention of the Treasury Committee
Document details	European Court of Auditors review of making the best use of EU money
Legal base	—
Department	HM Treasury
Document number	(36585),—

Summary and Committee's conclusions

19.1 The European Court of Auditors publishes annual audit reports on the revenues and expenditures of the General Budget, the European Development Funds and the wide range

of EU agencies and other bodies. It also carries out management audits of EU organisations or programmes, for which it publishes Special Reports.

19.2 The Court now produces a third class of reports: "Landscape Reviews". This Landscape Review concerns risks to the financial management of the EU budget. In addition to an introduction setting out how the EU budget operates, the review discusses the issues under three headings: "What are the risks to good financial management?", "What goes wrong and why?" and "What are the opportunities and what needs to be done?".

19.3 The Government welcomes the Court's views, which play into its own about the need for improvement in the management of the EU budget.

19.4 **This Court initiative is a welcome effort to improve management of the EU budget. While clearing the document from scrutiny, we draw it to the attention of the Treasury Committee and of the wider House, given the importance of the issues it addresses.**

Full details of the documents: European Court of Auditors "landscape review": *Making the best use of EU money: a landscape review of the risks to the financial management of the EU budget*: (36585),—.

Background

19.5 The European Court of Auditors (ECA) is responsible for the external audit of the EU's public finances. It publishes annual audit reports on the revenues and expenditures of the General Budget, the European Development Funds and the wide range of EU agencies and other bodies. It also carries out management audits of EU organisations or programmes, for which it publishes Special Reports.

19.6 The ECA now produces a third class of reports: "Landscape Reviews", of which it says:

> "Landscape reviews are a new product of the European Court of Auditors (the Court). They consider broad themes based on the Court's output and accumulated knowledge and experience. They are intended to serve as a basis for consultation and dialogue with the Court's stakeholders. They enable the Court to make observations on important matters which might not ordinarily be subject to audit."

The document

19.7 This ECA Landscape Review concerns risks to the financial management of the EU budget. The review is accompanied by factsheets summarising the ECA's findings in relation to revenue and each of the five headings of EU budget expenditure. In the review the ECA:

- highlights the importance of transparency and the concerns raised by the ECA repeatedly qualifying EU budget expenditure;
- notes, in particular, the erroneous perception that the errors identified are equivalent to the level of fraud and corruption affecting the EU budget;

- gives an overview of EU financial flows and summarises the issues that should be addressed to ensure that taxpayers across the EU get better value for money; and
- sets out how the EU budget operates, including the Multiannual Financial Framework, the system of commitment and payment appropriations and the compliance requirements for EU budget expenditure.

19.8 In relation to risks to good financial management the ECA:

- identifies the following key risks to financial management of the EU budget: a failure to spend allocated funds as intended, reliability of the EU budget accounts, not spending funds economically, effectively and efficiently and not offering added value; and
- deliberately excludes fraud and corruption from consideration, since it does not routinely and actively seek out fraud as part of its audits.

19.9 Under the rubric "What goes wrong and why?" the ECA:

- summarises the type of errors committed by Member States and the Commission which affect the financial management of the EU budget;
- highlights that expenditure without due consideration to achieving expected results may lead to poor value for money and notes that the complexity of eligibility rules may contribute to funds not being targeted appropriately;
- notes the deliberate or inadvertent misapplication of public procurement rules and procedures as a cause of many legality and regularity errors it finds;
- says inconsistency in Member States' national administrative capacities is also an issue;
- asserts that the difference between the political commitment to finance projects and the resources actually available can result in duplications, gaps or contradictions in EU budget expenditure;
- adds that the timeline of EU budget financed programmes can also mean that errors are not identified until years down the line;
- says that the current approach to EU budget spending causes management and control authorities to focus on compliance rather than the results achieved by EU funds received;
- notes that the Commission's challenge is to ensure that accurate data is collected from the most appropriate actors in the EU budget expenditure process; and
- says that the Commission faces a challenge, however, in monitoring financial and performance management, including the fact that reporting and accountability systems are not designed to measure outcomes or performance.

