



House of Commons

European Scrutiny Committee

Sixth Report of Session 2015–16

**Documents considered by the Committee on 21 October 2015,
including the following recommendation for debate:**

EU-Turkey cooperation on support of refugees and migration
management in view of the situation in Syria and Iraq



House of Commons
European Scrutiny Committee

**Sixth Report of Session
2015–16**

**Documents considered by the Committee on 21 October 2015,
including the following recommendation for debate:**

EU-Turkey cooperation on support of refugees and migration
management in view of the situation in Syria and Iraq

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 21 October 2015*

HC 342-vi

Published on 30 October 2015
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

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

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	Treaty on European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
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) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

Staff

The staff of the Committee are Sarah Davies (Clerk), David Griffiths, Terry Byrne, Leigh Gibson, Peter Harborne, Sibel Taner, Alistair Dillon (Clerk Advisers), Arnold Ridout (Legal Adviser) (Counsel for European Legislation), Joanne Dee (Assistant Legal Adviser) (Assistant Counsel for European Legislation), Amelia Aspden (Second Clerk), Julie Evans (Senior Committee Assistant), Jane Bliss, Beatrice Woods and Rob Dinsdale (Committee Assistants), Paula Saunderson and Ravi Abhayaratne (Office Support Assistants).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is (020) 7219 3292/5465. The Committee's email address is escom@parliament.uk

Contents

Report		<i>Page</i>
Meeting Summary		3
Documents for debate		
1	(37170) EU-Turkey cooperation on support of refugees and migration management in view of the situation in Syria and Iraq	7
	Annex: European Council Conclusions on Migration of 15 October 2015	18
Documents not cleared		
2	CO (36197) Interoperability as a means for modernising the public sector: the ISA programme	20
	ANNEX A: Commission Non Paper on the follow-up activities of the ISA Programme interim evaluation	29
3	CO (37100) EU Youth Strategy	32
4	DCMS (36909) The EU and the ITU World Radiocommunication Conference (WRC-15)	36
5	FCO (36921) EU-Mongolia Partnership and Cooperation Agreement	41
6	FCO (36976) Enhanced Partnership and Cooperation Agreement between the EU and Kazakhstan	43
7	HMT (35328) Financial services: benchmarks	49
8	HO (37090) A common EU list of safe countries of origin	51
9	HO (37091) EU Action Plan on Return	57
Documents cleared		
10	CO/FCO (36803) (36170) EU elections	66
11	DECC (36935) Renewable energy progress report	68
12	DWP (37068) (37069) (37070) European Globalisation Adjustment Fund	70
13	FCO (37006) EU Energy Diplomacy Action Plan	74
14	FCO (37138) EU restrictive measures against the Republic of Guinea	76
15	FCO (37164) Biological and Toxin Weapons Convention	81
16	FCO (37174) (37155) (37156) EU Burundi: consultations under the Cotonou Agreement	86

17	HO	(37092) The role of EU external action in addressing the refugee crisis in Europe	95
----	----	---	----

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

18		List of documents	104
----	--	-------------------	-----

		Formal minutes	107
--	--	-----------------------	------------

		Standing Order and membership	108
--	--	--------------------------------------	------------

Meeting Summary

The Committee considered the following documents:

Regulation proposing a common EU list of safe countries of origin

A number of Member States have a list of designated safe countries of origin. Asylum applicants originating from these countries are often dealt with by fast-track procedures. The criteria for designating safe countries of origin are set out in the 2013 Asylum Procedures Directive, but the designation is made at national level. The number and identity of countries included in national lists varies considerably.

The proposed Regulation would establish a common EU list of safe countries of origin comprising six Western Balkans countries and Turkey. The aim is to reduce existing divergences between Member States, facilitate the application of fast-track procedures for applicants unlikely to have well-founded claims, and deter secondary movements within the EU. The UK does not participate in the 2013 Directive — it would have to do so if it wished to opt into the proposed Regulation. The Government indicates that it is not minded to do so. There is little obvious benefit to the UK — the six Western Balkans country are already included in the UK's national list of designated safe countries of origin.

Based on the evidence in the Commission's own explanatory memorandum, we suggest that the inclusion of Turkey in the list of safe countries of origin is an anomaly and ask whether the Government will press for its removal, as a number of other Member States have done. We also request further information on the Government's position on the 2013 Directive, following its decision to suspend the use of fast-track asylum procedures in the UK in light of a recent Court of Appeal ruling, and ask the Government for its views on the proposed use of delegated acts to remove a country from the common EU list. We draw this document to the attention of the Home Affairs Committee.

The role of EU external action in tackling the refugee crisis

This Commission Communication sets out how the EU intends to use its external relations tools, including the EU external cooperation and development budget, to address the refugee crisis. It describes existing and proposed action in some of the main affected countries and regions and identifies a number of cross-cutting themes, including cooperation on returns and readmission and on combatting people smuggling and human trafficking. The Government welcomes the document, noting that it forms part of a wider package of measures put forward by the Commission in September. The Government identifies UK priorities and the contribution the UK is making to help refugees in Syria and neighbouring countries and to the EU naval mission in the Mediterranean. Whilst clearing the document from scrutiny, we draw it to the attention of the Home Affairs and International Development Committees.

EU Action Plan on Return

This Commission Communication responds to a request made by EU leaders in June to establish robust and effective return, readmission and reintegration policies for individuals not qualifying for protection within the EU. It takes the form of an Action Plan on Return

which identifies a series of actions to increase the rate of returns from the EU, enhance the role of the EU's external borders agency, Frontex, and develop more intensive cooperation with the main countries of origin and transit, using a range of budgetary and policy incentives (such as visa facilitation, development aid and trade preferences).

UK participation in this policy area is not straight-forward — the UK does not participate in the principal EU-level instrument for effecting returns (the EU Return Directive), nor does it take part in the common EU visa policy or the Schengen free movement area. The UK is not a full member of Frontex but is able to take part in joint return operations coordinated by Frontex and in its wider activities on a case-by-case basis.

The Government welcomes the Communication and describes the contribution made by the UK in some of the areas set out in the Action Plan. The Government does not, however, explain how the UK intends to exercise influence in those policy areas in which it does not participate fully. The Committee requests further information on two areas, in particular, which the Home Secretary highlighted in her Written Ministerial Statement to Parliament on the outcome of the 8/9 October Justice and Home Affairs Council — the establishment of multi-purpose centres and safe zones outside of Europe to which economic migrants could be returned. We also ask the Government to provide information on the rate of returns from the UK in 2014, as a basis for comparison with the EU average of 40%, and draw the Communication to the attention of the Home Affairs Committee and the International Development Committee.

EU-Turkey cooperation on support of refugees and migration management in view of the situation in Syria and Iraq

Enhanced EU engagement with Turkey on migration was agreed at the informal meeting of EU heads of state or government on 23 September. Turkey's President, Recep Tayyip Erdoğan, visited Brussels on 5 October where he received the draft action plan from the Commission. The Commission is proposing a series of short and medium term measures, to be implemented simultaneously by Turkey and the EU, that try to (i) support refugees and their host communities in Turkey, and (ii) prevent further irregular migration flows to the EU.

All the details of what will make it attainable have yet to be agreed, and there will plainly be difficult discussions ahead on the incentives to secure Turkey's cooperation, notably funding, visa liberalisation and the acceleration of accession negotiations. The issues that it raises should be debated on the floor of the House. We are content for this to take place as part of the floor of the House debate we have already recommended on the European Agenda on Migration and on the EU military operation in the Mediterranean — EUNAVFOR Med. Given that it is now three months since our original recommendation, during which the crisis has significantly worsened, it is imperative that this debate is arranged in the very near future. We draw this document to the attention of the Home Affairs, Foreign Affairs and International Development Committees.

The European Globalisation Adjustment Fund

The European Globalisation Adjustment Fund (EGF) is designed to provide support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation. It was established in 2006 and renewed, for the financial period 2014-

20, in 2013. The Government has repeatedly expressed its opposition to the existence and use of this Fund, an opposition we have previously endorsed. It never supports any proposal for use of the EGF, although Qualified Majority Voting means that none is ever denied.

We have now considered three more applications, from Germany, Belgium and Italy, for assistance from the Fund. Again the Government reminds us of its continued opposition to the existence and use of the EGF. On the understanding that the Government is continuing to oppose, albeit unsuccessfully, EGF applications, whilst ensuring that the eligibility criteria are strictly enforced, we are clearing these documents from scrutiny. However, we have previously drawn the attention of the Work and Pensions Committee to the Commission's own disturbing review of the efficacy of the Fund, and we now draw these present documents to its attention, as examples of the use made by other Member States of an EU financial instrument of apparent little efficacy.

EU elections — Commission Communication and European Council Decision

These two documents both concern the 2014 process for elections to the European Parliament (EP). The Communication reviews the conduct of those elections and the effectiveness of the measures recommended and taken to enhance the transparency, democratic conduct and European dimension of the elections. As part of previous scrutiny of the Communication, we had asked the Government about the prospect of any future legislative proposals on the conduct of EP elections. The Government now confirms that there are no current plans for such legislation. Back in July 2014, our predecessors asked the Government for further information about the supposed commitment from the European Council to review the 2014 process for the appointment of the Commission President. Although we now clear both documents, we ask the Government to keep us informed of any significant developments, particularly for the 2019 EP election process. We also ask the Government to respond to the outstanding questions about the appointment of the Commission President, so that the position can be clarified well in advance of the appointment of the next President in 2019. We draw the Report chapter to the attention of the Public Administration and Constitutional Affairs Committee.

Proposed Financial Benchmarks Regulation

We report on the proposal to regulate indices used as benchmarks in financial instruments and contracts. This was the subject of a Reasoned Opinion issued by the House in 2013. Our predecessors granted a scrutiny waiver in February to enable the Government to support a General Approach on more proportionate text. This focused on a limited number of “critical benchmarks” and a reduced role for the European Securities and Markets Authority in favour of national authorities. The Government now informs us that a final text was not agreed nor even discussed at the Council meeting on 6 October. The conditional scrutiny waiver we granted in our last Report was therefore not needed. Given the importance of the proposal, we do not clear it but ask the Government to keep us informed of significant developments as trilogues continue. We draw our Report chapter to the attention of the Treasury Committee.

1 EU-Turkey cooperation on support of refugees and migration management in view of the situation in Syria and Iraq

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; for debate on the floor of the House along with the Commission Communication: <i>A European Agenda on Migration</i> , the Commission Communication: <i>EU Action Plan against migrant smuggling (2015–20)</i> and the Council Decisions to establish and launch a European Military Operation in the Southern Central Mediterranean (EUNAVFOR Med) (decision reported on 21 July 2015); ¹ drawn to the attention of the Home Affairs, Foreign Affairs and the International Development Committees
Document details	Draft Action Plan: <i>stepping up EU-Turkey cooperation on Support of refugees and Migration management in view of the situation in Syria and Iraq</i>
Legal base	—
Department	Foreign and Commonwealth Office
Document Number	(37170), —

Summary and Committee's conclusions

1.1 The Draft Action Plan seeks to reflect agreement between the EU and Turkey to step up their cooperation on support of refugees and migration management related to the crisis created by the situation in Syria and Iraq.

1.2 Enhanced EU engagement with Turkey on migration was agreed at the informal meeting of EU heads of state or government on 23 September. Turkey's President, Recep Tayyip Erdoğan, visited Brussels on 5 October, where he received the draft Action Plan from the Commission.

1.3 The Commission is proposing a series of short and medium term measures, to be implemented simultaneously by Turkey and the EU, that try to support refugees and their host communities in Turkey; and prevent further irregular migration flows to the EU.

1.4 Under “*support refugees and their host communities in Turkey*”, the Commission intends that the action plan will allow Turkey and the EU to cover emergency needs by providing immediate humanitarian assistance to refugees in Turkey; alleviate the burden on Turkish society, which is hosting more than 2.2 million refugees; create better living conditions and medium and long-term perspectives for refugees in Turkey; and seek to address factors pushing refugees from Turkey to the EU.

1 See Second Report HC 342–ii, [chapters 1–3](#), (21 July 2015).

1.5 Under “*prevent further irregular migration flows to the EU*”, the Commission intends that the action plan will allow Turkey and the EU to prevent further irregular arrivals to Turkey, and irregular departures from Turkey to the EU; prevent loss of life at sea; step up the fight against organised immigration crime; and ensure prompt returns of irregular migrants not in need of international protection.

1.6 The Draft Action Plan notes that Turkey has already spent more than €6.75 billion (£4.86 billion) of its own resources on addressing an unprecedented and continuously increasing influx of refugees from Syria and Iraq, which has exceeded 2.2 million to date. The Action Plan proposes a series of actions to be taken by the EU including mobilising funds (subject to availability in light of appropriations decided by the budget authority, and in respect of the relevant budget implementation rules and procedures); providing assistance to humanitarian organisations in Turkey; completing a comprehensive needs assessment as a basis for programming; weakening push factors forcing refugees in the region to move to Turkey; and supporting existing Member State and EU resettlement schemes.

1.7 It also indicates that the EU intends better to inform refugees in Turkey about the risks linked to irregular departures; strengthen Turkey’s capacity to combat migrant smuggling; support cooperation on joint EU-Turkey returns operations; support cooperation with regional authorities (Pakistan, Afghanistan, Iraq, Iran and Bangladesh) on preventing irregular migration; enhance information exchange between Turkey and the EU on combating smuggling networks; and support Turkey to develop a comprehensive asylum, migration, visa and integrated border management system (see “Background” for further details).

1.8 The Minister for Europe (Mr David Lidington) describes the Draft Action Plan as “a significant step forward covering a number of priority areas for the UK”, and welcomes many of the headline provisions in the Action Plan, such as the need to: address push factors by creating better living conditions and perspectives for refugees in Turkey; prevent further arrivals of irregular migrants both to Turkey and from Turkey to the EU, including through further support to Syrians elsewhere in the region; prevent further loss of life; fight people traffickers; and ensure returns of those not eligible for asylum.

1.9 The Government considers it important to inform would-be migrants of the risks of embarking on irregular journeys, but wishes to see more done to avoid raising any expectations that large numbers of migrants will benefit from legal means of residence in the EU.

1.10 Implementation of this “ambitious programme” will need to be “managed carefully and constructively, as will any impact on the EU budget”. Working closely with Turkey on delivery is the best way to ensure positive cooperation and ensure progress is made.

1.11 The Government will be stressing the importance of pursuing value for money and ensuring the funds are used effectively, and that any proposals are consistent with the MFF. This will require rigorous Commission prioritisation and drawing on Turkey’s existing

pre-accession funding and Turkey’s allocations under the EU regional (Madad) Trust Fund in response to the Syrian crisis.²

1.12 The Government’s immediate priorities are: quick implementation of the new migration dialogue; for the EU quickly to produce the comprehensive needs assessment which will form the basis for programming; and focus the Commission on implementing the most specific commitments in this action plan, including by providing timelines for EU commitments.

1.13 Here and now, Commission officials will work to agree a final version with Turkey to be discussed by the Council. Should a draft Council Decision to approve the final Action Plan be proposed, the Government will submit an Explanatory Memorandum, including an analysis of whether the JHA opt in is triggered.

1.14 Since submitting his Explanatory Memorandum the European Council has discussed the Action Plan on 15 October 2015 and:

- welcomed the EU-Turkey joint action plan to tackle the current migratory crisis;
- agreed to work on an integrated border management system and enhance the Frontex mandate, developing it into a more operational body, with the right to organise joint return operations of irregular migrants on its own initiative, and making it more proactive in protecting the EU’s external borders; and
- discussed broader challenges in order to be ready for a new influx of refugees next year, including a debate on the future of the Dublin regulation, on the EU border guard system and on the specific role of “hotspots” (see “Background” for details of the post-Council statement by the President of the Council and of the Council Conclusions).

1.15 Further insights into the meeting are provided by the European media, e.g., “Politico” of 16 October 2015, which said that:

- European Council President Donald Tusk expressed “cautious optimism” about the results of the meeting, referring to: “Progress on genuine border security” as “a very real achievement of tonight” and it being “our first obligation to protect the European community and to guarantee public order”;
- the agreement would offer significant financial aid — Turkey wants up to €3 billion (£2.16 billion) — and a promise to consider speeding up visa liberalization for Turkish citizens traveling to Europe in exchange for help coping with the flow of Syrian refugees through the country. President Hollande is quoted thus: “If there are visa liberalizations, it needs to be on an extremely precise and controlled basis”;
- Commission President Jean-Claude Juncker said EU Member States promised to deliver on humanitarian aid contributions they had previously committed: “They promised today that they will match the contribution of the European Commission, and that means money coming from the European budget in the coming weeks”.

² On 15 December 2014, the European Commission and Italy signed the “constitutive agreement” to launch the first ever EU Regional Trust Fund as a new strategic financing tool to mobilise more aid in response to the Syrian Crisis. See [EU Regional Trust Fund in Response to the Syrian Crisis](#) for full information.

Juncker said the final amount will “be part of the discussion in the coming days with Turkey”. France’s President François Hollande is quoted as saying: “No amount of money has been set” and “It is not about giving money, it is about looking at what these funds can produce in terms of effect”;

- Germany’s Chancellor Angela Merkel is quoted as saying: “Turkey has agreed to make the position of refugees there better,” and “That they are ready to provide better social support, for example, the form of health care. That’s part of what we have to understand as globalization... We need direction, we need order, we need the ability to plan and that means we need to share the burden.... I would say that we have come a big step forward”;
- European Council President Tusk is said to be still wanting to see concrete steps from Ankara on helping reduce the flow of migrants as part of any deal: “We need something like guarantees that Turkey’s response to our offer will be as concrete and substantive as ours”.³

1.16 The Minister for Europe is right to define the programme as ambitious. But anything less would not be what is needed, when Europe is facing certainly its biggest such challenge since the Balkan wars of twenty years ago, and arguably since the aftermath of WWII. However, it is plain that all the details of what will make it attainable have yet to be agreed and that there will be difficult discussions ahead on the incentives to secure Turkey’s cooperation, notably funding, visa liberalisation and the acceleration of accession negotiations.

1.17 We consider that this Action Plan and the issues that it raises should be debated on the floor of the House. We are content for this to take place as part of the floor of the House debate we have already recommended on the European Agenda for Migration and on the EU military operation in the Mediterranean — EUNAVFOR Med.⁴ But, given that it is now nearly three months since our original recommendation, since when the crisis has significantly worsened, it is imperative that this debate is arranged in the very near future. In the meantime, we shall retain the Draft Action Plan under scrutiny.

Full details of the documents: Draft Action Plan: *stepping up EU-Turkey cooperation on Support of refugees and Migration management in view of the situation in Syria and Iraq*: (37170), —.

Background

1.18 In May, the Commission published a *European Agenda on Migration* which proposed a series of actions to address the immediate humanitarian crisis in the Mediterranean and a range of longer-term measures to lay the foundations for a “fair, robust and realistic” EU migration policy.

3 See [EU agrees to new migration measures](#) in 16 October “Politico”.

4 See Second Report HC 342–ii, [chapters 1–3](#), (21 July 2015).

1.19 Commission Communication 12313/15, *Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration*, reviewed the action taken since May to implement the European Agenda on Migration and identified a range of actions which should be given priority over the next six-month period. These comprise operational measures, budgetary support, implementation of EU law, and new legislative initiatives.

1.20 The Communication informed discussions amongst EU leaders at a specially convened meeting of the European Council on 23 September to address the migration and refugee crisis. A Statement issued after the meeting invited EU institutions and Member State governments to “work speedily” on the priority actions proposed by the Commission and called for “operational decisions on the most pressing issues” ahead of the European Council meeting on 15/16 October.⁵ These include:

- at least an additional €1 billion (£721,000) to support the work of the UN Refugee Agency (UNHCR), the World Food Programme and other agencies in meeting the urgent needs of refugees in the region;
- a substantial increase in the EU’s Regional Trust Fund (the Madad Fund) to help Lebanon, Jordan and Turkey deal with the Syrian refugee crisis;
- *a strengthening of dialogue and cooperation with Turkey to stem and manage migratory flows;*⁶
- the use of pre-accession instruments to help Western Balkan countries manage refugee flows, and effective preparation of a conference on the Western Balkans route (8 October);
- increased funding for the Emergency Trust Fund for Africa which seeks to address the root causes of irregular migration and displacement, and effective preparation of the Valetta Summit involving African countries of origin and transit (11/12 November);
- additional resources for the EU’s external borders agency (Frontex), the European Asylum Support Office (EASO) and Europol, supplemented by personnel and equipment provided by Member States;
- greater assistance for frontline Member States (to be provided by EU institutions, agencies, and other Member States) to ensure identification, registration and fingerprinting of migrants and to support relocation and returns (the “hotspots” approach, to be implemented at the latest by November 2015);
- increased resources for the EU’s Emergency Fund for Asylum, Migration and Integration and the Internal Security (Borders) Fund;
- a renewed UN-led international effort to end the conflict in Syria and to support the formation of a government of national unity in Libya; and

5 See the [Statement](#) issued after the informal meeting of EU Heads of State or Government on 23 September 2015.

6 Our emphasis.

- full implementation of the Dublin Regulation (establishing the Member State responsible for examining individual asylum applications) and other measures forming part of the common European asylum system.

1.21 EU leaders noted that the Commission would present proposals to mobilise the EU budget in support of these priorities which Member States should match with their own contributions.⁷

1.22 On 5 October, after his meeting with after his meeting with the President of Turkey, Recep Tayyip Erdoğan, the President of the European Council, Donald Tusk, said:

“In view of the refugee crisis I decided several weeks ago to intensify our contacts. It is already our second meeting in a month after we met in Ankara in September. I also met Prime Minister Davutoğlu in New York last week. And our staffs have been very engaged in talks the last days and weeks. We have a shared challenge at hand, which is the many refugees and migrants in and crossing through Turkey to EU countries.

“It is indisputable that Europe has to manage its borders better. We expect Turkey to do the same.

“In order to solve this crisis we discussed financial assistance, border management, fight against smugglers, integration policies and visa liberalisation. The European Union is ready to take up all issues with Turkey so we also discussed a possible buffer zone in Syria.

“However, Turkey needs to be equally ready to act. The situation where hundreds of thousands of people are fleeing to the EU via Turkey must be stopped. And we cannot do it on our own, we need the Turkish side. Strengthened cooperation will benefit both sides. Europe wants a real solution to this very real crisis.

“I have also stressed the need to respect rules and agreements, including the readmission and border agreements with EU countries.”⁸

The Draft EU-Turkey Action Plan⁹

1.23 The Action Plan identifies a series of collaborative actions to be implemented as a matter of urgency by the EU and Turkey with the objective of assisting Turkey in managing the “massive influx of refugees and preventing uncontrolled migratory flows from Turkey to the EU”. It was elaborated jointly by the EU and Turkey, and builds upon the existing EU-Turkey policy dialogue and cooperation instruments, and, more generally Turkey’s EU accession process — in particular the Visa Liberalisation Dialogue, the EU-Turkey readmission agreement and the EU instruments for the provision of financial assistance to Turkey.

7 See [Commission Communication 12313/15](#) and our previous Report under reference for full information.

8 See [Remarks](#).

9 See [Draft EU Turkey Action Plan](#) for full details.

1.24 The Draft Action Plan notes that Turkey has already spent more than € 6.75 billion (£4.87 billion) of its own resources on addressing an unprecedented and continuously increasing influx of refugees from Syria and Iraq, which has exceeded 2.2 million to date.

1.25 Implementation will allow the EU and Turkey to:

Under Part I:

- Cover further emergency needs by providing immediate humanitarian assistance to the refugees;
- Alleviate the burden undertaken by the Turkish society to host more than 2.2 million refugees;
- Create better living conditions and medium and long-term perspectives for the refugees in Turkey; and
- Address key factors that push the refugees to move from Turkey to the EU through irregular channels in search of alternative places of asylum.

Under Part 2:

- Prevent further arrivals of irregular migrants to Turkey and irregular departures of refugees and migrants from Turkey to the EU;
- Prevent losses of lives at sea by intensified search and rescue operations;
- Step up the fight against criminal networks involved in the smuggling of migrants; and
- Ensure prompt return to the point of origin of irregular migrants who are not in need of international protection and who were apprehended by the law enforcement agencies of the EU Member States or Turkey and support the reintegration of returnees to the countries of origin.

1.26 Implementation is set to start immediately; it will be jointly steered and monitored by the European Commission and the EU High Representative for Foreign Affairs and Security Policy/Vice-President (HRVP) Federica Mogherini, and the Turkish government, through the establishment of the EU-Turkey high-level dialogue on migration.

1.27 The EU intends to:

- Mobilise up to €1 billion¹⁰ (£721,000) for the period 2015–16. Priority should be given to providing immediate humanitarian assistance; legal, administrative and psychological support to refugees; support for community centres; the enhancement of self-sufficiency and employability of refugees and their social inclusion; improved access to education; supporting host communities in areas such as infrastructures and services;

¹⁰ The Commission footnote says: "All references to EU funds are naturally subject to the availability of EU funds in the light of the appropriations decided by the budget authority, and in respect of the relevant budget implementation rules and procedures".

- Consider “a fair share of the substantial increase of the EU Regional Trust Fund in response to the Syrian Crisis announced at the 23 September European Council”;
- Continue to provide “immediate and principled humanitarian assistance” via humanitarian organisations in Turkey and complementary to bilateral cooperation programmes;
- Proceed with a comprehensive needs assessment as a basis for programming and designing adequate short, medium and long-term actions;
- Continue providing assistance to Syrian refugees hosted in Lebanon, Jordan and Iraq, as well as to Syrians displaced within Syria with the aim to contribute, *inter alia*, to the weakening of push factors;¹¹ and
- Support existing Member State and EU resettlement schemes and programmes, which could enable refugees in Turkey to enter the EU in an orderly manner, and step up work on a structured EU-wide approach to resettlement.

1.28 Turkey intends to:

- Continue and further enhance the effective implementation of the law on foreigners and international protection;
- Ensure that migrants are registered and provided with appropriate documents on a compulsory basis;
- Ensure that, once initiated, asylum procedures are completed, so that the status of refugee is granted without delay to those whose asylum requests are positively assessed;
- Adopt measures enabling refugees to have access, for the duration of their stay in Turkey, to labour market and public services, education, health care and appropriate accommodation; in this respect, priority will be given to opening six refugee reception centres built with the EU co-funding; and
- Ensure that vulnerable people (e.g. unaccompanied children on the move, victims of trafficking) are identified and taken care of.

Strengthening cooperation to prevent irregular migration

1.29 The EU intends to:

- Better inform refugees in Turkey about the risks linked to irregular departures, the possibilities to enter the EU or other countries “in an orderly manner”, and the relevant procedures to be implemented;
- Support Turkey in reinforcing the Turkish Coast Guard patrolling and surveillance capacity;

¹¹ This to be in addition to the over €4.2 billion of total budget already mobilised by the Commission and Member States collectively in humanitarian, development, economic and stabilisation assistance to Syrians in their country and to refugees and their host communities in neighbouring Lebanon, Jordan, Iraq, Turkey and Egypt.

- Support cooperation between EU Member States and Turkey in organising joint return operations, including reintegration measures, towards countries of origin of irregular migrants;
- Support the development of dialogue and cooperation with Pakistan, Afghanistan, Iraq, Iran and Bangladesh on preventing irregular migration, combatting migrant smuggling and improving the management of migration within the framework of the “Silk Routes’ Partnership for migration”;¹²
- Deploy a FRONTEX liaison officer to Turkey and improve cooperation with Turkey’s liaison officers in the EU; and
- Increase financial support to Turkey in developing a well-functioning asylum, migration, visa and integrated border management system in line with the EU-Turkey visa dialogue.

1.30 Turkey intends to:

- Strengthen the interception capacity of the Turkish Coast Guard (upgrading surveillance equipment, increasing patrolling activity and search and rescue capacity);
- Step up cooperation with the Hellenic Coast Guard;
- Step up cooperation with Bulgarian, Romanian and Greek authorities to prevent irregular migration and accelerate readmission procedures for irregular migrants who are not in need of international protection;
- Strengthen visa requirements and residence rules applicable to nationals from countries that are potentially a source of irregular migration for Turkey and the EU;
- Develop better data analysis capacities for assessing and managing migration flows;
- Enhance the fight against criminal networks involved in the smuggling of migrants, notably by increasing operational cooperation between and among Turkish law enforcement authorities and with their EU Member State counterparts and EU Agencies;
- Intensify the exchange of information and cooperation with the EU and its Member States; in particular, work closely with Member States’ immigration liaison officers located in Turkey; and
- Further intensify cooperation with FRONTEX.

1.31 In his Explanatory Memorandum of 13 October 2015, the Minister says that the migration crisis requires “an holistic response by all EU Member States, with Turkey as the

12 The Istanbul Ministerial Declaration on a Silk Routes Partnership for Migration was adopted by the participating countries of the Budapest Process at the 5th Budapest Process Ministerial Conference on 19 April 2015 in Istanbul. In addition to launching the declaration, the conference marked the 20th anniversary of the Budapest Process. Over 250 representatives from 53 countries, as well as international organisations and other stakeholders, attended the conference, which was hosted by Turkey, the Chair of the Budapest Process. The Co-Chair of the Budapest Process is Hungary. See [A Silk Routes Partnership for migration is established](#) for full details.

key strategic partner”. Although the draft paper does not represent a proposal for legislation, the proposed actions are:

“proportionate, do not damage the collective interest and do not cut across the objectives of the Treaties. Member States, acting individually, are not able to solve the problems posed by irregular migration through Turkey, and therefore the draft action plan does not engage subsidiarity concerns and is proportionate.”

The Government’s view

1.32 The Minister describes the Draft Action Plan as “a significant step forward covering a number of priority areas for the UK”. Implementation “will need to be managed carefully and constructively, as will any impact on the EU budget”.

1.33 The Government:

“welcomes many of the headline provisions in the action plan, such as the need to: (a) address push factors by creating better living conditions and perspectives for refugees in Turkey; (b) prevent further arrivals of irregular migrants both to Turkey and from Turkey to the EU, including through further support to Syrians elsewhere in the region; (c) prevent further loss of life; (d) fight people traffickers; and (e) ensure returns of those not eligible for asylum.”

1.34 Of the detailed provisions in Part I, the Government welcomes:

“the EU: (i) mobilising €1 billion provided this is consistent with the Multi-annual Financial Framework (MFF) and through a comprehensive needs assessment; (ii) the reference to agreeing disbursement streams with Turkey; and (iii) the need to ensure support to the most vulnerable.”

1.35 On Turkish actions, the Government agrees with:

“(i) registration of migrants and the carrying out of asylum procedures; (ii) the inclusion of refugees into Turkish society including through access to the labour market and building the capacity of Turkey’s public services; and (iii) the provision of new reception centres and care for especially vulnerable migrants.”

1.36 In Part II, the Government:

- welcomes the EU commitments to support Turkey to “(a) strengthen capacity to combat migrant smuggling; and (b) organise joint returns operations and reintegration measures”;
- agrees with the need for further dialogue and cooperation with Pakistan, Afghanistan, Iran, Iraq and Bangladesh to prevent irregular migration while supporting Turkey to develop an integrated border management system;
- further agrees with the need for Turkey to work with Greece and Bulgaria to return economic migrants or others that do not qualify for international protection while assisting Turkey to broaden its visa requirements to countries which pose a significant migration threat; and

— welcomes strengthened cooperation with FRONTEX and Europol including on exchange of information and data analysis capacities.

15 October European Council meeting¹³

1.37 Speaking immediately after the meeting, the President of the European Council, Donald Tusk, said:

“First of all, allow me to express cautious optimism, and I have to underline of course the word cautious. Tonight leaders took important decisions that will help secure the Union’s external borders.

“We welcomed the agreement of an EU-Turkey joint action plan to tackle the current migratory crisis. Our intensified meetings with Turkish leaders here in Brussels, Ankara, and in New York in the last couple of weeks, were devoted to one goal: stemming the migratory flows that go via Turkey to the EU. The action plan is a major step in this direction. Still, as I made clear from the very start, an agreement with Turkey makes sense only if it effectively contains the flow of refugees. Here let me thank Jean-Claude and the Commission for the great work in negotiating the action plan, it was really a demanding and difficult issue and all of us were very impressed by the effectiveness and impressive pace.

“Second, we agreed to work on an integrated border management system that will go beyond the Frontex mandate. In the coming months, the agency will be developed into a more operational body. Our aim is to give Frontex the right to return irregular migrants on its own initiative, and to make it more proactive in protecting the external borders. In the meantime, Member States will be ready to send hundreds more border guards to Frontex and EASO to secure the hotspot areas in Greece and Italy.

“Progress on genuine border security is in my opinion, a very important achievement of tonight. Not because I have advocated the need to protect the EU’s borders, but because it is our first obligation to protect the European community, and to guarantee public order. We have made a step in this direction.

“Third, we also discussed broader challenges in order to be ready for a new influx of refugees next year. We had a debate on the future of the Dublin regulation, on the EU border guard system and on the specific role of hotspots. These are all divisive issues and the goal today was to have a first serious exchange of views on them. If we are not able to find humanitarian and efficient solutions, then others will find solutions which are inhumane, nationalistic and for sure not European.”

Previous Committee Reports

None, but see (37119), 12313/15: Fifth Report HC 342–v (2015–16), chapter (14 October 2015).

13 See the Annex to this chapter of our Report for the “migration” section of the European Council Conclusions.

Annex: European Council Conclusions on Migration of 15 October 2015

1. “Tackling the migration and refugee crisis is a common obligation which requires a comprehensive strategy and a determined effort over time in a spirit of solidarity and responsibility. The orientations agreed by Heads of State or Government on 23 September focused on the most pressing issues. Their implementation is advancing rapidly, as evidenced by work undertaken within the Council and by the Commission report of 14 October. This will be kept under close review, including as concerns the financial pledges and possible further needs.
2. “Today, the European Council set out the following further orientations:

“Cooperating with third countries to stem the flows

- a) “welcomes the joint Action Plan with Turkey as part of a comprehensive cooperation agenda based on shared responsibility, mutual commitments and delivery. Successful implementation will contribute to accelerating the fulfilment of the visa liberalisation roadmap towards all participating Member States and the full implementation of the readmission agreement. Progress will be assessed in spring 2016. The EU and its Member States stand ready to increase cooperation with Turkey and step up their political and financial engagement substantially within the established framework. The accession process needs to be re-energized with a view to achieving progress in the negotiations in accordance with the negotiating framework and the relevant Council conclusions.
“The European Council expressed its condolences to the people of Turkey following the Ankara bomb attack and pledged its support to fight terrorism.
- b) “ensure effective and operational follow up to the High-level Conference on the Eastern Mediterranean/Western Balkans Route, with particular emphasis on the management of migratory flows and the fight against criminal networks;
- c) “achieve concrete operational measures at the forthcoming Valletta Summit with African Heads of State or Government, focusing, in a fair and balanced manner, on effective return and readmission, dismantling of criminal networks and prevention of illegal migration, accompanied by real efforts to tackle root causes and to support the African socio-economic development together with a commitment concerning continued possibilities for legal migration;
- d) “explore possibilities for developing safe and sustainable reception capacities in the affected regions and providing lasting prospects and adequate procedures for refugees and their families, including through access to education and jobs, until return to their country of origin is possible;
- e) “ask Member States to further contribute to the efforts made to support UNHCR, World Food Programme and other agencies, as well as to support the EU’s Regional Trust Fund responding to the Syria crisis and the EU Trust Fund for Africa.

“Strengthening the protection of the EU’s external borders (building on the Schengen acquis)”

- f) “work towards the gradual establishment of an integrated management system for external borders;
- g) “make full use of the existing Frontex mandate, including as regards the deployment of Rapid Border Intervention Teams;
- h) “in accordance with the distribution of competences under the Treaty, in full respect of the national competence of the Member States, enhance the mandate of Frontex in the context of discussions over the development of a European Border and Coast Guard System, including as regards the deployment of Rapid Border Intervention Teams in cases where Schengen evaluations or risk analysis demonstrate the need for robust and prompt action, in cooperation with the Member State concerned;
- i) “devise technical solutions to reinforce the control of the EU’s external borders to meet both migration and security objectives, without hampering the fluidity of movement;
- j) “welcome the Commission’s intention to rapidly present a package of measures with a view to improving the management of our external borders.

“Responding to the influx of refugees in Europe and ensuring returns”

- k) “in accordance with the decisions taken so far, press ahead with the establishment of further hotspots within the agreed timeframe to ensure the identification, registration, fingerprinting and reception of applicants for international protection and other migrants and at the same time ensure relocation and returns. Member States will support these efforts to the full, in the first place by meeting the calls for expertise from Frontex and EASO for the Migration Management Support Teams to work in hotspot areas and by the provision of necessary resources;
- l) “further to the first successful relocations, proceed rapidly with the full implementation of the decisions taken so far on relocation as well as our commitments on resettlement and on the functioning of hotspots;
- m) “at the same time step up implementation by the Member States of the Return Directive and, before the end of the year, create a dedicated return office within Frontex in order to scale up support to Member States;
- n) “enlarge the Frontex mandate on return to include the right to organise joint return operations on its own initiative, and enhance its role regarding the acquisition of travel documents for returnees;
- o) “promote the acceptance by third countries of an improved European return *laissez-passer* as the reference document for return purposes;

- p) “effectively implement all readmission commitments, whether undertaken through formal readmission agreements, the Cotonou Agreement or other arrangements;
- q) “further increase leverage in the fields of return and readmission, using where appropriate the “more-for-more” principle. In this regard, the Commission and the High Representative will propose, within six months, comprehensive and tailor-made incentives to be used vis-à-vis third countries.
3. “The orientations set out above represent a further important step towards our comprehensive strategy, consistent with the right to seek asylum, fundamental rights and international obligations. There are however other important priority actions that require further discussions in the relevant fora, including the Commission proposals. And there is a need for continuing reflection on the overall migration and asylum policy of the EU. The European Council will keep developments under review.”¹⁴

2 Interoperability as a means for modernising the public sector: the ISA programme

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Council decision establishing a programme on interoperability solutions for European public administrations, businesses and citizens (ISA2)
Legal base	Article 172 TFEU; ordinary legislative procedure; QMV
Department	Cabinet Office
Document Numbers	(36197), 11580/14, COM(14) 367

Summary and Committee’s conclusions

2.1 ISA2 is a proposal for the continuation of the ISA programme, which funds projects on interoperability for public services across the EU. In this context, “interoperability” means enabling different national systems to communicate with each other, reducing friction and improving efficiency in cross-border and cross-sector transactions. As such, “interoperability” underpins the aims of the European Commission’s Digital Single Market strategy, particularly in relation to work on e-government and “the cloud”.

2.2 The ISA2 Council Decision was presented for scrutiny in October 2014. Since then, both the then Minister for the Cabinet Office (Mr Francis Maude) and his successor (Matthew Hancock) have illustrated a number of concerns, including that the Commission was bent on pressing ahead, notwithstanding that it had yet to produce a full evaluation of

14 See [European Council conclusions, 15 October 2015](#) for the full Council Conclusions.

the earlier ISA programme (ISA 1). Our predecessors said that the Commission was thus pushing ahead without any objective evaluation of how effective the predecessor programme had been, or any assessment of the impact of its proposed successor (see “Background” for details).

2.3 The Commission’s view was that no impact assessment was required, because ISA2 was the continuation of an existing programme which is believed to be of value; whereas the Minister continued to believe that the ISA2 proposal would have been stronger if a proper impact assessment had been prepared when the proposal was being drafted. He noted that the Commission’s proposal for ISA2 did little to address concerns raised in the interim evaluation of the predecessor ISA programme with regards to the important areas of effectiveness, coherence and coordination. Whilst stating that the revised Council draft was significantly better than the Commission’s original proposal, the Minister said that more could and should also be done during trilogue to improve the text to ensure that ISA2 was effective. However, given that it had not yet been possible to scrutinise the text properly, and given the areas where he believed further improvements to the text could have been made, he would abstain from voting on the general approach on 12 June. Beyond that, he would continue to work to support further improvements.

2.4 On 12 June 2015, the Council issued a statement confirming that the Council had adopted a general approach on the ISA 2 Programme.¹⁵ The aim is to make sure that European public administrations can interact electronically with each other and with citizens and businesses in a seamless manner. The ISA 2 Programme will support both cross-border and cross-sector interaction. It is set to run from 2016 to 2020, with a financial envelope of “about €131 million” (£94,500). The programme will support actions to assess, improve and re-use existing interoperability solutions and to develop new ones. Compared to the initial Commission proposal, the presidency compromise text was said to introduce “provisions to clarify the eligibility criteria for actions to be financed under the ISA 2 programme” and “criteria to prioritise actions”, and to include “provisions to avoid overlaps and ensure consistencies and coordination with other EU programmes”. The Council statement also noted that, in order to be adopted, the decision will have to be approved by both the Council and the European Parliament, which latter has not yet voted its position.¹⁶

2.5 The Committee found the Commission’s view on the question of a prior, full impact assessment of “ISA 1” to be entirely circular. How could a programme be deemed of value if it had not been fully evaluated? And how could any successor be deemed not to need an impact assessment when it was a continuation of something that had not been fully evaluated? The Minister referred in his letter to an annex, on the Commission’s reasoning, which he did not in fact enclose. We therefore asked him to provide, along with a letter summarising its key points and setting out his views.

2.6 The other like-minded Member States of February 2015 had presumably been won over during the working group discussions. Nonetheless, in these circumstances, the Committee regarded it as plainly right for the Minister to have abstained. We now looked

¹⁵ Available at [General Approach](#).

¹⁶ See [Press release](#).

forward to being regularly updated on the trilogue process; in the meantime, the draft Council Decision remained under scrutiny.

2.7 The Minister now reports that a final text was agreed at the first trilogue session in September, and then presented to COREPER¹⁷ on 23 September 2015. He also now provides the Commission’s “non paper”¹⁸ outlining its reasoning, as well as the document that was agreed by COREPER.¹⁹

2.8 With regard to the impact assessment issue, he says that in having instigated/improved digital communications and workshops with Member States to promote participation and community building; increased its efforts to advance the work of the programme in a collaborative manner focussing on the development of solutions for specific target groups; and taken “a holistic approach to improve governance, increase screening for overlapping projects and improve operational reusability of its creations”, the Commission regards itself as having addressed the issues highlighted in the interim evaluation of “ISA 1”, and therefore no further assessment is necessary.

2.9 The Minister believes, however, that these measures do not go far enough; that the Commission should have performed an impact assessment; and that this would have helped the Commission:

- “to identify areas where we could have learned from the predecessor ISA project to ensure the programme is properly effective throughout its lifecycle, in particular:
- “a clearer statement of the main objective of ISA2 to ensure that the programme is delivering a specific goal, not a disparate range of solutions;
- “better coordination with other EU activities on interoperability to ensure different parts of the Commission are working together; and
- “prioritisation of activities based on user needs and genuine testing to ensure that activities funded by ISA2 meet and continue to meet real needs”.