19.10 Under the heading "What are the opportunities and what needs to be done?" the ECA:

- confirms that both the Commission and Member States are responsible for ensuring responsible EU budget expenditure and calls on the Commission to prioritise expenditure on areas of EU added value;
- suggests, to encourage and promote performance management, that, among other things, clear milestones should be set for the EU budget with systematic monitoring and evaluation to measure performance;
- suggests clear impact assessments justifying requests for EU budget funds, establishment of a performance management and reporting system, and timely evaluations to establish whether objectives have been achieved efficiently and effectively;
- considers budgetary management and calls on the Commission to improve and publish its long-term cash flow forecast to better ensure that required payments can be made from agreed annual budgets; and
- encourages the Commission to identify examples of gold-plating, continue its efforts to simplify the complex rules and legislation governing EU budget expenditure, and identify and promote examples of best practice to inform and improve budgetary management.

The Government's view

19.11 In his Explanatory Memorandum of 22 January 2015 the Financial Secretary to the Treasury (Mr David Gauke) says that:

- the Government strongly supports the ECA's view that EU budget expenditure, which is funded by taxpayers, should represent value for money and offer added value;
- it therefore welcomes the ECA's Landscape Review, which promotes a number of the Government's priorities in the area of financial management, including simplification, benchmarking the costs of administration, an increased focus on the added value of EU budget expenditure and the need for the Commission to identify and promote best practice amongst Member States; and
- it will continue to encourage the Commission to take steps to better assess and monitor the effectiveness and efficiency of EU budget funds.

Previous Committee Reports

None.

20 Stability and Growth Pact

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Commission guidance on flexibility in Stability and Growth Pact rules
Legal base	—
Department	HM Treasury
Document numbers	(36608), 5375/15, COM(15) 12

Summary and Committee's conclusions

20.1 Some of the EU's Stability and Growth Pact rules aim to prevent Member States' fiscal policies being potentially problematic, while others are intended to correct excessive budget deficits or excessive public debt burdens. In this Communication the Commission presents detailed guidance on how it will make use of those areas of flexibility which are built into the existing rules of the SGP. It clarifies how three specific policy dimensions will be taken into account when applying the rules. They are investment spending, particularly with regard to establishment of a new European Fund for Strategic Investments, structural reform and cyclical conditions.

20.2 The Government tells us of its nuanced welcome for the new guidance, particularly noting that the flexibility described should not undermine the Pact's credibility as a tool for responsible fiscal policy. It says that it does not expect that these clarifications will have a significant effect on the assessment of the UK under the Pact in the coming years.

20.3 **Given the importance of the Stability and Growth Pact in many aspects of EU economic governance, whilst clearing the document from scrutiny, we draw it to the attention of the House.**

Full details of the documents: Commission Communication: *Making the best use of the flexibility within the existing rules of the Stability and Growth Pact*: (36608), 5375/15, COM(15) 12.

Background

20.4 The Stability and Growth Pact (SGP) is an EU agreement to ensure that Member States pursue sound public finances and coordinate their fiscal policies. Some of the SGP's rules aim to prevent fiscal policies being potentially problematic, while others are intended to correct excessive budget deficits or excessive public debt burdens. It involves fiscal monitoring, against a number of criteria, of Member States by the Commission and the Council and the issuing of yearly recommendations for policy actions to ensure full compliance with the SGP. It has both a preventative and a dissuasive (corrective) arm.

The document

20.5 In this Communication the Commission presents detailed guidance on how it will make use of those areas of flexibility which are built into the existing rules of the SGP. It does not propose modification of existing legislation and says that this guidance does not change the existing rules of the Pact. The Commission clarifies how three specific policy dimensions will be taken into account when applying SGP rules. They are:

- investment spending, particularly with regard to establishment of a new European Fund for Strategic Investments (EFSI);[74]
- structural reform; and
- cyclical conditions.

Investment spending

20.6 Article 5 of Regulation (EC) No. 1466/97 and Article 3 of Regulation (EC) No. 1467/97, specify Member States' targets under both the preventive and corrective arms of the SGP in structural terms, net of one-of and other temporary measures. The Commission confirms its intention to treat Member States capital contributions to the EFSI as exceptional, one-off measures, having no effect on the underlying fiscal positions of Member States. Contributions would not, therefore, effect the Commission's assessment of Member States progress towards fiscal targets under the SGP. Furthermore, an excessive deficit procedure would not be launched if a Member State breached either the debt or deficit criteria of the SGP as a result of a contribution to the EFSI.