2.10 He also insists that the Government has “consistently outlined our concerns around these points to improve the viability of the ISA2 programme” throughout both discussions in working group meetings and negotiations in Council, and “subsequently continued to push for them to be addressed throughout trilogue”. It remains the case that the UK supports the overall aim of improving interoperability to reduce the friction involved in online transactions across borders and across sectors the EU. However, despite some

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

18 Which we reproduce at the Annex to this chapter of our Report.

19 But this is *limité*, which means that it has been provided to the Committee under the Government’s authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a *limité* marking, i.e., it cannot be published, nor can it be reported on in any way that would bring detail contained in the document into the public domain.

improvements to the text during triaologue, the text “does not fundamentally address our core issues” and “do not do enough”. The proposal could be “substantially improved if it had been written with a clearer process for prioritising funding based on establishing a clear need for Europe to work on interoperability between national systems”. The UK will therefore abstain from voting when the proposal is returned to Council for final agreement (see paragraphs 2.26–2.30 below for details).

2.11 We share the Minister’s views about the Commission’s approach. It is, we suspect, typical of many such programmes, both external as well as internal: once established, there is an in-built reluctance to close them down and a corresponding bias towards justifying continuation on the basis of a “self-evident” need and some minor changes based on the views of parties who prefer continuation of something to nothing at all. How else to explain so enduring a reluctance to do what any commercial organisation would be obliged to do before continuing phase I into phase II — fully evaluating the former before deciding on whether to engage in the latter? In short, to assess its impact before deciding whether, and if so, how, to proceed. In EU terms, €160 million (£115 million) for ISA 1 plus c. €130 million (£93.8 million) for ISA 2 is relatively modest; but if we are right about the wider implications, ISA and such counterparts add up to something much more substantial. Moreover, as the Minister says, reluctance fully to embrace the evaluation culture means that projects are inevitably less effective than they could otherwise be.

2.12 The Minister and his officials’ endeavours notwithstanding, it would appear that the ISA 2 programme will now go ahead. In that case, we ask the Minister to write to us again, once the Council Decision has been adopted by the Council and is thus no longer *limité*, with a copy of the final version, and to explain:

- what, in detail, ISA 2 will set out to do and how it will do it;
- how ISA 2 is an improvement on its predecessor;
- what weaknesses it nonetheless continues to have;
- what aspects of the interim evaluation have been incorporated, and which ones have not;
- what the final budget is;
- what arrangements will be made for evaluating it; and
- if “ISA 1” is still to have a full evaluation, once it has been fully completed.

2.13 In the meantime, we shall retain the draft Council Decision under scrutiny.

Full details of the documents: Proposal for a Council Decision establishing a programme on interoperability solutions for European public administrations, businesses and citizens (ISA2): (36197), [11580/14](#), COM(14) 367.

Background

2.14 The ISA programme (ISA 1) was launched on 1 January 2010 and runs for five years. It had a budget of €160 million (£114 million). Its main objective was to support cooperation between European public administrations by facilitating efficient and effective electronic cross-border and cross-sectoral interaction, with a view to enabling the delivery of electronic public services supporting the implementation of EU policies and activities (see our predecessor’s Report of last October for full details).²⁰

2.15 A January 2013 interim evaluation was largely positive. But it was too early to arrive at any firm conclusions on the programme’s utility or effectiveness. The need to identify possible means to ensure the long term sustainability of an increasing number of solutions developed by the ISA programme was highlighted. Although ISA 1 was found to be generally working well internally and with other EU initiatives, the majority of stakeholders interviewed suggested that there were overlaps that could be better managed; and whilst Member States were involved in the oversight of the ISA programme, it was not yet sufficiently effective in meeting the needs and priorities of individual Member States.²¹

2.16 The proposed Council Decision is for a successor programme, ISA2, to run from 2016–20, with a budget of €146.6 million (£104.2 million), and intended to “consolidate, promote and expand its activities”. In particular, the new programme will:

- “help to identify, create and operate interoperability solutions, which will then be provided for unlimited use to other Union institutions and bodies, and national, regional and local public administrations, thus facilitating cross-border or cross-sector interaction between them;
- “develop interoperability solutions autonomously or complement and support other Union initiatives by piloting interoperability solutions as a ‘solution incubator’ or ensuring their sustainability as a ‘solution bridge’; and
- “assess the ICT implications of existing and proposed EU legislation.”²²

The previous Committee’s assessment

2.17 When the ISA2 Council Decision was presented for scrutiny in October 2014, the then Minister (Mr Francis Maude) noted that there were a number of interrelated programmes across many policy areas including Health, Taxation, Business and Competition, Justice, Procurement, Animal Health, Statistics, and ICT & Digital Services, and was broadly supportive of this proposed Council Decision, as were the other government departments who had been consulted (see our predecessor’s Report of last October and its annex for full details).

2.18 He also noted that:

20 Thirteenth Report: HC 219–xiii (2014–15), [chapter 10](#) (15 October 2014).

21 *Ditto*.

22 COM(14) 367, p.11.

- the Commission had yet to undertake an impact assessment on this decision and that “UKREP have been trying to obtain more information”;
- adoption of this decision affected a number of programmes or initiatives;
- however, it did not “itself have any direct impacts on businesses or citizens since it promotes interoperability between governments at all levels”;
- the only assessment undertaken by the EU was largely based on the evaluations of previous programmes and on the fact that these programmes had identified an ongoing need for developing or updating interoperability standards; and
- “the full evaluation of the current programme is not yet available and HMG will want to monitor progress in implementing the recommendations from the interim evaluation.”

2.19 Our predecessors said that the Commission was thus pushing ahead without any objective evaluation of how effective the predecessor programme had been, or any assessment of the impact of its proposed successor.²³

Subsequent developments

2.20 When responding to its observations, in February 2015, the Minister was only able to add that he was still trying to obtain definitive responses from the Commission to some of the questions raised. Meanwhile, his views on the need for an ISA2 and on there being no need for a prior full impact assessment of ISA remained unchanged. He and other like-minded Member States would continue to press the Commission to properly justify the proposals for ISA2 before further discussions of the detail, especially as ISA2 was now to be a Latvian Presidency priority; a full update would be provided when progress on these issues had been made.

2.21 His successor (Matthew Hancock) then wrote, on 10 June 2015, stating that, after a “lot of work ... in Council working groups on this file over the last two months”, the Commission had proposed that Member States should agree a General Approach on the ISA2 text at the 12 June 2015 Telecommunications Council. He illustrated a number of ways in which he said that the text had been improved. But the Commission continued to maintain that no impact assessment was required; whereas the Minister continued to believe that the ISA2 proposal would have been stronger if a proper impact assessment had been prepared when the proposal was being drafted. Whilst stating that the Council draft was significantly better than the Commission’s original proposal, the Minister said that more could and should also be done during trilogue to improve the text to ensure that ISA2 was effective.

2.22 The Government continued to support the overall aim of improving interoperability to reduce the friction involved in online transactions across borders and across sectors within the EU. However, given that it had not yet been possible to scrutinise the text properly, and given the areas where he believed further improvements to the text could

23 See Thirteenth Report HC 219–xiii (2014–15), [chapter 10](#) (15 October 2014) for full information.

have been made, the Minister said that he would abstain from voting on the general approach on 12 June. Beyond that, he would continue to work to support further improvements:

“with the hope that the proposal will be something that we can support when it comes to a future Telecoms Council for final agreement. The European Parliament has voiced some similar concerns on the proposal to those set out by the UK, so we do not anticipate any significant risk of the work to date being reversed during the trialogue process.”

Our assessment

2.23 The Minister had pointed out that the Commission’s proposal for ISA2 did little to address concerns raised in the interim evaluation of the predecessor ISA programme with regards to the important areas of effectiveness, coherence and coordination. The Commission nonetheless remained obdurate: full evaluation would not be produced until the latest date possible, in December 2015; work would continue on ISA2 without the benefit of this evaluation; and no impact assessment was required because ISA2 was the continuation of an existing programme which was believed to be of value. We found this to be an entirely circular argument. How could a programme be deemed of value if it had not been fully evaluated? And how could any successor be deemed not to need an impact assessment because it was a continuation of something that had not been fully evaluated? The Minister referred in his letter to an annex, on the Commission’s reasoning, which he did not in fact enclose. We therefore asked him to send it to us, along with a letter summarising its key points and setting out his views.

2.24 The other like-minded Member States of February 2015 had presumably been won over during the working group discussions. Nonetheless, in these circumstances, it was plainly right for the Minister to have abstained. We now looked forward to his keeping us regularly updated on the trilogue process, since it might be appropriate for this Council Decision to be debated before a final position was adopted, and we did not wish to be presented with a *fait accompli*; on this occasion, the dissolution and then the absence of a Committee in mid-June had meant that the lack of any update until the last minute was immaterial, but it would not be acceptable in future.

2.25 In the meantime, the draft Council Decision remained under scrutiny.²⁴

The Minister’s letter of 15 October 2015

2.26 The Minister reports that the first trialogue meeting on the ISA2 text was held in September, at which agreement was reached; and a proposed final text was presented to COREPER on 23 September 2015.

2.27 He then says that, in our previous Report, the Committee asked for three things:

- “clarity on the Commission’s reasoning for not conducting a thorough impact assessment;

24 See First Report HC 342–i (2015–16), [chapter 8](#) (21 July 2015).

- “my views on the Commission’s reasoning for not conducting an impact assessment; and
- “regular updates on the trialogue process.”

2.28 He continues as follows:

Request for clarity on the ISA2 impact assessment

“The Commission has made it clear that it does not feel that an impact assessment was necessary. As requested by the committee, I have re-enclosed the Commission’s reasoning as Annex A. The key points are:

- “the Commission maintains the argument that no impact assessment was required because ISA2 is the continuation of an existing programme (ISA) which is believed to be of value;
- “the interim evaluation of the predecessor ISA programme raised concerns with regards to the important areas of effectiveness, coherence and coordination. The Commission believe they have taken three appropriate actions to address the issues highlighted in this interim evaluation and therefore no further assessment is necessary:
- “Improved communication and awareness raising

“The Commission have instigated/improved digital communications and workshops with Member States to promote participation and community building

- “Engagement of stakeholders and project management continuity

“The Commission increased its efforts to advance the work of the programme in a collaborative manner focussing on the development of solutions for specific target groups

- “Avoiding overlaps and duplications

“The Commission took a holistic approach to improve governance, increase screening for overlapping projects and improve operational reusability of its creations

UK position on the Commission’s reasoning for not conducting an impact assessment

“I believe that the measures the Commission have taken to address the issues identified by the interim evaluation of the predecessor ISA project do not go far enough. I believe the Commission should have performed an impact assessment as outlined in my most recent letter to the Committee dated 10 June 2015.

“The preparation of an impact assessment would have helped the Commission to identify areas where we could have learned from the predecessor ISA project to ensure the programme is properly effective throughout its lifecycle, in particular:

- “a clearer statement of the main objective of ISA2 to ensure that the programme is delivering a specific goal, not a disparate range of solutions;
- “better coordination with other EU activities on interoperability to ensure different parts of the Commission are working together;
- “prioritisation of activities based on user needs and genuine testing to ensure that activities funded by ISA2 meet and continue to meet real needs.

“Throughout both discussions in working group meetings and negotiations in Council, we have consistently outlined our concerns around these points to improve the viability of the ISA2 programme. We have subsequently continued to push for them to be addressed throughout dialogue.

Update on dialogue

“Following the UK abstention from the vote on 12 June to agree a general approach the proposal was passed and the Commission recommended it move to dialogue.

“Significant progress was made in the first dialogue meeting at the beginning of September, and the parties to dialogue have now agreed a text that was presented to COREPER on 23 September 2015.

“During dialogue, some progress was made to address our concerns. Specifically:

- “there is an improvement in the recitals and Article 2 which makes it clearer that the ISA2 programme will have to consider the value to end users of any proposals. This should have the effect of reducing any money spent on solutions where there is no clear need and which might not be re-used at all; and
- “there is a recognition in Article 7 that actions under the ISA2 programme need to be more effectively prioritised which should have the effect of reducing money spent on solutions which might not be re-used.

“Whilst these improvements go some way to remedying our concerns, they do not do enough. The proposal could be substantially improved if it had been written with a clearer process for prioritising funding based on establishing a clear need for Europe to work on interoperability between national systems.”

2.29 The Minister then refers to Annex B of his letter — the final version of the proposal that was sent to COREPER — but says that it is:

“being provided to the Committee under the Government’s authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a *limité* marking. It cannot be published, nor can it be reported on in any way that would bring detail contained in the document into the public domain”.

Next steps

2.30 The Minister says that the Government continues to support the overall aim of improving interoperability to reduce the friction involved in online transactions across borders and across sectors the EU:

“However, despite some improvements to the text during trialogue, the text does not fundamentally address our core issues. The UK will therefore abstain from voting when the proposal is returned to Council for final agreement.”

2.31 The Minister concludes by expressing the “hope that the Committee will feel that this addresses all of the points made in the Committee’s report of 15 October 2014”.²⁵

Previous Committee Reports

First Report HC 342–i (2015–16), [chapter 8](#) (21 July 2015); also see Thirteenth Report HC 219–xiii (2014–15), [chapter 10](#) (15 October 2014).

ANNEX A: Commission Non Paper on the follow-up activities of the ISA Programme interim evaluation

“The purpose of this document is to present the recommendations of the interim evaluation of the ISA programme and the respective follow up activities the Programme took since then.

“1. Communication and raising awareness

“The recommendations from the interim evaluation have been answered by increasing efforts in various fields, in particular:

“Organisation of tailor-made workshops for the Member States

“To promote the solutions developed specifically towards interested target groups, ISA offered to all interested Member States a new flexible type of workshop. In this format Member States can choose:

- “the solutions/topics to be presented,
- “the format of the event (just presentations from the Commission side or bilateral presentations, workshop or discussion style),
- “the identification and invitation of their preferred target groups (administrators, IT specialists, policy makers, management or executive level, officials or contractors),
- “the duration of the meeting (half-day, one-day, two-days) and
- “the location of the meeting (locally or in Brussels).

25 i.e., our predecessors’ Thirteenth Report HC 219–xiii (2014–15), [chapter 10](#) (15 October 2014).

“In 2014 workshops were hosted in FR, NL, SE and EL respectively and one common workshop in Brussels for PL, RO, EE and LU. Workshops were done in different formats and with different topics, depending on the preferences of the individual Member States.

“Participants surveys showed high satisfaction rates with the tailor made format (on average some 80% of participants deemed the workshop content to be relevant for their work and some 90% indicated that they might re-use some of the solutions presented (40% “definitely”, “50% maybe”).

“In 2015, a workshop has already taken place in Denmark; further Member States have indicated their interest in hosting an ISA workshop.

“Participation in conferences and other events

“ISA further increased its presence at conferences and other events. In 2013 and 2014 ISA presented the solutions developed at more than 30 national, European and international events.

“A list of these events is published on the ISA website (library section).

“Communication through the Digital Media

“ISA further intensified its efforts to increase the attractiveness of the website which plays a central role in the ISA communication activities. The result was a strong increase of page visits (+64%), unique visitors (+64%) and page views (+88%) in 2014. In 2013, visits to the website had already tripled compared to 2012.

“Twitter was used as a complementary communication channel. Vice-President Sefcovic and Vice-President Ansip tweeted ISA news of core importance on their respective Twitter accounts.

“ISA has worked further on improving the visibility, attractiveness and quality of the Joinup collaborative platform. In 2014, the ePractice community (former epractice.eu site) has been merged with Joinup, adding about 15.000 new members to the site. These members bring new practitioners in the field of eHealth, eInclusion and eGovernment to Joinup that can now also share and re-use interoperability solutions for public administrations.

“The current Joinup solution catalogue now holds more than 3000 interoperability solutions, more than 3000 library items, news items, events.

Strengthening community building

“ISA, has increased and improved the support services to communities built around the interoperability solutions in the Joinup platform, a central place for discussions (around 720 interactions between users/project owners in 2014), collaboration, sharing and re-using solutions. In 2014, these activities were extended to the e-Government communities migrated from ePractice. A specific support service stimulates the facilitators of the communities to keep their communities active and interact with their members.

“Moreover, there is a range of awareness raising activities to promote the communities on Joinup such as production of news items (in 2014: 232), case studies (in 2014: 19) and

events that are regularly published. The efficiency of the communication is better monitored since 2014 to permit an adaptation if needed and to get trends.

“34 eGovernment factsheets were recently published with a focus on policies and activities covering good practices in the delivery of electronic services to the benefit of public administrations, businesses and citizens.

“Additionally, ISA continued the organisation of specific conferences. After Dublin in 2013 and Athens 2014 the ISA organised conference on Semantics for 2015 will be held in Riga. Furthermore in 2014 a conference specifically dedicated to the machine translation tool MT@EC was organised. Both conferences attracted more than 200 visitors and were given very positive feedback from participants. The Highlights reports of both conferences are available on the ISA website.

“The solutions developed under ISA so far have been documented in some 25 publications, all available on the ISA website (library section). The publications are disseminated at all events mentioned above and digitally through the ISA website.

2. Engagement of stakeholders and project management continuity

“The following answers summarise ISA activities to the recommendations under this heading:

- “As it is mentioned in the previous points ISA increased its efforts to address all requests coming from Member States to present and disseminate the programme and its solutions to different audiences and to a wide variety of events. The tailor-made workshops mentioned above highlights these efforts.
- “In what concerns the priority to be given to the assessment of ICT implications of new legislation, a specific service to help Commission services to evaluate ICT implications of planned legislation was put in place together with a screening of the Commission’s agenda planning to preliminary identify planned legislation that may be the target of this service.
 - “The ISA unit is also involved in the inter-service group that is revisiting the Impact Assessment guidelines so as to give more emphasis and explicitly include ICT implications in these guidelines.
 - “The figures on staff turnover of the unit in charge of the programme have greatly improved since the publication of the interim evaluation with a stable team since 2013.
- “New contractual frameworks have been put in place late 2014 assuring that the necessary framework contracts will be available at the start of the future programme.

3 Avoiding overlaps and duplications, increasing reusability and ensuring sustainability

“The Commission has taken a holistic approach to address the recommendations under this heading by acting at different levels:

- “At governance level:
 - “by improving the links between the Commission’s IT governance and the ISA programme and through the ISA committee with the Member States;
 - “by increased screening of inter-service consultations so as to detect as early possible overlaps and duplications and identify potential synergies;
 - “by involvement in the EU Semester process consultations so as to check the coherence of the country reports and national operational programs; and
- “At operational level, by taking action to ensure better reusability of interoperability solutions and to develop sustainability enablers (e.g. European Interoperability Reference Architecture (EIRA), the European Interoperability Cartography, the Assessment of trans-European networks supporting EU policies and the Sharing and reuse strategy). The future sharing and re-use framework will comprise business methods, governance models and supporting guidelines.”

3 EU Youth Strategy

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Education Committee
Document details	Commission Communication on the <i>Draft 2015 Joint Report of the Council and the Commission on the implementation of the renewed framework for European cooperation in the youth field (2010–18)</i>
Legal base	—
Department	Cabinet Office
Document Numbers	(37100), 11825/15 + ADDs 1–7, COM(15) 429

Summary and Committee’s conclusions

3.1 Article 6 and Title XII of Part Three of the Treaty on the Functioning of the European Union permits the Union to carry out actions to support, coordinate or supplement the actions of the Member States in the area of youth policy. To that end, the EU Youth Strategy 2010–18, agreed by the Council in 2009, seeks to enhance opportunities for young people in education and in the labour market, and to promote active citizenship and social inclusion. The purpose of the Commission Communication is to identify progress made over the period 2013–15 and to establish priorities for the next three years.

3.2 According to the Commission, education indicators reveal positive trends. Early school leaving, for example, is in decline and higher education attainment rates have improved. On the other hand, the economic crisis has created new divisions. Poverty rates are higher for young people than for the overall population. Young people with a migrant

background, with health issues or with low educational achievement are more likely to fall within the “NEET” category (Not in Employment, Education or Training).

3.3 On the basis of its analysis, the Commission recommends that the future work cycle of the cooperation framework should prioritise social inclusion, stronger participation of young people and labour market integration, with a special focus on the long-term unemployed. The Commission and Member States commit to acting in these areas. It is concluded that this action should be supported by a coherent policy agenda, backed by initiatives such as Erasmus+, the Youth Guarantee and the European Social Fund.

3.4 The Minister for Civil Society at the Cabinet Office (Mr Rob Wilson), emphasises that the EU has limited competence in youth policy. While he recognises that Member States can learn from each other, the Minister is concerned that some of the terminology used in the report does not reflect current UK policy emphasis. The Government will therefore continue to work with the EU and other parties to change the terminology used in EU youth policy work. Through its work in the Education, Youth and Sport Council, the UK will continue to monitor how broad policy statements develop into more formal policy.

3.5 As the Minister notes, the European Union has limited competence in the area of youth policy. It follows logically that the wording used in policy documents such as this must be aligned with the level of competence. We are not clear from the Minister’s Explanatory Memorandum as to whether changes will be sought to the wording of the draft Joint Report itself or whether he is committing to a more general monitoring of the terminology used by the Commission and others in relation to EU youth policy.

3.6 We would therefore welcome responses to the following questions:

- **Is the Government content with the wording in the draft Joint Report, including wording that commits Member States to taking action in the identified priority areas? If not, how will the Government be seeking to amend the text?**
- **If the Government’s policy represents a broader intention to change the terminology used in EU youth policy work more generally, can the Government set out past instances when it has succeeded in changing such terminology? Has the Government identified any other youth policy documents or statements that it will be seeking to amend in the near future?**

3.7 It is our understanding that the EU Youth Strategy provides for the Council to adopt priorities for work over the period 2016–18 based on the joint Council and Commission Report. We note the Minister’s view that the draft Joint Report under scrutiny is a review of work undertaken during 2013–15 and that it therefore has no direct policy implications. It seems to us, however, that the document goes beyond a review of past policy and that it contains revised policy priorities. Indeed, that interpretation appears to be acknowledged later in the Minister’s EM. We look to the Minister for an explanation of this apparent contradiction. We would also welcome confirmation of the procedure for the adoption of priorities. It would be particularly helpful to be clear whether a further document on priorities will be proposed for decision by the Council alone, and deposited with Parliament accordingly.

3.8 We ask that the Minister respond to these queries ahead of the 23 November Youth Council and that he include information on any aspects of the text that have been amended in the course of negotiations. In the meantime we retain the draft Joint Report under scrutiny. We consider the document to contain issues of policy interest and therefore draw it to the attention of the Education Committee.

Full details of the documents: Commission Communication on the *Draft 2015 Joint Report of the Council and the Commission on the implementation of the renewed framework for European cooperation in the youth field (2010–18)*: (37100), [11825/15](#) + ADDs 1–7, COM(15) 429.

Background

3.9 Adopted by the Council in 2009, the EU Youth Strategy²⁶ covers education and training, employment and entrepreneurship, social inclusion, health and well-being, participation, culture and creativity, volunteering, and youth and the world. It has two strategic objectives:

- i) Create more and equal opportunities for all young people in education and in the labour market; and
- ii) Promote the active citizenship, social inclusion and solidarity of all young people.

3.10 The Strategy provides that its delivery be divided into a series of three-year cycles, with the final cycle covering the years from 2016–18. For each of these cycles, a number of priorities will be adopted by the Council on the basis of a joint Council and Commission report.

The draft Joint Report

3.11 The draft Joint Report under consideration notes that the human and social capital of young people is one of Europe’s greatest assets for the future. It highlights the need to invest “in the potential that 90 million young Europeans represent in terms of skills, creativity and diversity”.

3.12 The draft Joint Report summarises EU and Member State action over the period 2013–15. Actions highlighted include:

- Action by Member States under the European Semester to bring down early school leaving and promote higher education attainment;
- Introduction of the Youth Guarantee as a structural framework to offer young people a job, an apprenticeship, traineeship or continued education within four months of leaving school or becoming unemployed;
- Use of available funding under the European Social Fund and the Youth Employment Initiative; and

²⁶ Council [Resolution](#) of 27 November 2009 on a renewed framework for European cooperation in the youth field (2010–18).

- Launch of the Erasmus+ programme, 10% of the budget of which is reserved for youth activities, which fund an estimated 400,000 participants in youth exchanges and 100,000 in the European Voluntary Service.

3.13 Looking to the future, the draft Joint Report proposes that work under the Strategy over the next three years should prioritise:

- “Increased social inclusion of all young people, especially those at risk such as NEETs (not in employment, education and training) and young people with a migrant background;
- “Stronger participation of all young people, in particular those at risk of marginalisation; and
- “Easier integration into the labour market for all young people, with a special focus on the long-term unemployed and those in transition from education to work.”

3.14 The draft Joint Report is accompanied by a series of Commission Staff Working Document. These summarise the results of co-operation over the period 2013–15 and assess more generally the situation of young people in the EU.

The Minister’s Explanatory Memorandum of 12 October 2015

3.15 The Minister explains that the EU Youth Strategy is based on the Open Method of Coordination (OMC), which is a voluntary method of developing policy at an EU level, involving sharing of best practice and monitoring performance using agreed indicators. He confirms that the EU has limited competence in youth policy and that there is a general understanding that youth policy is best made at the local level according to local needs.

3.16 The Minister sets out the Government’s position in the following terms:

“The document is a review of work undertaken during 2013–15 and has no direct policy implications.

“The review summarises a series of national reports submitted by Member States, while also providing an overview of actions taken by the EU itself. To this extent, it does comprise a fair representation of Commission views and those of most Member States. However, some of the terminology used in the report does not reflect current UK policy emphasis. We will continue to work with the EU and other parties to change the terminology it uses in EU youth policy work.

“The review’s stated priorities for the final three-year cycle of the framework are relatively broad. There are no proposals for specific courses of action. While we accept the general directions proposed, we will continue to monitor how these broad proposals develop and particularly whether they develop into more formal policy. We will do so through our representation in the Education, Youth and Sport Council, where we have been active in making sure that the UK’s position is accurately reflected on a range of issues, including voting ages.”

Previous Committee Reports

None.

4 The EU and the ITU World Radiocommunication Conference (WRC-15)

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Council Decision on the EU position at the November 2015 World Radiocommunication Conference (WRC-15); drawn to the attention of the Culture, Media and Sport Committee
Legal base	Articles 114 and 218(9) TFEU; QMV
Department	Culture, Media and Sport
Document Numbers	(36909), 9455/15 + ADD 1, COM(15) 234

Summary and Committee's conclusions

4.1 World radiocommunication conferences (WRC) are held every three to four years. It is the job of WRC to review, and, if necessary, revise the *Radio Regulations*, the international treaty governing the use of the radio-frequency spectrum and the geostationary-satellite and non-geostationary-satellite orbits. Revisions are made on the basis of an agenda determined by the International Telecommunication Union (ITU) Council, which takes into account recommendations made by previous world radiocommunication conferences. The general scope of the agenda of world radiocommunication conferences is established four to six years in advance, with the final agenda set by the ITU Council two years before the conference, with the concurrence of a majority of Member States.²⁷

4.2 The ITU World Radiocommunication Conference (WRC-15) will take place in Geneva from 2 to 27 November 2015. The European Conference of Postal and Telecommunications Administrations (CEPT)²⁸ — a pan-European body rather than an

27 The 2014–18 membership is: **Region A (Americas): 9 seats:** Argentina, Brazil, Canada, Costa Rica, Cuba, Mexico, United States, Paraguay, Venezuela; **Region B (Western Europe): 8 seats:** France, Italy, Germany, Greece, Lithuania, Spain, Switzerland, Turkey; **Region C (Eastern Europe and Northern Asia): 5 seats:** Azerbaijan, Bulgaria, Poland, Romania, Russian Federation; **Region D (Africa): 13 seats:** Algeria, Burkina Faso, Egypt, Ghana, Kenya, Mali, Morocco, Nigeria, Rwanda, Senegal, Tanzania, Tunisia, Uganda; and **Region E (Asia and Australasia): 13 seats:** Australia, Bangladesh, China, India, Indonesia, Japan, Korea (Republic of), Kuwait, Pakistan, Philippines, Saudi Arabia, Thailand, United Arab Emirates.

28 The European Conference of Postal and Telecommunications Administrations — CEPT — was established in 1959 by 19 countries. It now has 48 members. CEPT offers its members the chance of:

- establishing a European forum for discussions on sovereign and regulatory issues in the field of post and telecommunications issues;
- providing mutual assistance among members with regard to the settlement of sovereign/regulatory issues;
- exerting an influence on the goals and priorities in the field of European Post and Telecommunications through common positions;
- shaping, in the field of European posts and telecoms, those areas coming under its responsibilities;

EU (including countries such as Russia and Iceland) — has been involved in preparations for WRC-15 since 2012.

4.3 The Commission draft proposal sets out the negotiating positions that (in its view) Member States must take on behalf of the EU at WRC-15.

4.4 In his Explanatory Memorandum of 15 June 2015, the Minister for Culture and the Digital Economy at the Department for Culture, Media and Sport (Mr Edward Vaizey) explained that, earlier this year, the Radio Spectrum Policy Group (RSPG)²⁹ published an Opinion setting out its view of EU objectives for the WRC. It envisaged that this would lead to a Commission Communication and then non-binding Council Conclusions on the positions that EU Member States should adopt — the approach for previous WRCs, which had “worked reasonably well”.

4.5 This time, however, the Commission was proposing a Council Decision, which would be binding on all Member States. The Commission argued that decisions on some of the agenda items at the WRC would affect areas of EU policy, and so it was necessary for Member States to take positions on behalf of the Union. The EU was a “sector member” of the ITU, not a full member, so it was unable to negotiate on its own behalf. The proposed Decision set out positions to be adopted on behalf of the EU in relation to four of the WRC-15 Agenda items and provided that Member States “must ensure that any relevant amendments comply with EU law and do not bear any prejudice to its future foreseeable development”. The details are set out in our previous Report.³⁰

4.6 Given the antecedents (see “Background” for details), the Commission’s approach here was a clear departure from previous practice in that it was now asserting more aggressively that the EU had exclusive competence over some of the subject matter of the negotiations. We accordingly retained this proposal under scrutiny, pending an update from the Minister. We asked that it should include his assessment whether or not the Commission was likely to pursue its claim of exclusive competence to litigation.³¹

-
- o carrying out its activities at a pan-European level;
 - o strengthening and fostering more intensive co-operation with Eastern and Central European countries;
 - o promoting and facilitating relations between European regulators (e.g. through personal contacts);
 - o influencing, through common positions, developments within ITU and UPU in accordance with European goals;
 - o responding to new circumstances in a non-bureaucratic and cost-effective way and carrying out its activities in the time allocated;
 - o settling common problems at committee level, through close collaboration between its committees;
 - o giving its activities more binding force, if required, than in the past; creating a single Europe on posts and telecommunications sectors.

Since 2001, as a response to the convergence in the telecommunications sector and the requirements of the information society, the two committees dealing separately with radiocommunications and telecommunications were replaced by a single Electronic Communications Committee.

29 The RSPG consists of representatives of the Member States and of the Commission. In addition, representatives of the EEA countries, the candidate countries, the European Parliament, the European Conference of Postal and Telecommunications Administrations (CEPT) and the European Telecommunications Standardisation Institute (ETSI) attend as observers. The RSPG contributes to the development of a EU Radio Spectrum Policy, taking into account not only technical parameters but also economic, political, cultural, strategic, health and social considerations. The high-level advisory group also considers the various potentially conflicting needs of radio spectrum users with a view to ensuring that a fair, non-discriminatory and proportionate balance is achieved. The RSPG adopts [opinions](#), which are meant to assist and advise the Commission on Radio Spectrum Policy issues, on coordination of policy approaches and, where appropriate, on harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market.

30 See First Report HC 342–i (2015–16), [chapter 12](#) (21 July 2015).

31 *Ditto*.

4.7 The Minister now reports that, faced by an alliance between the UK, France and Germany, the Presidency has withdrawn its proposal and instead proposed draft Council Conclusions.

4.8 The Minister says:

- the Government has worked to ensure the text of these Conclusions is acceptable in competence terms and remains acceptable in substance;
- as “the key concern over competence in this measure has been resolved, and the final form of this measure is not a binding legal instrument”, the Government intends to support the Conclusions; and
- that as “the Committee’s concerns have also been met”, he “would welcome your confirmation on this point”.

4.9 **So far, so good. But before clearing this matter from further scrutiny we would like the Minister to send us a copy of the finally-adopted Council Conclusions, together with his illustration of the ways in which they are “acceptable in competence terms and ... in substance”.**

4.10 **The Minister also says that he would also:**

“draw to the Committee’s attention [to the fact] that the underlying competence issue between the Commission and Member States remains unresolved.”

4.11 **When he writes to us about the Council Conclusions, we would therefore also like him to let us know whether or not the Commission has indicated if it intends to pursue this matter to litigation (c.f. our previous Report and paragraph 4.15 below).**

4.12 **In the meantime, we shall continue to retain the document under scrutiny.**

Full details of the documents: Proposal for a Council Decision on the position to be adopted in the International Telecommunication Union (ITU) World Radiocommunication Conference 2015 (WRC-15): (36909), [9455/15](#) + ADD 1, COM(15) 234.

Background

4.13 As the then Committee’s 2011 Report on the most recent World Radiocommunication Conference, WRC-12, demonstrated, the Minister was correct about the normal preparatory procedure.³² The Commission’s approach here was a clear departure from previous practice in that it was now asserting more aggressively that the EU had exclusive competence over some of the subject matter of the negotiations. Whether this new approach would be vindicated would depend upon the Commission being able to establish that there was indeed some element of EU exclusive competence, albeit it had not been asserted in the past.

³² See the then Committee’s Report of 24 May 2011 for its consideration of the process used at WRC-12: (32669), 8758/11: Thirty-first Report HC 428–xxviii (2010–12), [chapter 6](#) (24 May 2011).

4.14 We noted that the Minister considered that there was no good reason for the Commission’s changing of the EU approach to these negotiations, and that it should instead maintain and build on the process used at WRC-12, especially as his understanding was that the RSPG (of which the Commission is a member) had expressed a similar view and that a number of other Member States would similarly resist the implications of this proposal as drafted.

4.15 We accordingly retained this proposal under scrutiny, pending an update from the Minister. We asked that it should include his assessment whether or not the Commission was likely to pursue its claim of exclusive competence to litigation.

4.16 We also drew these developments to the attention of the Culture, Media and Sport Committee.³³

The Minister’s letter of 1 September 2015

4.17 The Minister provided the following update:

“HMG remains opposed to the draft Council Decision for the following reasons:

“It would undermine the position of the European Conference of Postal and Telecommunications Administrations (CEPT) — it is important that CEPT maintains its current mandate and role in order to bind in non-EU Member States.

“It would reduce the flexibility that we have during the negotiations. WRC is a global conference and Europe will inevitably have to make compromises. Increasing the need for formal EU coordination and decision-making processes during the negotiation would be cumbersome. It could put us at a disadvantage in the negotiations and potentially alienate non-EU CEPT members.

“It does not add any value to the existing processes, which have worked well.

“It would set a precedent for using binding Council Decisions for ITU WRC negotiations.

“It would appear to amount to the Commission seeking to extend its exercise of exclusive external competence. HMG continues to analyse this position and is in contact with other Member States about this issue.

“On this basis, I have asked my officials to pursue the option of achieving a co-ordinated EU approach (which is what the Commission seeks) but combined with the flexibility that the UK and other Member States need of being able to maintain an adaptable negotiating position e.g. by agreeing non-binding Council Conclusions. We would not want to concede any extension of Commission competence in this area.

“Current position

“Following the last Telecoms Working Group on 16 July, I understand the Commission intends to come back in Autumn 2015 with a revised proposal. As it stands it seems likely that this will be a new draft Decision but one where the operative language will be changed and the annex made more flexible. We await details of this but it was confirmed at the Working Group that a number of other Member States have concerns about the Commission’s approach.

“Next steps

“My officials will take advantage of any opportunity that presents itself to influence the Commission, and other Member States prior to the receipt of the next draft. After the Commission’s summer break, they will then continue to work with other Member States to pursue the non-binding Council Conclusion option once the diplomatic stations return to full strength. HMG will of course keep this position under review as new drafts or alternative procedures are proposed.

“Scrutiny questions

“Whilst it can be confirmed that a number of other Member States have considerable concerns about the Commission’s current draft Decision and it seems unlikely that the Commission’s revised draft of the proposed Decision will satisfy all of those concerns, it is not yet possible to provide any assessment of whether or not the Commission is likely to pursue its claim of exclusive competence to litigation. I will be better placed to provide an update on this once the revised draft Decision has been issued by the Commission.”

The Minister’s further letter of 15 October 2015

4.18 The Minister recalls that the Government’s concern with this particular measure has not been its substance but its implications for Member State competence on spectrum management issues. Noting that, in seeking a Council Decision, the European Commission took the position that it had exclusive competence over any element of the multi-state WRC-15 process that was subject to common EU rules, or where such harmonisation was in prospect, he says:

“The UK remains unconvinced of this argument. Instead, with France and Germany we proposed the adoption of non-binding Council Conclusions, as used for previous World Radiocommunication Conferences.”

4.19 He continues as follows:

“Finding that the Council would not accept a Decision, and in view of the limited time available before WRC-15, the Presidency has proposed draft Council Conclusions. The Government has worked to ensure the text of these Conclusions is acceptable in competence terms and remains acceptable in substance.

“As the key concern over competence in this measure has been resolved, and the final form of this measure is not a binding legal instrument, the Government intends

to support the Conclusions. I hope that the Committee’s concerns have also been met, and would welcome your confirmation on this point.”

4.20 Finally, the Minister says:

“I would also draw to the Committee’s attention that the underlying competence issue between the Commission and Member States remains unresolved.”

Previous Committee Reports

First Report HC 342–i (2015–16), [chapter 12](#) (21 July 2015); also see (32669), 8758/11: Thirty-first Report HC 428–xxviii (2010–12), [chapter 6](#) (24 May 2011).

5 EU-Mongolia Partnership and Cooperation Agreement

Committee’s assessment	Legally and politically important
Committee’s decision	Not cleared from scrutiny; further information awaited
Document details	Proposal for a Council Decision on the conclusion of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States and Mongolia
Legal base	Articles 207, 209 and 218(6)(a) TFEU; QMV
Department	Foreign and Commonwealth Office
Document Numbers	(36921), 9485/15 + ADD 1, COM(15) 226

Summary and Committee’s conclusions

5.1 The EU–Mongolia Framework Agreement on Partnership and Cooperation (PCA) provides a legal framework for further engagement across a broad range of areas. It is a mixed agreement.³⁴ Authority for the EU to sign was given by Decision 2012/273 of May 2012 and the EU signed it on 30 April 2013. This proposal would enable the EU to conclude (ratify) the PCA. The UK signed the Agreement on 20 January 2012 and has undertaken the necessary domestic procedures in order to ratify it too.

5.2 Like many similar agreements with third countries this PCA gives rise to legal issues as to the exercise of competence and the UK opt-in in relation to matters covered by Part Three Title V TFEU (concerning the Area of Freedom, Security and Justice).

5.3 On the question of competence we previously noted the Government’s policy that where a mixed agreement covers some matters where competence is shared between the

³⁴ An agreement is mixed when the competence to enter into the agreement is exercised by both the EU and its Member States acting in their own right.

EU and the Member States,³⁵ the Member States should, in general, act in respect of those matters, leaving the EU to act only where it has exclusive competence. We also considered that it should transparent whether it is the Member States or the EU exercising that competence.

5.4 The Minister (Mr David Lidington) has now responded to the Committee's request for further information on competence.

5.5 The Minister indicates that “As is customary in these agreements, the Union approves the whole of the PCA between the EU and its Member states on the one side and the Third Country on the other. This is clear from the legal text”. He also indicates that it would not be pragmatic to specify where competence lies even if this results in a lack of clarity as to who exactly (the EU or the Member States) is entering into which obligations and on what basis.

5.6 It appears to us that this approach undermines the Government policy that the EU should not ordinarily exercise shared competence. It creates an opportunity for the Commission to argue in this case, on the basis of the legal texts adopted, that the EU has, in fact, exercised shared competence. Furthermore, consistently conceding lack of clarity makes it more difficult to apply the policy in any future case where a pragmatic approach may not be justified. This is all the more important as it appears that other Member States do not share the Government's concern.³⁶

5.7 The Minister seeks comfort from “the position that the balance of competence is set out in the treaties and cannot be modified by a Third Country Agreement or a Council Decision”. Whilst this statement is true, it does not provide comfort because the Treaties clearly leave it as a policy choice whether the EU or the Member States should exercise competence.

5.8 In the light of these observations we ask the Minister to comment on the robustness of the Government policy that the EU should not ordinarily exercise shared external competence. As it appears to us to be more common that not for the Government to take a pragmatic approach, we ask him to provide recent examples where its policy is, in fact, reflected in the legal texts.

5.9 Whilst the Government may not wish to use its veto to insist on clarity in the legal texts as to the exercise of competence, we nevertheless consider that it would be prudent for it to analyse the extent of shared competence in the PCA, if only for its own purposes of understanding the extent of the deviation from Government policy involved in taking the pragmatic approach. We ask the Minister whether the Government has undertaken this exercise, and, if so, to inform us of the extent of shared competence in the Agreement.

35 Where competence is shared it can be exercised by either the EU or Member States. Who exercises that competence is a matter of political choice.

36 On the issue of competence we have been told by the Minister for Security (Mr John Hayes) in the context of proposals for EU participation in prevention of terrorism measures that “Whilst the Government's position is that the Member States rather than the EU should act where competence is shared, other Member States are generally content for the EU to act where competence is shared”. See his [letter](#) of 17 September 2015.

Full details of the documents: Proposal for a Council Decision on the conclusion of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States and Mongolia: (36921), [9485/15](#) + ADD 1, COM(15) 226.

The Minister’s letter of 18 September 2015

5.10 In response to the Committee’s questions on the exercise of shared competence the Minister stated:

“It is not my intention that the EU should only be concluding the PCA where it has exclusive competence. As is customary in these agreements, the Union approves the whole of the PCA between the EU and its Member states on the one side and the Third Country on the other. This is clear in the legal text.

“Specifying where competence lies article-by-article risks negotiations in the Council becoming intractable and untimely. We therefore take a pragmatic approach which may ultimately mean a lack of clarity on the face of the agreement or the face of the Council Decision as to who exactly is entering which obligations and on what basis. In this context, we are guided by the position that the balance of competence is set out in the treaties and cannot be modified by a Third Country Agreement or a Council Decision.”

Previous Committee Reports

Third Report HC 342–iii (2015–16), [chapter 21](#), (9 September 2015).