20.7 Based on Article 5 of Regulation (EC) No. 1466/97 the current investment clause allows for accommodative treatment of spending on projects co-financed under the EU's Structural and Cohesion Policy, Trans-European Networks programmes and the Connecting Europe Facility. The Commission confirms that the clause would also now apply to government spending on projects co-financed by the EFSI. As before, the investment clause would only apply to Member States in the preventive arm of the SGP, and only when their economic growth was negative. In a change to previous guidance, application of the investment clause will not require the eurozone or the EU as a whole to experience an economic downturn.

Structural reform

20.8 As provided for under Articles 5 and 9 of Regulation (EC) No. 1466/97 and Article 2 of Regulation (EC) No. 1467/97, in assessing performance under both the preventive and corrective arms of the SGP, the Commission may take into account the positive fiscal impact of completed structural reforms that are expected to have major, positive, verifiable and direct long-term budgetary effects. Under the new guidance, the Commission will also consider the expected impact of planned structural reforms, provided that the Member State involved presents a dedicated plan providing detailed and verifiable information on such reforms, and credible timelines for their adoption and delivery. Following submission

[74] See (36605), 5112/15 + ADD 1: chapter 1 of this Report.

of such a plan by a Member State, the Commission will assess the reform plan and may recommend the allowance of a temporary deviation from the Member State's existing fiscal targets. For Member States under the preventive arm of the Pact, the deviation can be up to a maximum of 0.5% GDP and they must maintain a safety margin to the 3% deficit limit. Member States under the corrective arm of the Pact would still be required to meet the minimum adjustment of 0.5% GDP per annum. The Commission will also give due consideration to planned structural reforms when deciding on the existence of an excessive deficit and the deadline for correcting it. The Commission will closely monitor the implementation of the reforms through the European Semester. In case of failure to implement, the Commission would take any necessary action.

Cyclical conditions

20.9 Based on Article 5 of Regulation (EC) No. 1466/97, the Commission establishes a new matrix (reproduced below) that specifies the appropriate fiscal adjustments to be undertaken by Member States in the preventative arm, determined according to their individual position in the economic cycle. The Member State cyclical position will be assessed with reference to its output gap and real growth rate.

20.10 Under Article 3 of Regulation (EC) No. 1467/97, the Commission will continue to assess effective action under the corrective arm of the SGP on the basis of a measurement of structural fiscal effort, excluding budgetary developments which are outside the control of governments. This will continue to be done using an approach endorsed by the European Council in June 2014

20.11 The Commission also reaffirms its willingness to take an accommodative approach to individual fiscal targets in the event of a general downturn in the eurozone or the EU as a whole.

Annexes

20.12 The Communication contains two annexes. Annex 1 is on the statistical recording of contributions in relation to the EFSI. It provides illustrative examples of how various types of contributions may be recorded from a statistical point of view by Eurostat. This statistical recording is a separate step and without prejudice to the Commission's assessment of such contributions under the relevant provisions of the SGP. Annex 2 provides the matrix, outlining adjustments to fiscal targets in the preventive arm based on cyclical conditions. It also provides explanatory notes on how this matrix should be interpreted.

Matrix

Required annual fiscal adjustment			
Condition		Debt below 60% and no sustainability risk	Debt above 60% and sustainability risk
Exceptionally bad times	Real growth <0 Or output gap <-4	No Adjustment needed	
Very bad times	-4≤ output gap <-3	0	0.25
Bad times	-3≤ output gap <-1.5	0 if growth below potential, 0.25 if growth above potential	0.25 if growth below potential, 0.5 if growth above potential
Normal times	-1.5≤ output gap <1.5	0.5	> 0.5
Good times	output gap ≥ 1.5%	> 0.5 if growth below potential, ≥ 0.75if growth above potential	≥ 0.75 if growth below potential, ≥ 1 if growth above potential

The Government's view

20.13 In his Explanatory Memorandum of 30 January 2015 the Financial Secretary to the Treasury (Mr David Gauke) says that:

- the Government notes the new guidance in the Commission's Communication and that these clarifications apply in principle to the assessment of all Member States under the SGP, including the UK;
- it welcomes the extra transparency that the Communication provides regarding the Commission's approach to the existing rules;
- the Government also notes that a clear, credible commitment to deficit reduction and fiscal sustainability is a critical foundation for economic recovery;
- fiscal credibility is hard won but easily lost, and it is important that the flexibility allowed for under the SGP is not used in a manner or to a degree that undermines the Pact's credibility as a tool of responsible fiscal policy;
- those Member States confronting problems of high deficits need to continue the work of fiscal consolidation; and
- in this context, the Government does not expect that these clarifications will have a significant effect on the assessment of the UK under the SGP in the coming years.

Previous Committee Reports

None.

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

Department for Environment, Food and Rural Affairs

(36598) 17061/14 C(14) 9657	Commission Delegated Regulation (EU) No …/.. of 17 December 2014 supplementing Regulation (EU) No. 508/2014 on the European Maritime and Fisheries Fund with regard to the period of time and the dates for the inadmissibility of applications.
(36601) 5186/15 + ADDs 1–2 COM(14) 749	Draft Council Decision on the acceptance of the Amendments to the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants.
(36602) 5187/15 + ADD 1 COM(14) 750	Draft Council Decision on the acceptance of the Amendment to the 1998 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Heavy Metals.

Foreign and Commonwealth Office

(36625) — —	COUNCIL DECISION 2014/…/CFSP of … in support of activities of the Organisation for the Prohibition of Chemical Weapons (OPCW) in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction.

HM Treasury

(36612) 5353/15 COM(15) 4	Draft Council Implementing Decision authorising the United Kingdom to apply differentiated levels of taxation to motor fuels in certain geographical areas pursuant to Directive 2003/96/EC.

Home Office

(30103) 15041/08 + ADDs 1–2 COM(08) 676	Draft Council Decision on a Critical Infrastructure Warning Information Network (CIWIN).

(32680) 8977/11 + ADD 1 COM(11) 175	Commission Third Report *on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States*.

Office for National Statistics

(36613) 16663/14 + ADD 1 —	ECB Opinion of 5 December 2014 on a Draft Regulation amending Regulation (EC) No. 184/2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment as regards conferring of delegated and implementing powers upon the Commission for the adoption of certain measures (CON/2014/84).

Formal minutes

Wednesday 4 February 2015

Members present:

Sir William Cash, in the Chair

Mr James Clappison	Henry Smith
Michael Connarty	Mr Michael Thornton
Kelvin Hopkins	

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 21 read and agreed to.

Resolved, That the Report be the Thirty-second Report of the Committee to the House.

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

****

[Adjourned till Wednesday 11 February at 2.00pm.

Standing Order and membership

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

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

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

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

The expression "European Union document" covers —

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

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

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

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

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

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

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

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

Current membership

Sir William Cash MP (*Conservative, Stone*) (Chair)
Andrew Bingham MP (*Conservative, High Peak*)
Mr James Clappison MP (*Conservative, Hertsmere*)
Michael Connarty MP (*Labour, Linlithgow and East Falkirk*)
Geraint Davies MP (*Labour/Cooperative, Swansea West*)
Julie Elliott MP (*Labour, Sunderland Central*)
Stephen Gilbert MP (*Liberal Democrat, St Austell and Newquay*)
Nia Griffith MP (*Labour, Llanelli*)
Chris Heaton-Harris MP (*Conservative, Daventry*)
Kelvin Hopkins MP (*Labour, Luton North*)
Chris Kelly MP (*Conservative, Dudley South*)
Stephen Phillips MP (*Conservative, Sleaford and North Hykeham*)
Jacob Rees-Mogg MP (*Conservative, North East Somerset*)
Mrs Linda Riordan MP (Labour/Cooperative, Halifax)
Henry Smith MP (*Conservative, Crawley*)
Mr Michael Thornton MP (*Liberal Democrat, Eastleigh*)

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

Mr Joe Benton MP (Labour, Bootle)
Jim Dobbin MP (Labour/Co-op, Heywood and Middleton)

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