6 Enhanced Partnership and Cooperation Agreement between the EU and Kazakhstan

Committee’s assessment Committee’s decision	Legally and politically important Not cleared from scrutiny; further information requested
Document details	Council Decision on the signing and provisional application of the Enhanced Partnership and Cooperation Agreement
Legal base	Articles 91, 100(2), 207 and 209, in conjunction with Article 218(5) TFEU; QMV
Department	Foreign and Commonwealth Office
Document Number	(36976), —

Summary and Committee’s conclusions

6.1 Since the end of the 1990s, the EU concluded ten similar Partnership and Cooperation Agreements (PCAs) with Russia and the New Independent States of Eastern Europe, the Southern Caucasus and Central Asia: Armenia, Azerbaijan, Georgia, Kazakhstan,

Kyrgyzstan, Moldova, Ukraine, Uzbekistan and Tajikistan. Partnership and Co-operation Agreements (PCAs) were introduced as an instrument for developing the EU’s relationship with third countries in the early 1990s. Though primarily targeted at the countries of the former Soviet Union, 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 (see our previous Report for details).³⁷

6.2 At our meeting on 9 September, we asked the Minister to explain how an “enhanced” PCA (“ePCA”) differed from its predecessor, and if this was likely to be more widely applied. We also asked for further information on the legal issues surrounding the ePCA.

6.3 The Minister for Europe (Mr David Lidington) now explains that the parties decided in 2009 that the PCA in its present form did not “reflect to the full extent the mature partnership which has developed in the past years, nor Kazakhstan’s growing relevance as a political and economic actor”. Nonetheless, the ePCA is not as far reaching as the Association Agreement/Deep and Comprehensive Free Trade Agreements concluded with Ukraine, Georgia and Moldova.

6.4 Looking ahead, the Minister notes that:

- Kazakhstan is a member of the Eurasian Economic Union, whose members may not independently negotiate new free trade agreements with other potential partners;
- new agreements may also be concluded with others among the original ten, albeit the nomenclature may differ according to the exact nature and scope of the agreements;
- the EU and Armenia are poised to launch negotiations on a new EU-Armenia overarching agreement; and
- a European Commission delegation is also planning to visit Azerbaijan to discuss a proposed new agreement (see the Minister’s letter below for further detail).

6.5 We thank the Minister for his letter and his explanation of the nature and scope of an enhanced PCA (“ePCA”).

6.6 We note the Government asserts that the UK opt-in applies in relation to Mode IV provisions in the absence of a legal base from Part Three, Title V TFEU and sets out why it is minded to opt in. We remain of the view that the opt-in is not engaged in the absence of a formal Title V legal base. However, as the UK is likely to participate in this proposal either because it has opted in (as is the Government’s position) or because it does so automatically (as is our position) we do not take this issue further.

6.7 On the question of shared competence, we welcome the Minister’s reiteration that it is the Government’s policy that Member States “should continue to act” in relation to shared competence not previously exercised by the EU. We also note his view that would not be pragmatic to specify where competence lies article by article, in the legal texts.

37 See Third Report HC 342–iii (2014–15), [chapter 22](#) (9 September 2015).

6.8 It appears to us that this lack of clarity as to the application of the Government's policy undermines it. The Commission is thereby given the opportunity to argue that the EU has, in fact, exercised shared competence. Furthermore, following this pragmatic approach as standard practice will also make it difficult to seek clarity and transparency on the exercise of shared competence in circumstances where it is important to do so.

6.9 We also do not agree with the Minister that reliance may be placed on the fact that "the balance of competence is set out in the treaties and cannot be modified by Third Country Agreement or Council Decision". Whilst this statement is true, it does not provide comfort because the Treaties clearly leave it as a policy choice whether the EU or the Member States should exercise competence.

6.10 In the light of these observations, we ask the Minister whether the Government has, for its own purposes and regardless whether such information is deployed in negotiations, carried out an article by article assessment of the exercise of competences in order to identify the extent of the deviation from the normal policy that Member States should exercise shared competence. If so we ask that he share this information with us.

6.11 We also note that the Minister similarly finds it unhelpful to engage in an article by article assessment of where competence lies for the purposes of deciding the EU's power to provisionally apply the ePCA. Instead he provides an assurance that the very specific provisions of the ePCA to be provisionally applied cover matters for which the EU has competence to act. We ask whether, in coming to that conclusion, he has also considered the extent to which that EU competence over these specific provisions is shared rather than exclusive, and if so whether he will provide that information to us.

6.12 Pending the Minister's response, we retain this document under scrutiny.

Full details of the documents: Council Decision on the signing and provisional application of the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States and the Republic of Kazakhstan: (36976), —.

Background

6.13 The Council having authorised the Commission to open negotiations with the Republic of Kazakhstan on an ePCA, negotiations on the Agreement were successful and it was initialled on 20 January 2015.

6.14 The Minister described the Agreement as both commercially and geo-politically important, and as having the potential to increase the ease of doing business for UK firms. He described Kazakhstan as a comparatively young country, and considered its move to develop its relationship with the EU and secure membership of international institutions (Kazakhstan is also finalising accession to the WTO and has ambitions to join the OECD) as welcome.

Our assessment

6.15 As was clear from its antecedents, such agreements are now very much part of the EU’s international “toolkit”. From the political perspective, this Agreement was no doubt as described by the Minister.

6.16 However, we were not familiar with the concept of the “enhanced” PCA, i.e., its rationale and the wider policy framework of which it formed a part. Nor was it clear from the Minister’s Explanatory Memorandum in what ways, and in what areas, the existing Kazakhstan PCA had been “enhanced”. Also, was this part of a wider process, in which other such agreements would in due course be finalised? We asked the Minister to write to us, swiftly, with further information on these points.

6.17 From the legal perspective, we addressed in turn the question of the application of the UK’s JHA opt-in, the proposed division and exercise of competences by the EU and Member States and the proposed provisional application of the ePCA.

6.18 As on previous occasions, we did not agree with the Government that the UK’s opt-in applied to the Mode IV provisions in the absence of a Title V legal base. We considered that the last Recital³⁸ in the Agreement, in only addressing any future application of the opt-in (most likely, in relation to any further agreement on Readmission), underlined the weakness of the Government’s position that the opt-in applied to the present Agreement.

6.19 We noted the Minister’s apology in his letter for not being able to comply with the Ashton undertaking allowing Parliament an eight week scrutiny period prior to notification of the opt-in decision. This was regrettable. We asked the Minister to tell us what measures had been put in place to prevent future misunderstandings about the running of the three month opt-in period. We also looked forward to the Minister’s explanation of how the factors he outlined in his earlier Explanatory Memorandum were determinative in making the decision to opt in. We requested a copy of the Written Ministerial Statement, when it was made, informing Parliament of the opt-in decision.

6.20 We noted that the Agreement was a mixed agreement. We consider that in such an Agreement, where competences are shared,³⁹ they should be exercised by the Member States, leaving the EU to act only where it has exclusive competence. Did the Minister agree? If so, how had he sought to achieve this in the text?

6.21 We commended the Minister for the action he has taken to ensure that only certain Articles of the ePCA were within the scope of the proposed provisional application and

38 “NOTING that in case the Parties decided, within the framework of this Agreement, to enter into specific agreements in the area of freedom, security and justice which were to be concluded by the European Union pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, the provisions of such future agreements would not bind the United Kingdom and/or Ireland unless the European Union, simultaneously with the United Kingdom and/or Ireland as regards their respective previous bilateral relations, notifies the Republic of Kazakhstan that the United Kingdom and/or Ireland has/have become bound by such agreements as part of the European Union in accordance with Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union. Likewise, any subsequent EU-internal measures which were to be adopted pursuant to the above mentioned Title V to implement this Agreement would not bind the United Kingdom and/or Ireland unless they have notified their wish to take part or accept such measures in accordance with Protocol No. 21. Also noting that such future agreements or such subsequent EU-internal measures would fall within Protocol (No. 22) on the position of Denmark annexed to the said Treaties”.

39 Where competence is shared either the EU or the Member States may exercise it

then “only to the extent that they cover matters falling within the Union’s competence, including matters falling within the Union’s competence to define and implement a common foreign and security policy”. We asked the Minister to indicate the extent to which these Articles, other than those relating to the CFSP, covered matters of shared competence.

6.22 In the meantime, we retained the document under scrutiny.⁴⁰

The Minister’s letter of 18 September 2015

6.23 With regard to *the nature of an “enhanced” agreement*, the Minister says:

“The PCA between the EU and Kazakhstan entered into force in 1999 for an initial period of ten years (after which it could be renewed on an annual rolling basis). In 2009, the EU and Kazakhstan stated that: “The two sides share the view that the PCA in its present form does not reflect to the full extent the mature partnership which has developed in the past years, nor Kazakhstan’s growing relevance as a political and economic actor. The EU and Kazakhstan consider therefore that the time has come to proceed to a review of the 1999 PCA, with the aim of upgrading the relationship between Kazakhstan and the EU, through an early updating of the present provisions or the elaboration of a new agreement”.

“In 2011, work therefore began on a new enhanced PCA. The enhanced PCA is not as far reaching as the Association Agreement/DCFTAs concluded with Ukraine, Georgia and Moldova. Kazakhstan is also a member of the Eurasian Economic Union, whose members may not independently negotiate new free trade agreements with other potential partners. Kazakhstan was also only recently accepted as a WTO member (pending ratification), and the EU’s current policy is to negotiate full free trade agreements only with WTO members.

“Kazakhstan is the first Central Asian partner to have concluded an enhanced Partnership and Cooperation Agreement with the EU. New agreements may also be concluded with other countries from among those with whom the ten PCAs were originally concluded, albeit the nomenclature used may differ according to the exact nature and scope of the agreements. The EU and Armenia, also a member of the Eurasian Economic Union, have recently successfully completed a joint scoping exercise for a future legal agreement compatible with Armenia’s new international obligations, which will enable both sides soon to launch negotiations on a new EU-Armenia overarching agreement. A European Commission delegation is also planning to visit Azerbaijan to discuss a proposed new agreement.”

6.24 With regard to the *legal issues*, the Minister says:

“The Committee raised the issue of the UK’s opt-in applying to the Mode IV provisions in the absence of the Title V legal base. During the negotiations the UK pressed for a recital that recognised the application of the opt-in to the Agreement but were unsuccessful. However, we judged that the overall benefits of the

Agreement were such that withdrawing UK support would not be in our best interests. The Cross-Whitehall assessment concluded that the JHA opt-in was engaged by provisions relating to Mode IV (the temporary movement of natural persons for business). Whilst the proposal does not cite a Title V legal base, the view previously agreed by the EAC is that, since Mode IV would impose JHA obligations on the UK, the opt-in is engaged by virtue of Article 207 of the Treaty on the Functioning of the European Union. The provisions in question are in line with the UK's previously-agreed Mode IV commitments under the WTO General Agreement on Trade in Services (GATS). As such, I recommended that we assert the opt-in and opt in to these provisions.

“The Committee asked about shared competence in a mixed agreement. Where competence is shared, and has not been exercised by the EU, legally both the EU and Member States are free to act. It is Government policy that in cases of unexercised shared competence, Member States should continue to act. However, specifying where competence lies article-by-article risks negotiations in the Council becoming intractable and untimely. We therefore take a pragmatic approach which may ultimately mean a lack of clarity on the face of the agreement or the face of the Council Decision as to who exactly is entering which obligations and on what basis. In this context, we are guided by the position that the balance of competence is set out in the treaties and cannot be modified by a Third Country Agreement or a Council Decision.

“The Committee asked which Articles, other than those relating to the CFSP, cover matters of shared competence. As indicated above, we do not find it helpful to engage in an article-by-article analysis of where competence lies. However, I assure you that the Articles to be provisionally applied cover matters for which the EU has competence to act.”

Previous Committee Reports

Third Report HC 342–iii (2014–15), [chapter 22](#) (9 September 2015).

7 Financial services: benchmarks

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Treasury Committee
Document details	Proposed Regulation on benchmarks used in the financial services sector
Legal base	Article 114 TFEU; ordinary legislative procedure; QMV
Department	HM Treasury
Document Numbers	(35328), 13985/13 + ADDs 1–2, COM(13) 641

Summary and Committee's conclusions

7.1 This proposed Regulation concerns indices used as benchmarks 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 and contributors, enhance the quality and accuracy of input data and methodologies used by administrators and ensure adequate protection for consumers and investors using benchmarks. On the basis of our predecessors' recommendation, the House of Commons issued a Reasoned Opinion on this proposal (in November 2013), challenging the supposed benefits of EU level action.

7.2 In February the previous Government told the preceding Committee about a new compromise text tabled by the Latvian Presidency, which contained significant improvements over the previous version and which it wished to support in a General Approach. The preceding Committee welcomed the improvements: the focus on a limited number of "critical benchmarks" and the reduced role for the European Securities and Markets Authority in favour of national supervisory authorities. It therefore granted a scrutiny waiver to enable the Government to support the General Approach.

7.3 The Government continued to update us on the ensuing trilogue negotiations. The text appeared to be moving towards a more proportionate approach to benchmark regulation (see our Report of 21 July).⁴¹ Following a request from the Government to clear the document in anticipation of final agreement at the ECOFIN⁴² Council meeting of 6 October (falling within the Conference recess), we instead granted a conditional scrutiny waiver (see our Report of 16 September).⁴³ This was to enable the Government to support a text in line with the UK's negotiating objectives which centred on the need for proportionate approach to the diverse range of benchmarks and consistency with the Principles for Financial Benchmarks published by the International Organisation of Securities Commission (IOSCO).⁴⁴ In the event, the proposal was not agreed nor even discussed at that Council meeting.⁴⁵

41 First Report, HC 342–i (2015–16), [chapter 32](#) (21 July 2015).

42 Economic and Financial Affairs Council.

43 Fourth Report HC 342–iv (2015–16), [chapter 7](#) (16 September 2015).

44 Published in July 2013.

45 [Press Release](#), 6 October 2015.

7.4 The Economic Secretary to the Treasury (Harriett Baldwin) now writes to inform the Committee of developments in ongoing trilogues since her last letter of 10 September.

7.5 We thank the Minister for her helpful letter and look forward to further updates on significant developments. In the meantime, we retain this document under scrutiny and draw this Report to the attention of the Treasury Committee.

Full details of the documents: Proposed Regulation on indices used as benchmarks in financial instruments and financial contracts: (35328), [13985/13](#) + ADDs 1–2, COM (13) 641.

Minister’s letter of 12 October 2015⁴⁶

7.6 The Minister, after thanking the Committee for granting the conditional scrutiny waiver (which was not needed), updates the Committee on developments.

“As I outlined in my previous letter, proportionality remains an active area of discussion in the ongoing negotiations. The parties in the trilogue held on 22 September agreed a three-tier categorisation framework with diminishing restrictions applying to those benchmarks that are in the less significant categories. The Council are internally deliberating on the relevant thresholds and criteria that should apply and the UK is currently working very closely with colleagues to ensure that the Regulation will apply in a proportionate manner, and fully accommodates and reflects the diverse nature of benchmarks.

“The Committee may also be interested in the ongoing negotiations on the third-country regime for benchmarks administered outside the European Union. Given the widespread use of third-country benchmarks in EU markets, both the Parliament and Council texts agree that alternative mechanisms beyond simple equivalence are required to ensure a workable third-country regime. The UK has argued that demonstrable compliance with the International Organization of Securities Commissions (IOSCO) principles should form the foundation of the third-country regime, and is working very closely with international counterparts to ensure that these mechanisms are appropriate and correctly calibrated in the final Benchmarks Regulation, including safeguards against unintended consequences.

“The next trilogue is scheduled for 15 October 2015 and is expected to focus on categorisation and proportionality and there remains a possibility of further trilogues to discuss these issues in more detail. I will continue to update the Committee as the file progresses.”

Previous Committee Reports

Fourth Report HC 342–iv (2015–16), [chapter 7](#) (16 September 2015); First Report, HC 342–I (2015–16), [chapter 32](#) (21 July 2015); Thirty-seventh Report HC 219–xxxvi (2014–15), [chapter 1](#) (18 March 2015); 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

⁴⁶ [Minister’s letter](#).

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).

8 A common EU list of safe countries of origin

Committee’s assessment Committee’s decision	Politically important Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Regulation establishing a common list of safe countries of origin for the purposes of Directive 2013/32/EU on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU
Legal base	Article 78(2)(d) TFEU; ordinary legislative procedure; QMV
Department	Home Office
Document Numbers	(37090), 11845/15 + ADD 1, COM(15) 452

Summary and Committee’s conclusions

8.1 The purpose of the proposed Regulation is to establish a common EU list of safe countries of origin. The designation of a third country as a safe country of origin may affect how an application for international protection is handled within the EU. Under existing EU asylum law, set out in the 2013 Asylum Procedures Directive, Member States may apply accelerated or border procedures if an applicant for international protection is a national of a designated safe third country or a stateless individual who was formerly habitually resident there. Under the existing Directive, the designation takes place at national level, according to an agreed set of criteria — there is no provision for a common EU list.

8.2 The proposed Regulation would establish a common EU list of seven safe countries of origin which would supplement third countries already (or yet to be) designated at national level under the 2013 Directive. The list includes six Western Balkans countries — Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia — plus Turkey. The proposed Regulation is subject to the UK’s Title V (justice and home affairs) opt-in.

8.3 The Minister for Countering Extremism (Lord Ahmad) notes that the UK does not participate in the 2013 Directive and could only opt into the Regulation if it were also to seek to opt into the Directive. He indicates that any benefits from opting into the proposed Regulation would not outweigh the disadvantages of being bound by the 2013 Directive and says that the Government is therefore “not minded” to opt into the proposal.

8.4 There has been a sharp increase in the number of Western Balkans nationals applying for international protection within the EU in recent years but recognition rates remain low across the EU. The designation of these countries as safe countries of origin is intended to make it easier for Member States to deal with applications made by their nationals expeditiously, whilst ensuring that each receives an individual assessment in compliance with EU asylum law.

8.5 It seems clear from the evidence presented in the Commission’s own explanatory memorandum accompanying the proposed Regulation that the inclusion of Turkey as a safe country of origin is an anomaly. The Minister explains that Turkey does not feature in the UK’s list of designated safe countries of origin and that a number of Member States have pressed for its removal. We ask the Minister to confirm that the Government would support its removal.

8.6 We note that the Government is “not minded” to opt into the proposal, since a decision to opt in would also have to be accompanied by an application to participate in the 2013 Asylum Procedures Directive. The Government’s concerns with this Directive appear to stem primarily from its potential impact on the UK’s “detained fast-track” procedures. We understand that these procedures have been suspended following a judgment of the Court of Appeal in July which concluded that the fast-track rules were “systemically unfair and unjust”.⁴⁷ We ask the Minister whether the Court’s ruling has altered the Government’s calculation of the balance of benefits and disadvantages associated with UK participation in the 2013 Directive, since this would appear to be the determining factor in reaching an opt-in decision on the proposed Regulation. As both instruments constitute a package, we do not consider that it would be appropriate to express a view on opting into the proposed Regulation in isolation from a wider consideration of possible UK participation in the 2013 Directive.

8.7 We would welcome the Minister’s view on the proposed use of delegated acts to enable the Commission, temporarily, to remove a country from the common EU list of safe countries of origin. We also ask him to clarify whether the Devolved Administrations have been consulted on the proposed Regulation given that his Explanatory Memorandum provides contradictory information.

8.8 Meanwhile, the proposed Regulation remains under scrutiny. We draw it to the attention of the Home Affairs Committee.

Full details of the documents: Proposal for a Regulation establishing a common list of safe countries of origin for the purposes of Directive 2013/32/EU on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU: (37090), [11845/15](#) + ADD 1, COM(15) 452.

Background

8.9 In May, the Commission published a Communication setting out a *European Agenda on Migration* which proposed a series of actions to address the immediate humanitarian crisis in the Mediterranean and a range of longer-term measures to lay the foundations for

47 See the Court of Appeal’s [judgment](#) in *Lord Chancellor v Detention Action*.

a “fair, robust and realistic” EU migration policy. These included proposed changes to the 2013 Asylum Procedures Directive to support the swift processing of claims for international protection made by applicants from safe countries of origin.

8.10 Under the 2013 Directive, a third country may be designated as safe if it can be shown that “there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU,⁴⁸ no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict”. This assessment is based on “the legal situation, the application of the law within a democratic system and the general political circumstances”, and must take into account:

- the content of relevant laws and regulations, and how they are applied;
- observance of the rights and freedoms contained in relevant international instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant for Civil and Political Rights and the United Nations Convention against Torture;
- respect for the principle of *non-refoulement*; and
- the availability of a system of effective remedies against violations of the protected rights and freedoms.⁴⁹

8.11 The 2013 Directive requires Member States to ensure that there is an individual assessment of every claim for international protection, but envisages that fast-track or border procedures may be applied in cases where the applicant originates from a safe third country. It also creates a presumption that a claim is unlikely to be well-founded unless the applicant is able to demonstrate that there are “serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection”.⁵⁰

8.12 Whilst establishing common criteria for the designation of safe countries of origin, the 2013 Directive does not make provision for a common list of safe third countries to be established at EU level. Instead, it is for Member States to determine at national level whether to designate a third country as safe and to notify the Commission of any such designations.

8.13 Twelve Member States, including the UK, maintain national lists of third countries considered to be safe; others apply the safe country of origin concept on a case-by-case basis. The number and identity of countries included in national lists varies considerably.⁵¹

8.14 In June, EU leaders agreed a set of Conclusions calling for all tools to be mobilised to promote the readmission of irregular migrants to countries of origin and transit. In this context, the European Council noted the Commission’s intention to “strengthen the ‘safe

48 Directive 2011/95/EU establishes common standards for determining who qualifies for international protection. Article 9 defines an “act of persecution” within the meaning of the 1951 Geneva Convention relating to the status of refugees.

49 See Annex 1 to [Directive 2013/32/EU](#) on common procedures for granting and withdrawing international protection.

50 See Article 36 of [Directive 2013/32/EU](#).

51 See the [table of safe countries of origin](#) produced by the European Commission.

country of origin’ provisions in the Asylum Procedures Directive, including the possible establishment of a common EU list of safe countries of origin”.⁵²

8.15 Shortly afterwards, in July, Justice and Home Affairs Ministers agreed Conclusions underlining the need for a “coordinated approach” to the designation of safe countries of origin and welcoming possible changes to the 2013 Asylum Procedures Directive to include provision for a common EU list of safe countries of origin. Meanwhile, all Member States were encouraged to designate six Western Balkans countries — Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo — as safe countries of origin at national level.⁵³

The proposed Regulation

8.16 The proposed Regulation is based on Article 78(2)(d) TFEU which authorises the EU to adopt measures establishing common procedures for granting and withdrawing international protection. It would establish a common EU list of safe countries of origin comprising the six Western Balkans countries and Turkey. It requires the Commission to carry out regular reviews of the situation in these countries, drawing on a range of sources which include information provided by Member States, the European External Action Service, the European Asylum Support Office, UNHCR, the Council of Europe and other relevant international organisations. Any changes to the list must be agreed by the ordinary legislative procedure (meaning that the approval of the Council and European Parliament is required), but the Commission is given powers temporarily to suspend a country included in the list by means of a delegated act in the event of “sudden changes in the situation of a third country”. The Commission must act on the basis of a “substantiated assessment” of the criteria set out in the 2013 Asylum Procedures Directive. The maximum period of suspension is two years — beyond that, a formal legislative amendment must be adopted.

8.17 The proposed Regulation includes a number of consequential amendments to the 2013 Asylum Procedures Directive (also based on Article 78(2)(d) TFEU). These make clear that a third country of origin may be designated as safe on the basis of the common EU list or by national law. Designations based on national law are in addition to the countries included in the common EU list.

8.18 In its explanatory memorandum accompanying the proposed Regulation, the Commission identifies a number of objectives which the common EU list is intended to achieve. They include:

- increasing the overall efficiency of Member States’ asylum systems by facilitating the use of fast-track procedures for applications for international protection which are likely to be unfounded;
- reducing existing divergences between national lists of safe countries of origin; and
- deterring secondary movements within the EU.

52 See the [Conclusions](#) of the European Council meeting on 25–26 June 2015.

53 See [Conclusions](#) of the Justice and Home Affairs Council of 20 July 2015.

8.19 The Commission sets out its reasoning for proposing that seven third countries should be included in the common EU list of safe countries of origin. The principal factors, and their relevance for each third country are summarised in Table 1. The reference, in the final column, to countries designated by the European Council as candidates for EU membership is considered by the Commission to be material, as these countries must have fulfilled the “Copenhagen criteria” — guaranteeing democracy, the rule of law human rights, and respect for and protection of minorities — in order to gain candidate status.

Table 1

Proposed safe country of origin	Council of Europe member	ECHR violations in 2014	% of well-founded asylum applications in 2014 (total number)	Already designated as safe country of origin⁵⁴	Designated an EU candidate country
Albania	Yes	4 (out of 150 applications)	7.8% (1,040)	8 Member States	Yes
Bosnia and Herzegovina	Yes	5 (out of 1,196 applications)	4.6% (330)	9 Member States	No
fYR Macedonia	Yes	6 (out of 502 applications)	0.9% (70)	7 Member States	Yes
Kosovo	No (its status as a sovereign State is disputed)	N/A	6.3% (830)	6 Member States	No
Montenegro	Yes	1 (out of 447 applications)	3% (40)	9 Member States	Yes
Serbia	Yes	16 (out of 11,490 applications)	1.8% (400)	9 Member States	Yes
Turkey	Yes	94 (out of 2,899 applications)	23.1% (310)	1 Member State	Yes

8.20 The Commission indicates that its proposal is “the first step towards the objective of establishing a comprehensive common list of safe countries of origin at Union level” and that, in proposing further additions, it will give priority to third countries generating significant numbers of applications for international protection, such as Bangladesh Pakistan and Senegal.⁵⁵ The Commission moots the possibility that it may, at a later stage, seek to harmonise at EU level the list of safe countries of origin, thereby eliminating the need for national designations.

54 Out of a maximum of 12 Member States that currently maintain national lists of safe countries of origin.

55 See p.7 of the Commission’s explanatory memorandum accompanying the proposed Regulation.

The Minister's Explanatory Memorandum of 30 September 2015

8.21 The Minister explains that there are 26 countries on the UK's list of safe countries of origin, including the six Western Balkans countries covered by the proposed Regulation. These designations are based on the UK's Nationality, Immigration and Asylum Act 2002 which allows the Home Secretary to designate countries (or parts of countries) as "generally safe". He continues:

"Parliament must approve any designation by the affirmative procedure in the event of adding states, or parts of states. The effect of designation is that when an asylum claim or human rights claim is made by a person from a designated state, there is a presumption that the claim will be refused and certified as clearly unfounded, unless the person can show that it should not be. If the claim is certified as clearly unfounded, the person cannot appeal against that decision until they have left the UK. Even if the claim is not certified, it may still be refused but in this case the person will be able to exercise a right of appeal from within the UK. The designation of a state, or part of a state, does not mean that a person cannot be granted asylum or have a human rights claim recognised, it simply creates a presumption that the claim is unfounded, unless there is evidence to the contrary."⁵⁶

8.22 Turkey is not included in the UK's list of designated safe countries of origin. The Minister notes that other Member States have expressed concern about Turkey's inclusion in the proposed common EU list of safe countries of origin and indicates that it may be removed.

8.23 The proposed Regulation is subject to the UK's Title V (justice and home affairs) opt-in. The three-month deadline for notifying the EU institutions of the Government's opt-in decision expires on 8 December, but the Minister expects the proposal to be adopted in November and invites our views by no later than 21 October. He explains that the proposed Regulation would amend the 2013 Asylum Procedures Directive and that the UK could only opt in if it also sought to participate in the 2013 Directive. He continues:

"The Government decided not to opt in to the Directive when it was agreed in 2013 because it was deemed not to be in the national interest. There were implications for immigration control and the integrity of UK legal systems, including non-suspensive appeals and our Detained Fast Track process. Those reasons remain valid."⁵⁷

8.24 Noting that the UK already designates six of the seven countries in the proposed common EU list, and that it has the power to designate Turkey should it meet the criteria for designation set out in UK law, the Minister concludes:

"On an initial reading, the Government therefore does not see any benefits to opting in to this proposal that would outweigh the disadvantages of also having to participate in the 2013 Procedures Directive. The Government is therefore not minded to opt in to this proposal."⁵⁸

56 See para 10(iv) of the Minister's Explanatory Memorandum.

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

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

Previous Committee Reports

None.

9 EU Action Plan on Return

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee and the International Development Committee
Document details	Commission Communication: <i>EU Action Plan on Return</i>
Legal base	—
Department	Home Office
Document Numbers	(37091), 11846/15, COM(15) 453

Summary and Committee’s conclusions

9.1 In its Communication, *A European Agenda on Migration* the Commission noted that the implementation of a more effective policy on return was necessary to reduce the incentives for illegal migration and to ensure a “fair, robust and realistic” EU migration policy.⁵⁹ In June, the European Council made clear that EU solidarity measures — including the relocation of individuals in clear need of international protection from frontline Member States within the EU, and the resettlement of refugees from outside the EU — should be accompanied by effective return, readmission and reintegration policies for those not qualifying for protection within the EU. EU leaders agreed to make “adequate means” available as part of the EU budget for 2016 and tasked the Commission with establishing a dedicated European Return Programme.⁶⁰

9.2 The Commission Communication sets out an EU Action Plan on Return which includes a commitment to consider carefully the need to increase the EU’s budgetary resources for return in the coming years, but also identifies a number of immediate and mid-term measures to make the EU return system more effective. The Justice and Home Affairs Council welcomed the Action Plan at its meeting on 8 October and agreed Conclusions setting out policy orientations for the future development of the EU’s return system.⁶¹

9.3 The Minister for Countering Extremism (Lord Ahmad) welcomes the Communication, noting that the Government supports the renewed focus on returns. His Explanatory Memorandum highlights a number of areas in which the UK is “playing a leading role” and

59 See our Second Report HC 342–ii (2015–16), [chapter 1](#) (21 July 2014).

60 See [Conclusions](#) agreed on 26 June 2015.

61 See [Conclusions](#) agreed by the Justice and Home Affairs Council on 8 October 2015.

makes clear that further measures to implement the Action Plan will be assessed in light of the UK's Title V (justice and home affairs) opt-in.

9.4 The UK does not participate in the EU Return Directive, the principal instrument at EU level for enforcing the return of third country nationals who do not (or no longer) have a right to remain within the territory of an EU Member State. Nor does the UK participate in the common EU visa policy — one of the policy areas intended to incentivise third countries to strengthen their cooperation with the EU on return and readmission. The UK has opted into some, but not all, EU readmission agreements with third countries and participates in a number of policy initiatives developed as part of the EU's Global Approach to Migration and Mobility. The UK is not a full member of the EU external borders agency, Frontex, but is able to take part in joint return operations coordinated by Frontex and in its wider activities on a case-by-case basis.

9.5 It is disappointing that the Minister's Explanatory Memorandum makes no reference to the UK's variable participation in many of the policy areas covered by the Action Plan and how this might affect the Government's ability to influence future developments.

9.6 We are surprised that the Minister considers that the Action Plan raises no fundamental rights issues. Whilst we recognise that it is a policy document, not an operational tool, it is evident that some of the ideas mooted, such as the use of detention for third country nationals awaiting removal, or other less coercive measures, such as electronic surveillance or the use of semi-closed facilities, merit some analysis in terms of their potential impact on fundamental rights.

9.7 We note that the Home Secretary's Written Ministerial Statement of 15 October urged the EU to “take forward discussions on multi-purpose centres and safe zones outside of Europe to which economic migrants could be returned”. We ask the Minister whether such discussions have taken place and to explain in greater detail what the Home Secretary has in mind, including where the multi-purpose centres and safe zones should be located and how they should be resourced.

9.8 Finally, the Minister calls on Member States to “improve their processes for returning those people who are not in need of international protection” in order to “break the link between illegal entry and being allowed to stay in Europe”. As the UK is not bound by the procedural rules set out in the EU Return Directive, we ask him to provide information on the effective rate of returns from the UK in 2014 and how it compares with the UK average of 40%. We also ask him to indicate the proportion of UK returns that are secured by voluntary means, and the proportion that are forced.

9.9 Pending further information, the Communication remains under scrutiny and we draw it to the attention of the Home Affairs Committee and International Development Committee.

Full details of the documents: Commission Communication: *EU Action Plan on Return*: (37091), [11846/15](#), COM(15) 453.

Background

9.10 EU leaders agreed in June that the EU should mobilise all tools to promote the return and readmission of irregular migrants to their countries of origin and transit. They called, in particular, for:

- high-level dialogues with the main countries of origin and transit;
- effective implementation of existing readmission commitments and the negotiation and conclusion of new agreements;
- further development of the “more-for-more” principle, creating incentives for third countries to cooperate in return and readmission;
- full implementation of the EU Return Directive⁶² by participating Member States, and the recording of return decisions in the Schengen Information System;
- effective use of Frontex to support returns from frontline Member States, as well as changes to Frontex’s mandate so that it can initiate return operations;
- the establishment of a common EU list of safe third countries of origin; and
- the setting up of a dedicated European Return Programme in 2016.⁶³

9.11 The Commission published its Communication proposing an EU Action Plan on Return on 9 September. At its meeting on 8 October, the Justice and Home Affairs Council welcomed the Action Plan and a Handbook on Return⁶⁴ presented by the Commission. The Council invited the Commission to put in place concrete actions to implement the Action Plan and to produce a stock-taking progress report by January 2016. The Conclusions highlighted the need for:

- adequate financial resources to improve the effectiveness of the EU return system;
- increased return rates to deter irregular migration, and better use of existing EU information-sharing systems such as the Schengen Information System, the Visa Information System and Eurodac;
- the use of detention as “a legitimate measure of last resort” to ensure effective returns;
- the creation of a dedicated Return Office within Frontex and a strengthening of its mandate to organise joint return operations on its own initiative;
- the development of an integrated system of return management using all available expertise;

62 [Directive 2008/115/EC](#) on common standards and procedures for returning illegally staying third country nationals. The UK does not take part in this Directive.

63 See [Conclusions](#) agreed on 26 June 2015.

64 See the [Return Handbook](#).

- increased cooperation on return and readmission with countries of origin and a strengthening of the link between visa facilitation and cooperation on readmission;
- the effective implementation of all existing readmission commitments and enhanced practical cooperation with third countries of origin and transit;
- the negotiation and conclusion of new readmission agreements;
- implementation of the “more-for-more” principle, maintaining “a fine balance of incentives and pressure” to secure cooperation on return and readmission;
- the deployment of European Migration Liaison Officers in key countries of origin and transit;
- wider use of the EU *laissez-passer* as the standard travel document accepted for return purposes by third countries;
- additional efforts to support reintegration as a means of ensuring the sustainability of returns, accompanied by monitoring of disparities between Member States’ voluntary return and reintegration programmes and an assessment of the risk of “return shopping”; and
- the possible development of safe and sustainable reception capacities for refugees in third countries and the application of “safe third country grounds” to declare asylum applications inadmissible.⁶⁵

9.12 In her Written Ministerial Statement to the House on 15 October, the Home Secretary set out the UK’s contribution to the Justice and Home Affairs Council meeting:

“The UK reiterated the importance of returning those not requiring international protection, in order that help could be focused on those in greatest need, which meant that effective returns of those not requiring international protection in Europe was vital. Identifying safe countries of origin was welcome, but the EU needed to go further.

“I also suggested that considering claims from certain countries as inadmissible except in exceptional circumstances could be the next step in tackling abuse, and that the use of detention was also necessary. The UK argued that it was important to consider seeking leverage with third countries to secure co-operation, that detention was often necessary and that the EU should take forward discussions on multi-purpose centres and safe zones outside of Europe to which economic migrants could be returned. I expressed the Government’s support for improved returns mechanisms, in particular at the EU external border and noted that the UK will carefully consider all current and future proposals.”⁶⁶

65 See [Conclusions](#) agreed by the Justice and Home Affairs Council on 8 October 2015.

66 See the Home Secretary’s [Written Ministerial Statement](#) HC Deb, 15 October 2015, 26WS to 30WS.

9.13 The European Council returned to the migration and refugee crisis on 15 October and agreed Conclusions endorsing many of the actions and policy initiatives proposed by the Commission in its Action Plan.⁶⁷

The Commission Communication

9.14 The Communication notes that fewer than 40% of irregular migrants who were ordered to leave the EU in 2014 actually did so. The Commission says that systematic return, whether by voluntary means or by compulsion, of individuals who do not (or no longer) have a right to remain is essential to maintain public trust in the EU's asylum system and public support for individuals in need of international protection. The purpose of the proposed Action Plan is to:

“achieve a coherent framework for action, backed by strong operational cooperation between the Member States, EU Agencies and countries of origin of migrants.”⁶⁸

9.15 The Commission acknowledges “the key role and responsibility of the Member States” in implementing EU return policy but suggests that there is a need for “stronger interaction” between them and with EU Agencies acting in a supporting capacity. It underlines the need for all action to be compliant with international human rights standards and refugee law and to observe the legal safeguards contained in the EU Return Directive. The Commission expects national programmes implementing the EU Asylum, Migration and Integration Fund to devote more than €800 million (£577 million) to their return programmes during the period 2014–20, but says it will consider carefully the need for a further increase in EU resources for return activities, particularly to support Frontex operations.

9.16 The Action Plan sets out a series of actions to improve the effectiveness of the EU return system and to strengthen cooperation on return and readmission with countries of origin and transit.

Improving the effectiveness of the EU return system

9.17 The Action Plan describes voluntary return, accompanied by reintegration measures in the home country, as “the preferred option whenever possible”, adding that voluntary return now accounts for around 40% of all returns and is generally more cost-effective. Whilst Member States are responsible for designing and implementing voluntary return programmes, the EU provides funding and facilitates the exchange of best practice. In the short and medium-term, the Commission says it will:

- provide funding from the Asylum, Migration and Integration Fund for assisted voluntary return programmes, supplemented by EU development funding to support sustainable return and reintegration;
- monitor the effects of disparities between national voluntary return schemes to obviate the risk of “return shopping”;

67 See [Conclusions](#) agreed on 15 October 2015.

68 See p.2 of the Communication.

- promote best practice on voluntary return and reintegration programmes, with a view to ensuring that they do not create a “pull-factor” by incentivising irregular migrants to travel to the EU to benefit from these programmes; and
- support joint reintegration programmes to improve employment opportunities and social integration for returnees.

9.18 Although the Commission expects the proportion of voluntary returns to increase during the period 2014–20, it suggests that migrants may only decide to opt for voluntary return if there is a credible prospect of forced return. The Action Plan therefore proposes more effective enforcement of existing EU rules, including the possibility of detention as “a legitimate measure of last resort” to prevent irregular absconding and evading removal. The rules are set out in the EU Return Directive which establishes common standards and procedures for returning illegally-staying third country nationals. The UK does not participate in the Directive.⁶⁹ The Commission says it will:

- evaluate Member States’ implementation of the EU Return Directive and, where necessary, take enforcement action;
- by 2017, consider the need for changes to the EU Return Directive;
- identify and share best practices through its Return Handbook;
- ensure the systematic assessment of the implementation of EU rules on return through the process of Schengen evaluations;
- map best practices as well as obstacles to return in national law and administrative practice; and
- include information on assisted voluntary return within the asylum process.

9.19 The Commission also urges Member States to explore alternatives to detention pending removal, such as electronic surveillance or the use of semi-closed facilities.

9.20 The Action Plan advocates more effective use of existing EU-wide information systems to support returns. The Commission says it will:

- continue its evaluation of the Schengen Information System with a view to enhancing its use for the return of irregular migrants, including through the development of a central Automated Fingerprint Identification System to establish identity;
- put forward a proposal requiring Member States to include entry bans and return decisions in the Schengen Information System;
- establish a network of national contact points to exchange information on the withdrawal of residence permits (notably for migrants with a criminal record);

69 See [Directive 2008/115/EC](#) on common standards and procedures for returning illegally staying third country nationals.

- publish revised proposals on “Smart Borders” which will ensure that there is a record of all cross-border movements and a means available to trace those who are over-stayers;
- explore the possible extension of the scope and purpose of the Eurodac Regulation so that data can be used to facilitate returns; and
- carry out an evaluation of the implementation of the Visa Information System, including a provision on the issuing of travel documents for return.

9.21 The Action Plan describes the existing capabilities of the EU’s external borders agency, Frontex, which include the deployment of mobile teams to provide operational support and information at “hotspots” established in frontline Member States, the organisation and co-financing of joint return operations, and assistance in identifying migrants and obtaining travel documents for their return. It envisages a strengthening of the role and mandate of Frontex which will require changes to its founding Regulation. The changes are intended to establish a dedicated Frontex Return Office and Frontex Rapid Intervention Teams to “scale up” the ability of Frontex to provide operational support and to initiate return operations, whilst also developing further its analytical capacities, through the provision of risk analyses. The Commission notes that it has proposed an additional €5 million (£3.64 million) for Frontex in the 2016 budget exclusively for return activities (bringing the total budget for returns in 2016 to €15 million (£10.8 million)).

9.22 The Action Plan calls for the development of “an integrated system of return management” which would connect all existing EU-funded networks and programmes dealing with return and readmission, with operational coordination ensured by Frontex. The Commission envisages that closer coordination will “increase convergence of practice on return” amongst Member States and discourage secondary movements. It says it will also explore wider acceptance of the EU *laissez-passer* for the return of irregular migrants and seek to increase the security features of the document. European Migration Liaison Officers will be deployed in key countries of origin and transit, working closely with the Immigration Liaison Officers’ Network (comprising national immigration officials) and relevant EU Agencies. The Commission will seek to improve the accuracy and comparability of statistical data provided to Eurostat on returns.

Strengthening cooperation on readmission with countries of origin and transit

9.23 The Action Plan notes that strengthening cooperation with the main countries of origin and transit is essential to increase the rate of return from the EU and to deter further irregular migration. The rate of return to African countries, at less than 30%, is particularly low, despite readmission of own nationals constituting an obligation under customary international law and under the EU’s Cotonou Agreement with African, Caribbean and Pacific countries. The Commission says it will seek to ensure that existing readmission commitments are implemented effectively whilst also bringing to a swift conclusion ongoing negotiations and initiating negotiations for new readmission agreements with key countries of origin. It intends to initiate bilateral readmission meetings with various sub-Saharan countries of origin, starting with Nigeria and Senegal, and to re-launch negotiations for readmission agreements with Algeria, Morocco and Tunisia.

9.24 As well as formal readmission agreements, the Action Plan envisages more frequent high-level dialogue to demonstrate the importance the EU attaches to securing cooperation on return and readmission and ensuring that returns are sustainable. The EU will provide support for reintegration and for capacity building to enable third countries to respond to readmission requests more promptly. To this end, the Commission has established a Readmission Capacity Building Fund with a budget of €5 million in 2015. The EU will also support voluntary return programmes from major transit countries (before migrants have reached the EU) as part of its Regional Development and Protection Programmes for North Africa and the Horn of Africa and for third country nationals in transit through Western Balkans countries. The EU Trust Fund for Africa — to be discussed at a special Summit in Valletta in November — is expected to make a significant contribution to capacity building and reintegration.⁷⁰

9.25 The Action Plan describes the leverage available to the EU to encourage cooperation on return and readmission, based on “a fine balance of pressure and incentives”.⁷¹ Forms of leverage include visa policy, legal migration (through increased opportunities for highly skilled workers, students and researchers), development assistance, trade agreements and trade preferences — the so-called “more-for-more” principle. The Commission also urges Member States to identify leverage in areas that fall under their national competence, such as access to labour markets for third country nationals and to give priority to readmission in all their contacts with third countries with low return rates.

9.26 The Commission concludes that improving the rate of readmission and return requires sustained “political will and prioritisation”, accompanied by adequate resources.

The Minister’s Explanatory Memorandum of 30 September 2015

9.27 The Minister (Lord Ahmad) welcomes the Communication, noting:

“All EU Member States must improve their processes for returning those people who are not in need of international protection. Only by returning those people to their countries or regions of origin will Member States be able to break the link between illegal entry and being allowed to stay in Europe. Returning those with no right to remain is an important part of ensuring the credibility of EU border and asylum systems and improving public confidence in them. The Government recognises the value of voluntary return schemes and agrees with the Commission that voluntary return is the preferred option wherever possible.”⁷²

9.28 The Minister describes the contribution that the UK is making to a number of the actions set out in the Communication:

“The UK Government is already engaged, or playing a leading role, in some of the actions proposed. This includes the forthcoming Valletta Summit on Migration, where the UK is playing a lead role in ensuring an effective meeting with the EU’s African partners. The UK Government also supports the proposal for hot spots,

70 See the [fact sheet](#) on the emergency EU Trust Fund for Africa.

71 See p.14 of the Communication.

72 See para 23 of the Minister’s Explanatory Memorandum.

which aim to provide a coordinated platform for the European agencies, including Frontex, the European Asylum Support Office (EASO), Europol and Eurojust, to intervene rapidly in a frontline Member State that is experiencing particular migratory pressures to ensure the full functioning of border and asylum processes. The Government continues to press for their rapid implementation and has offered to provide resource to hot spots, subject to specific requests from the European Asylum Support Office (EASO). The UK has contributed to every major EASO support operation in the last three years — including in Greece, Italy and Bulgaria — helping to build capacity in the asylum systems of Member States under particular pressure. Whilst the UK does not participate in the borders and visa elements of the Schengen *acquis*, the UK has supported a full range of Frontex activity since the Agency was formed in 2005. The Government deploys experts to joint operations at the external borders; participates in charter return operations, training activities, research and development and risk analysis as well as seconding national experts to Frontex HQ and assisting with the provision of items of equipment.

“The UK Government will continue to analyse the proposals in the Action Plan on Return and the forthcoming legislative proposals, in accordance with Protocol No. 21 on the position of the UK and Ireland in respect of the area of Freedom, Security and Justice annexed to the TFEU [Treaty on the Functioning of the European Union].”⁷³

Previous Committee Reports

None, but the following Reports are relevant: Second Report HC 342–ii (2015–16), [chapter 1](#), [chapter 2](#), [chapter 3](#) and [chapter 6](#) (21 July 2015); Third Report HC 342–iii (2015–16), [chapter 8](#) (9 September 2015); Fifth Report HC 342–v (2015–16), chapter 1, chapter 2, chapter 3 and chapter 32 (14 October 2015).

73 See paras 24–25 of the Minister’s Explanatory Memorandum.

10 EU elections

Committee's assessment	(a) Politically important; (b) Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Public Administration and Constitutional Affairs Committee
Document details	(a) Commission Communication: <i>Report on the European elections of 22–26 May 2014</i> ; (b) European Council Decision proposing a candidate for the President of the European Commission
Legal base	—
Department	(a) Cabinet Office; (b) Foreign and Commonwealth Office
Document Numbers	(a) (36803), —; (b) (36170), —

Summary and Committee's conclusions

10.1 The 2014 elections for the European Parliament were the first since the Lisbon Treaty to establish a direct link between the outcome of the elections and the appointment of the Commission President. As part of that process, the European political parties nominated Presidential candidates, the European Council then nominated the candidate of the majority party following the elections and that candidate was then elected by the EP.

10.2 Document (a) reviews the conduct of those elections and the effectiveness of measures taken to enhance the transparency, democratic conduct and European dimension of the elections. Despite a minimal decrease in turnout (0.36%) which varied significantly across Member States, the Commission's conclusions are mainly positive. It considers that voter engagement and understanding have increased due to the linkage of the elections and the Presidential appointment, the promotion by European (and some national political parties) of a particular Presidential candidate and increased use of interactive social media and EU-wide web dialogues and debates. It also considered building on these initiatives for the 2019 process.

10.3 The Parliamentary Secretary (Minister for Constitutional Reform at the Cabinet Office) (John Penrose) now writes to respond to our Report of 21 July. We asked the Government to keep us informed of any future developments on the conduct of EP elections, particularly the outcome of the 12 June EU Expert Group on Electoral Matters and the prospect of any binding legislative proposals in future.

10.4 We thank the Parliamentary Secretary for his letter.

10.5 Given the non-legislative nature of document (a) and the passage of time since our predecessors first reported on document (b), we now clear both documents from scrutiny. We also draw this chapter to the attention of Public Administration and Constitutional Affairs Committee.

10.6 However, we ask:

- a) the Parliamentary Secretary at the Cabinet Office to continue to keep us informed of any significant developments, particularly for the 2019 EP elections; and
- b) the Minister for Europe to respond to the questions, outstanding from our predecessors' Report of 16 July 2014, on the European Council's supposed commitment to review the process for future appointments of the President of the Commission. In the continued absence of a response, we will continue to pursue the issue with the Minister in correspondence so that the position can be clarified well in advance of the appointment process for the next Commission President in 2019.

Full details of the documents: (a) Commission Communication: *Report on the European elections of 22–26 May 2014*: (36803), [8876/15](#), COM(15) 206; (b) European Council Decision proposing to the European Parliament a candidate for the President of the European Commission: (36170), —.

The Minister's letter of 1 October 2015

10.7 The Parliamentary Secretary (Minister for Constitutional Reform) at the Cabinet Office (John Penrose) now says in relation to the Commission's initiatives highlighted in document (a):

“I am not aware of any current plans to progress these further into legislation and no agreement to do so on any of the points was made at the 12 June meeting of the EU Expert Group on Electoral matters, which was attended by Cabinet Office on behalf of the UK, but I will keep the Committee informed of any relevant developments in future.”

Previous Committee Reports

(a) First Report HC 342–i (2015–16), [chapter 10](#) (21 July 2015). See also (34797–8), 7648/13 and 7650/13: First Report HC 83–i (2013–14), [chapter 3](#) (8 May 2013); see also (34523), 17469/12: Twenty-seventh Report HC 86–xxvii (2012–13), [chapter 1](#) (16 January 2013); (34259), 13842/12: Nineteenth Report HC 86–xix (2012–13), [chapter 2](#) (7 November 2012); (b) First Report HC 342–i (2015–16), [chapter 10](#) (21 July 2015); Eighth Report HC 219–viii (2014–15), [chapter 7](#) (16 July 2014).

11 Renewable energy progress report

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of Energy and Climate Change Committee
Document details	Commission progress report on <i>renewable energy</i>
Legal base	—
Department	Energy and Climate Change
Document Numbers	(36935), 9964/15 + ADDs 1–2, COM(15) 293

Summary and Committee's conclusions

11.1 In order to support the development renewable energy, Directive 2009/28/EC sets legally binding targets for the EU as a whole and for each Member State, with progress being measured in interim (two-yearly) stages, which become steeper in the approach to 2020. The Directive requires the Commission to produce a mid-term progress report, and this document sets out the position on the basis of reports submitted by Member States in 2013. Among other things, it says that the EU and an overwhelming majority of Member States advancing well towards their 2020 target, although it adds that some (including the UK) may need to intensify their efforts, or reassess their policy tools, in order to keep on track.

11.2 Given the important role which EU energy policies give to renewables, we decided on 21 July 2015 to draw the document to the attention of the House, but to hold it under scrutiny as we had observed that the Commission had identified the UK as one of the Member States which might need to consider whether further action was needed to meet its overall renewable energy objectives. As the Government had made no reference to this in its Explanatory Memorandum, we asked it to indicate whether it believed the UK was likely to meet its 2020 targets (and in particular whether it agreed with the Commission's observations).

11.3 **We have since received two letters from the Parliamentary Under-Secretary of State (Lord Bourne of Aberystwyth) at the Department for Energy and Climate Change, neither of which gives an explicit answer to our question, but from which it can reasonably be inferred that the answer to the question of whether the Department agrees with the Commission's observations is — in essence — "yes". We are therefore drawing this situation to the attention of the House, but are now releasing the document from scrutiny. We also draw the Minister's responses to the attention of the Energy and Climate Change Committee.**

Full details of the documents: Commission Report: *Renewable energy progress report*: (36935), [9964/15](#) + ADDs 1–2, COM(15) 293.

Background

11.4 Directive 2009/28/EC sets a legally binding target whereby the EU as a whole must ensure that 20% of its final energy consumption by 2020 comes from renewable sources, with a sub-target of 10% for renewable energy use in transport. In parallel with this, each

Member State has its own overall target — which, for the UK, is 15% — whilst all Member States have the same (10%) sub-target for transport. The Directive also distinguishes between electricity consumption, heating and cooling, and transport. Progress is measured by interim (two-yearly) targets, which become steeper in the approach to 2020, and, along with other Member States, the UK outlined its plans to meet its target in a National Renewable Energy Action Plan, which was submitted to the Commission in 2010.

11.5 The Directive requires the Commission to produce a mid-term report on the EU's progress towards meeting its 2020 goal, and, as we noted in our Report of 21 July 2015, this document sets out the position on the basis of reports submitted by Member States in 2013. Among other things, the Commission says that, whilst an overwhelming majority of Member States are advancing well towards their 2020 target, some may need, as the trajectory becomes steeper, to intensify their efforts to keep on track: and it suggested that some Member States — including the UK — might need to assess whether policy tools are sufficient and effective in meeting their renewable energy objectives.

11.6 We commented that, although the Government had drawn attention to various aspects of the Commission's report, it had made no reference to the observation that the UK was one of the Member States which might need to assess whether policy tools are sufficient and effective in meeting its overall objectives. We therefore said that it would be helpful if the Government could indicate whether it believed that the UK was likely to meet its 2020 targets (and in particular whether it agreed with the Commission's observations).

Subsequent correspondence

11.7 This request prompted a letter of 1 September from the Parliamentary Under Secretary of State at the Department for Energy and Climate Change registering a number of points, but which, in relation to the one raised by us, simply said that it was for each Member State rather than the Commission to decide how its target will be met; that the UK was making progress towards its overall target, but that, whilst this was clearly welcome, there is still more to do between now and 2020. He added that the target set for the UK was in part based on GDP, and so was one of the toughest for any Member State, requiring a 16% average growth rate in final energy consumption for renewables between 2011 and 2020.

11.8 Our Chairman replied on 16 September, saying that we inferred from the Minister's letter that the Government did in fact accept what the Commission had said, but that it would be helpful to have explicit confirmation that this is indeed the case. We have now received a further letter of 14 October, which simply repeats that, whilst the UK is progressing towards the target, there was still more to do, in that its final energy consumption from renewables would need to be increased to meet the 15% target for 2020.

Previous Committee Reports

First Report HC 342–i (2015–16), [chapter 13](#) (21 July 2015).

12 European Globalisation Adjustment Fund

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Work and Pensions Committee
Document details	(a)-(c) Three proposed Decisions to authorise payments from the European Globalisation Adjustment Fund to Germany, Belgium and Italy
Legal base	Article 12(3) of Regulation (EC) No. 1927/2006 (based on Article 159 TEC) and Article 15(4) of Regulation (EU) No. 1309/2013 (based on Article 175 TFEU), in conjunction with point 13 of the Interinstitutional Agreement of 2 December 2013 on budgetary discipline, on cooperation in budgetary matters and on sound financial management; co-decision; QMV
Department	HM Treasury
Document Numbers	(a) (37068), 11611/15, COM(15) 342; (b) (37069), 11613/15, COM(15) 336; (c) (37070), 11615/15, COM(15) 397

Summary and Committee's conclusions

12.1 The European Globalisation Adjustment Fund (EGF) is designed to provide support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation. It was established in 2006 and renewed, for the financial period 2014–20 in 2013.

12.2 The Government has previously recalled to us, in the context of the Commission's first biennial report on the EGF, that it has opposed the EGF for many years, on principled grounds because it is highly sceptical about its effectiveness or efficiency. It told us that the findings of the report were deeply concerning and that it would continue to voice its objections in the planned Mid-Term Review of the EGF and work towards preventing a further extension of the Fund. The Government also told us that, although it objects to the continued existence and use of the EGF, it can only seek to ensure that any proposal properly meets the criteria in the EGF Regulation.⁷⁴ However, it never supports any proposal for use of the EGF, although QMV means that none is ever denied. We noted that the predecessor Committee also opposed the use and renewal of the EGF and endorsed that opposition.

12.3 We now have before us three more applications, from Germany, Belgium and Italy, for EGF assistance. Again the Government reminds us of its continued opposition to the existence and use of the EGF.

74 See headnote: Regulation (EU) No. 1309/2013.

12.4 On the understanding that the Government is continuing to oppose, albeit unsuccessfully, EGF applications, whilst ensuring that the eligibility criteria are strictly enforced, we clear these documents from scrutiny.

12.5 However, we recall that we have already drawn to the attention of the Work and Pensions Committee the Commission’s own disturbing review of the efficacy of the EGF, as relevant to any monitoring of the Government’s approach to the EGF Mid-Term Review that it might undertake. We now draw these present documents to the attention of the Work and Pensions Committee as examples of the use made by other Member States of an EU financial instrument of apparent little efficacy, and for which the Government finds UK redundancy cases to be ineligible.

Full details of the documents: (a) Proposal for a Decision on the mobilisation of the European Globalisation Adjustment Fund (application from Germany — EGF/2015/002 DE/Adam Opel): (37068), [11611/15](#), COM(15) 342; (b) Proposal for a Decision on the mobilisation of the European Globalisation Adjustment Fund (application from Belgium — EGF/2015/003 BE/Ford Genk): (37069), [11613/15](#), COM(15) 336; (c) Proposal for a Decision on the mobilisation of the European Globalisation Adjustment Fund (application from Italy — EGF/2015/004 IT/Alitalia): (37070), [11615/15](#), COM(15) 397.

Background

12.6 The European Globalisation Adjustment Fund (EGF) is designed to provide support for workers made redundant as a result of major structural changes in world trade patterns due to globalisation. It was established in 2006 and renewed, for the financial period 2014–20, in 2013.

12.7 The EGF is governed by strict criteria and eligibility rules. It can be used to co-fund a package of labour market measures for personalised support to integrate employees made, or at the risk of being made, redundant back into the labour market. However, there are some measures that are not eligible, such as actions which are the responsibility of enterprises by virtue of national law or collective agreements or actions receiving assistance from other EU financial instruments. Additionally, support for targeted beneficiaries should complement actions of Member States at national, regional and local level including those co-financed by EU funds. (There have been no cases in the UK where the eligibility criteria and rules for EGF funding would have been met.)

12.8 The Government has previously recalled to us, in the context of the Commission’s first biennial report on the EGF, that it has opposed the EGF for many years, on principled grounds because it is highly sceptical about its effectiveness or efficiency. It told us that the findings of the report were deeply concerning and that it would continue to voice its objections in the planned Mid-Term Review of the EGF and work towards preventing a further extension of the Fund. The Government also told that, although it objects to the continued existence and use of the EGF, it can only seek to ensure that any proposal properly meets the criteria in the EGF Regulation. However, it never supports any proposal for use of the EGF, although QMV means that none is ever denied. We noted that the predecessor Committee also opposed the use and renewal of the EGF and endorsed that opposition. Finally, we drew the Commission’s report to the attention of the Work and

Pensions Committee, as relevant to any monitoring of the Government's approach to the EGF Mid-Term Review that it might undertake.⁷⁵

The documents

12.9 These proposed Decisions are to approve applications from Germany, Belgium and Italy for contributions from the EGF.

12.10 Case EGF/2015/002 DE/Adam Opel from Germany, document (a), relates to 2,881 redundant workers, following Opel Adams AG's decision to close its plant in Bochum, who will benefit from support with a proposed EGF contribution of €6,959,000 (£5,062,900) — 60% of the total budget. The Commission accepts the German authorities' justification for the application, that is:

- due to the global economic and financial crisis, the number of cars sold in Europe is the lowest since 1997, with car sales in Western Europe having reached a 20-year low;
- Member States saw a 25% drop in the number of newly registered cars between 2007 and 2013;
- this decline has been reflected in car sales for Opel/Vauxhall in Europe, which fell by 39% over the same period; and
- this has led to the complete shutdown of the Adam Opel AG production plant in Bochum, giving rise to the redundancies.

12.11 Case EGF/2015/003 BE/Ford Genk from Belgium, document (b), relates to 5,111 redundant workers, following Ford's decision to close its plant in Genk, who will benefit from support with a proposed EGF contribution of €6,269,000 (£4,561,000) — 60% of the total budget. The Commission accepts the Belgian authorities' justification for the application, that is:

- the European automotive industry has lost significant market share within the past decade, with production of passenger cars decreasing by 14.6 % in the EU-27 between 2007 and 2012;
- figures for Belgium indicate that the Belgian car industry has suffered the full impact of these trends, with a decline in the production of cars from 596,461 units in 2011 to 503,504 units in 2013;
- permanent closure of the Ford Genk factory is estimated to lead to the loss of 8,000 jobs in the Limburg region; and
- as a result the regional unemployment rate will rise, and regional GDP and labour productivity will drop.

12.12 Case EGF/2015/004 IT/Alitalia from Italy, document (c), relates to 1,249 workers, following Gruppo Alitalia making them redundant as a result of a decline in the EU's

75 (37022), 11303/15 + ADD 1: see Fourth Report HC 342–iv (2015–16), [chapter 16](#) (16 September 2015).

market share of the international air transport market, who will benefit from support with a proposed EGF contribution of €1,415,000 (£1,029,000) — 60% of the total budget. The Commission accepts the Italian authorities' justification for the application, that is:

- air traffic between Europe and the rest of the world is growing at a slower pace (2.4 %) which has led to a decrease of the EU-27's market share in air transport measured in revenue passenger-kilometres;
- the Middle East and Turkey are strong performers in terms of connecting air traffic, and carriers such as Turkish Airlines have captured a significant share of traffic flows between Asia and Europe, which has affected Gruppo Alitalia; and
- Alitalia has experienced large losses and decreased demand, leading to the redundancies referenced in this application.

12.13 The Commission says that after a thorough examination of the applications and in accordance with all applicable provisions of the EGF Regulation, the conditions for a financial contribution from the EGF are met.

The Government's view

12.14 In his Explanatory Memorandum of 21 September 2015 the Financial Secretary to the Treasury (Mr David Gauke) says that:

- the Government has been clear that it wants to see real budgetary restraint in the EU over the coming years — reform of EU spending is a priority;
- the Prime Minister's negotiation of the European Council agreement on the 2014–2020 Multiannual Financial Framework (MFF) delivered important progress by securing the first real-terms cut on the previous MFF;
- the Government continues to oppose the EGF as it represents neither good value for money, nor a genuine case for investment at an EU rather than national level;
- for these reasons, it secured a very substantial reduction in the size of the EGF over the period 2014–2020;
- the Government will continue to work hard to limit EU spending, reduce waste and inefficiency, and deliver the best possible deal for taxpayers; and
- the Commission is responsible for ensuring that all EGF criteria have been respected in proposals for EGF assistance.

Previous Committee Reports

None.

13 EU Energy Diplomacy Action Plan

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Energy and Climate Change Committee
Document details	<i>EU Energy Diplomacy Action Plan</i>
Legal base	—
Department	Foreign and Commonwealth Office
Document Number	(37006), —

Summary and Committee's conclusions

13.1 Following the publication of a Commission Communication⁷⁶ earlier this year, setting out a framework strategy for a resilient Energy Union, the European External Action Service (EEAS) produced as a working document this *EU Energy Diplomacy Action Plan*, proposing a number of EU foreign policy measures and initiatives which could be taken by the High Representative, the Commission and Member States in support of the objectives set out in the Communication. In particular, the Plan seeks to establish and further develop cooperation with energy producing countries, to strengthen multilateral and bilateral initiatives related to energy, and to strengthen energy diplomacy capacities.

13.2 The Plan was welcomed by the June Foreign Affairs Council as a basis for future work, when the UK reaffirmed the importance of giving priority to the completion of the single market in energy as a means of increasing the EU's credibility when acting externally. It also said that it would continue to work to support the effective use of foreign policy resources on these issues, whilst avoiding any change to the balance of competence between Member States and the EU.

13.3 We think it right to draw this initiative to the attention of the House, and to the Energy and Climate Change Committee but, as the document does not raise any issues requiring further consideration, we are content to clear it.

Full details of the documents: European External Action Service Working Document: *EU Energy Diplomacy Action Plan*: (37006),—.

Background

13.4 On 24 March 2015, our predecessors drew to the attention of the House a Commission Communication: *A Framework Strategy for a resilient Energy Union with a Forward-Looking Climate Change Policy*, which contains five mutually reinforcing elements — energy, security and trust; a fully integrated European energy market; energy efficiency; decarbonising the economy; and research, innovation and competitiveness — designed to deliver greater energy security, sustainability and competitiveness.

The current document

13.5 On 1 July 2015, the Minister for Europe wrote drawing attention to the *EU Energy Diplomacy Action Plan*, prepared by the European External Action Service (EEAS) as a working document. This proposed a number of EU foreign policy measures and initiatives in support of the earlier Communication, and in response to the conclusions of the March 2015 European Council that external policy instruments should be used to establish strategic partnerships with producer countries in order to promote energy security.

13.6 That letter was followed by an Explanatory Memorandum of 30 July, in which the Minister set out the content and aim of the Plan in more detail, noting that, in broad terms, its aim is to strengthen strategic guidance through high-level engagement, with the Foreign Affairs Council continuing to hold regular discussions in order to agree measures to support the external actions of the Energy Union. More specifically, the Plan includes work to support energy cooperation and dialogues with important energy producing states, transit states or regions, and key global and regional strategic players and partners; prioritising partners and initiatives crucial to EU efforts to strengthen the diversification of EU energy sources, supplies and routes; and creating business opportunities to and with third countries by raising awareness of the EU's leadership in energy technologies. In addition, it seeks to establish common EU positions within multilateral energy institutions and frameworks, particularly those with a significant foreign policy impact, and to encourage energy related initiatives in support of bilateral and multilateral trade arrangements; and it would also aim to strengthen energy diplomacy capacities. The Plan also suggests that it should be implemented by the High Representative, the Commission and EU Member States in accordance with their respective roles as determined by the Treaties.

The Government's view

13.7 In noting the UK's support for the EU's Energy Union strategy, the Minister says that the June Foreign Affairs Council welcomed the Action Plan as a basis for future work, and invited the High Representative and Commission to ensure its follow-up in close consultation and cooperation with the Member States. He adds that the Foreign Secretary reaffirmed the importance of giving priority to the completion of the single market in energy as a means of increasing the EU's credibility when acting externally, and that the UK will continue to work to support the effective use of foreign policy resources on these issues, whilst avoiding any change to the balance of competence between Member States and the EU.

Previous Committee Reports

None.

14 EU restrictive measures against the Republic of Guinea

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information awaited
Document details	Council Decision renewing existing measures against the Republic of Guinea
Legal base	Article 29 TEU; unanimity
Department	Foreign and Commonwealth Office
Document Number	(37138), —

Summary and Committee's conclusions

14.1 EU sanctions were introduced in 2009 in response to a military coup and subsequent violent suppression, by security forces, of political demonstrators in Conakry on 28 September 2009.

14.2 Sixty-seven individuals originally subject to restrictive measures were targeted due to their affiliation with the National Council for Democracy and Development (CNDD) party, which was set up following the military coup. In 2010 the CNDD became defunct following the first ever democratic election of Guinea's President, Alpha Condé, bringing about the de-listing of 62 individuals.

14.3 The five individuals who have remained subject to EU restrictive measures were identified by the United Nations International Commission of Inquiry (UNICI) as being directly responsible for the acts of suppression; acts which were deemed as crimes against humanity by the ICC.

14.4 The draft Council Decision provides for the extension of restrictive measures — a freezing of funds and economic resources — against these five individuals, one of whom is the original coup leader (see "Background" for details).

14.5 A year ago, the Minister for Europe (Mr David Lidington) said that renewal was "an important message on the need for these individuals to be prosecuted and for the Government of Guinea to tackle impunity more widely". The previous Committee noted this was a message with echoes elsewhere both in Africa and closer to home, in the Balkans; and that, in "normalising" cooperation under the Cotonou Agreement in December 2013, the European Commission looked forward to the new parliament meeting and working together, and had noted the importance that the European Union attached to improving the electoral process.

14.6 The Minister now reiterates this same message. Retention, he says, supports the ongoing Guinean judicial process, initiated in January 2014: to date, 14 individuals have been charged with involvement in the 2009 massacre, including these five sanctioned individuals who are currently awaiting trial — two of whom, he says, nonetheless "continue to hold government positions"; several members of the security forces have been convicted of

abuse of human rights; and a recent EU Heads of Mission report noted that “security reform was progressing, although unfortunately some abuses continued”.

14.7 With regard to the political process, the Minister says that, despite being at the epicentre of the Ebola crisis during the past 12 months, Guinea has “continued its gradual transition to a strengthened (if still fragile) democracy”; and that both the EU and ECOWAS would be sending election observers and monitor the 11 October Presidential elections.

14.8 According to the BBC:

“Guinea’s presidential election on Sunday was valid but there were severe logistical difficulties, according to EU election observers.

“This comes after opposition called the vote fraudulent and demanded a re-run. They also threatened to protest, something the observers urged against.

“The final result is expected in the next few days.

“It was the country’s second democratic presidential election since it gained independence from France in 1958.

“The EU’s chief observer, Frank Engel, said he hoped Guineans remember this as a “milestone” in their “young democratic institutions”.

“But he also said there were many shortcomings, including problems with voter registration.

“Mr Engel added that the lack of transparency had led him to lose confidence in the electoral commission, and that he would be watching to see the results were announced in a suitable way.”⁷⁷

14.9 On this last point, at this juncture the BBC said:

“The people of Guinea could face a long wait to find out who their new president is.

“Results for last Sunday’s vote now look like they will come in on Friday, but will probably only be announced on Sunday.

“Police used teargas on Tuesday against supporters of the opposition, who accuse the government of voter fraud.”⁷⁸

14.10 It is clear that, as the Minister says, Guinea’s democracy is “still fragile”; though, given its history, it is perhaps not surprising that it is thus.

14.11 As of now, we are content for interested Members to follow up these aspects of the situation via the many means at their disposal.

77 See [BBC News](#).

78 See [BBC News](#).

14.12 For our part, we would like the Minister to provide a full assessment of the election outcome and subsequent developments the next time these measures are subject to review. In the meantime, we now clear the document.

Full details of the documents: Council Decision amending Decision 2010/638/CFSP concerning restrictive measures against the Republic of Guinea: (37138), —.

Background

14.13 The Cotonou Agreement, signed in 2000, is the principal instrument in the EU's development policy towards ACP countries. Article 8 covers normal political dialogue. Article 96 allows for enhanced consultations between the EU and a partner State if either one is considered to be in breach of the “essential” political elements in Article 9: human rights, democratic principles and the rule of law, or to provide good governance. If no remedy is found, co-operation with the State concerned may be suspended, in whole or in part.

14.14 The previous Committee took a particular interest in the Article 96 process in Guinea because the undertakings given by the Government of Guinea (GOG) were all in areas in which success, or failure, might well have much wider lessons, or repercussions, both for the Cotonou Process and Common Foreign and Security Policy (CFSP), with its new conditions-based approach to funding.

14.15 In the case of Guinea, the most recent challenge came in December 2008. For some 50 years after independence in 1958, Guinea remained a one-party dictatorship. When, after a long illness, President Lansana Conté died in office in 2008 with no obvious successor, a bloodless coup took place: a military junta seized power and its leader, Captain Moussa Dadis Camara, declared himself President, the Constitution was suspended, the National Assembly dissolved and all political and trade union activity banned. The coup initially received widespread popular support. But it was strongly condemned by most of the international community, including the AU, ECOWAS and the EU.

14.16 As our predecessors' Report on the 2014 renewal of these measures relates, in 2009 the EU began a parallel process: a travel ban and asset freeze on the military junta and its supporters, and an arms embargo; and the suspension of normal cooperation under the Cotonou Agreement.⁷⁹ The condemnation that followed the killing by the junta of 159 unarmed opposition supporters that September and the pressure for change helped to establish democratic constitutional rule, including an election in which Alpha Condé became Guinea's first democratically elected president.

14.17 In response:

- the EU travel ban and assets freeze were lifted in 2010 on 62 listed individuals — but not the five persons named as being complicit in the events of 28 September 2009 by the UN International Commission; and

79 See (36358), —: Thirteenth Report HC 219–xiii (2014–15), [chapter 36](#) (15 October 2014) for full background.

- the Cotonou Agreement process was gradually normalised, culminating in December 2013, in response to the holding of successful, peaceful parliamentary elections in that September.

14.18 Thus, all that remained was the travel ban and asset freeze on the coup leader and four associates — restrictive measures that, last October, were extended for a further 12 months.

The previous Committee’s assessment

14.19 Gratifyingly, Guinea continued to move in the right direction. But there was plainly still much work to be done. The Minister for Europe regarded this renewal as “an important message on the need for these individuals to be prosecuted and for the Government of Guinea to tackle impunity more widely” — a message with echoes elsewhere both in Africa and closer to home, in the Balkans — while, in “normalising” cooperation under the Cotonou Agreement last December, the European Commission looked forward to the new parliament meeting and working together, and noted the importance the European Union attached to improving the electoral process.

14.20 It would accordingly have been helpful to have heard more from the Minister with regard to subsequent developments regarding these important matters, and anything else that indicated the direction of travel during the year. A fuller political assessment in a year’s time was requested.

14.21 In the meantime, in clearing the 2014 Council Decision, they again drew these developments to the attention of the House because of the wider implications of EU policy in Guinea.⁸⁰

The draft Council Decision

14.22 This draft Council Decision renews, for a further 12 months, the EU’s restrictive measures against these same five individuals identified by the UNICI as directly responsible for acts of violent suppression in Republic of Guinea.

14.23 These individuals are:

Name (and possible aliases)	Identifying information (date and place of birth (d.o.b. and p.o.b.), passport (Pass.)/ID card number, etc.)	Reasons
Captain Moussa Dadis CAMARA	d.o.b: 01.01.64 or 29.12.68 Pass: R0001318	Person identified by the International Commission of Inquiry as responsible for the 28 September 2009 events in Guinea
Commandant Moussa Tiégboro CAMARA	d.o.b: 01.01.68 Pass: 7190	Person identified by the International Commission of Inquiry as responsible for the

80 See (36358), —: Thirteenth Report HC 219–xiii (2014–15), [chapter 36](#) (15 October 2014).

		28 September 2009 events in Guinea
Colonel Dr. Abdoulaye Chérif DIABY	d.o.b: 26.02.57 Pass: 13683	Person identified by the International Commission of Inquiry as responsible for the 28 September 2009 events in Guinea
Lieutenant Aboubacar Chérif (alias Toumba) DIAKITÉ		Person identified by the International Commission of Inquiry as responsible for the 28 September 2009 events in Guinea
Lieutenant Jean-Claude PIVI (alias Coplan)	d.o.b: 01.01.60	Person identified by the International Commission of Inquiry as responsible for the 28 September 2009 events in Guinea

The Government's view

14.24 In his Explanatory Memorandum of 5 October 2015, the Minister comments thus:

“Despite being at the epicentre of the Ebola crisis during the past 12 months, Guinea has continued its gradual transition to a strengthened (if still fragile) democracy. Presidential elections are scheduled to take place on 11 October. The EU will send election observers while the AU/ECOWAS will also monitor.

“Although the Government of Guinea continues to make progress on reform of its security sector, the targeted measures against the five individuals linked to the killing of protesters in September 2009 remain in place — something the UK supports. The retention of these measures sends an important message on the need for these individuals to be prosecuted and for the Government of Guinea to tackle impunity more widely.

“Retention of the measures also supports the on-going Guinean judicial process, initiated in January 2014, to investigate the 28 September 2009 massacre which is behind these sanctions. To date the Guinean process has charged 14 individuals with involvement in the massacre, including these 5 sanctioned individuals who are currently awaiting trial. Two of the sanctioned individuals continue to hold government positions. Other progress has been achieved by the Guinean Government in tackling impunity, including the successful conviction of several members of the security forces for abuse of human rights. A recent EU Heads of Mission report (Coreu Conakry 18.09.15) noted that security reform was progressing, although unfortunately some abuses continued.”

Previous Committee Reports

None, but see (36358) —: Thirteenth Report HC 219–xiii (2014–15), [chapter 36](#) (15 October 2014).

15 Biological and Toxin Weapons Convention

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Proposed decision on the European Union Position relating to the Eighth Review Conference of the Biological and Toxin Weapons Convention
Legal base	Article 29 TEU; unanimity
Department	Foreign and Commonwealth Office
Document Number	(37164), —

Summary and Committee's conclusions

15.1 The Council is working towards the adoption of a Council Decision relating to the position of the European Union for the Eighth Review Conference of the Biological and Toxin Weapons Convention (BTWC) which will be held in November 2016. This Council Decision is undertaken within the framework of the EU Strategy against Proliferation of Weapons of Mass Destruction adopted on 12 December 2003,⁸¹ which included measures related to the reinforcement, implementation, and promoting the universal adherence of the BTWC.

15.2 The Minister for Europe (Mr David Lidington) explains that, although biological agents and toxins are widely used for peaceful purposes (e.g. scientific research and vaccines) that are permitted under the Convention, the risk of an accidental or natural spread of dangerous pathogens is rising because of globalisation and increasing international travel and trade, bringing with them increased risks to public, animal and plant health and food security. Given their inherent characteristics, some agents and toxins can be misused for hostile purposes. Scientific progress and the risk of access to pathogens and toxins held for legitimate purposes, bring in their wake a risk that terrorists may acquire dangerous biological materials. Even when dangerous biological agents and toxins do not exist in nature on the territory of a BTWC State Party, it could still be confronted by biological weapon threats. In the absence of effective national legislation that prohibits biological weapons and penalizes offences, non-state actors could use the territory of such a State Party as a safe haven to pursue their efforts in acquiring biological and toxin agents for hostile purposes. By joining the Convention, States Parties commit to the international effort to tackle these threats.

15.3 The Minister explains that the proposed new Council Decision aims to set out the EU's position for the 8th Review Conference and to consolidate progress achieved through Joint Action 2012/429/CFSP.⁸² Articles proposed under this Council Decision have the following objectives:

81 See [EU Strategy against Proliferation of Weapons of Mass Destruction](#) for full details. It is itself a sub-set of the 2003 [European Security Strategy](#).

82 Between October 2012 and January 2015, the Geneva Branch of the United Nations Office for Disarmament Affairs has acted as the implementing agency for a EU Council Decision in Support of the Biological Weapons Convention (BWC Action). The BWC Action is mandated by the [Council decision 2012/421/CFSP](#), adopted on 23 July 2012 by the Council of the European Union. It is broadly anchored in the European Union's Common Position for the Seventh

- to build and sustain confidence in compliance;
- to support national implementation, including by engaging more with NGOs;
- supporting the UN Secretary General’s Mechanism, established to investigate unexplained biological or toxin incidents (not yet called into action for cases involving biological weapons);⁸³ and
- promoting universal membership of the BTWC.

15.4 The Minister underlines the Government’s commitment to countering the proliferation of weapons of mass destruction and its support for all practical efforts to strengthen the BTWC; and welcomes this Council Decision, since it is (he says) closely aligned with the Government’s own objectives of “increasing adherence to and effective implementation of the BTWC, including through ensuring a more productive fourth intersessional work programme for the period 2017–2020”.

15.5 As noted below, the previous Committee obtained a full report from the Minister about the last Review Conference (see “Background” for details). It helpfully explains not just how the UK secured its objectives, but also the appropriate role played by the EU. We should be grateful if the Minister would provide a similar assessment after this upcoming Eighth Review Conference.

15.6 In the meantime, we now clear this draft Council Decision.

Full details of the documents: Draft Council Decision on the Position relating to the Eighth Review Conference of the Biological and Toxin Weapons Convention: (37164), —.

Background

15.7 The BTWC entered into force on 26 March 1975. There are 173 States Parties, who are working to maintain a world free from biological and toxin weapons. The Convention itself prohibits the development, production, acquisition, transfer, stockpiling and its States Parties have recognised at three previous Review Conferences that it also bans the use of such weapons even though this is not expressly covered in Article I or in the title of the Convention.⁸⁴ It is a key element in the international community’s efforts to prevent the proliferation of weapons of mass destruction. The EU and UK are pressing for the universal application of the Convention.⁸⁵

Review Conference of the BWC ([Council Decision 2011/429/CFSP](#) of 18 July 2011) and focuses in particular on those aspects on which consensus was reached at the Seventh Review Conference held in 2011. See [2012–2015 EU Council Decision](#) for full information.

83 The Secretary-General’s Mechanism to carry out prompt investigations in response to allegations brought to his attention concerning the possible use of chemical and bacteriological (biological) and toxin weapons was developed in the late 1980s. Triggered by a request from any Member State, the Secretary-General is authorized to launch an investigation including dispatching a fact-finding team to the site(s) of the alleged incident(s) and to report to all United Nation Member States. This is to ascertain in an objective and scientific manner facts of alleged violations of the [1925 Geneva Protocol](#), which bans the use of chemical and biological weapons, or other relevant rules of customary international law. See [SECRETARY-GENERAL’S MECHANISM FOR INVESTIGATION OF ALLEGED USE OF CHEMICAL AND BIOLOGICAL WEAPONS](#) for full information.

84 See [Biological and Toxin Weapons Convention](#) for full information.

85 Nine states have signed but not ratified the BTWC: Central African Republic; Côte d’Ivoire; Egypt; Haiti; Liberia; Nepal; Somalia; Syrian Arab Republic; and the United Republic of Tanzania. Fourteen states have neither signed nor

The Seventh Review Conference

15.8 The last five-yearly BTWC Review Conference took place in Geneva on 5–22 December 2011. A similar Council Decision set out the EU position for the Review Conference. The Minister described the Review Conference as a major opportunity to strengthen the BTWC by agreeing a new programme of intersessional meetings that would address issues such as confidence building measures and scientific and technological developments. Ahead of the Conference, the Council was seeking to align Member States positions in the following key areas:

- promoting universality of the BTWC;
- supporting national implementation; and
- building confidence in compliance.

15.9 The UK had, he said, heavily influenced the final text of the Council Decision, which would complement the UK’s Review Conference priorities. The Minister spelt out EU and UK objectives clearly. Given the level of interest in the House in these matters, the then Committee asked the Minister, after the Seventh Review Conference, to provide a report, setting out achievements against objectives, and his view of the contribution of the EU collectively and the UK specifically to the outcome.⁸⁶

The Minister’s letter of 3 July 2012

15.10 The Minister reported that majority of monthly CODUN (Working Group on Global Disarmament and Arms Control) meetings in Brussels (to agree on a common EU position for the Review Conference, and share information about the approaches of EU Member states to the various issues that were expected to arise at the Conference itself) were attended by the UK Ambassador to the Conference on Disarmament in Geneva, who also led the UK delegation to the Review Conference.

15.11 At the Review Conference the EU delegation, as a Non-State Party, sat with the observers and thus could not intervene in debates held in the Committee of the Whole (CoW), or in informal meetings convened by the Conference President or Chairman of the CoW. The EU statement at the start of the Review Conference was made by the Head of the EU delegation, as an observer to the Conference. The EU was treated in the same way as other International Organisations (such as the WHO and International Committee of the Red Cross). Only a few EU coordination meetings were held over the three week Review Conference itself.

15.12 The focus during the Review Conference was in trying to influence others to accept EU positions, including through regular meetings of the UN Western European and Others Group (WEOG). This group of “like minded” countries includes the majority of the EU Member States plus e.g. Argentina, Canada, Japan, Norway, New Zealand, Republic of

acceded to the BTWC: Angola; Chad; Comoros; Djibouti; Eritrea; Guinea; Israel; Kiribati; Micronesia (Federated States of); Namibia; Niue; Samoa; South Sudan; and Tuvalu.

86 See our predecessors’ Report for full information: (32938), —: Thirty-fifth Report HC 428–xxxii (2012–13), [chapter 12](#) (29 June 2011).

Korea, Switzerland, Turkey and the USA. It was a useful forum to encourage engagement to support our objectives.

15.13 The Minister went on to say that, as was the norm, individual EU Member States intervened throughout the course of the Conference to promote specific policies or defend national and/or EU positions. However, the economic pressures facing the States Parties, especially Eurozone members, meant that decisions on budget related work were difficult and some of the EU's original objectives e.g. expansion of the Implementation Support Unit (ISU) which administers the BTWC, were no longer achievable given the financial realities facing many States Parties.

15.14 With regard to the UK role, the Minister said that, in the months leading up to the Conference, the UK had organised — including jointly with the EU and with the Netherlands — a number of conferences, seminars and workshops, and submitted several Background and Working Papers in order to help set the agenda. Meetings with the UK academics and NGOs provided further opportunities to discuss respective positions in advance of the Review Conference. The early preparation, the circulation of discussion and Working Papers, the cooperation and coordination with Western Group, EU partners and other like-minded States Parties e.g. the JACKSNNZ,⁸⁷ were key factors in the eventual outcome. The UK was, he said, particularly active in leading the debate and setting the agenda on issues such as the shape and content of a new intersessional work programme (which was at least as comprehensive as that outlined in the UK Review Conference Working Paper), more frequent reviews of Science & Technology (S&T), and review of Confidence Building Measures and Articles VII⁸⁸ and X.⁸⁹ The UK delegation's considerable experience of BTWC (going back to the Second Review Conference in 1986) and other multilateral arms control and disarmament agreements, as well as its scientific and technical knowledge and expertise, were major factors in the Government's ability to secure the outcome that it did.

15.15 As well as making the UK statement at the Conference, the then Parliamentary Under-Secretary of State at the FCO (Mr Alistair Burt) had also written articles for *New Scientist* and *The Huffington Post*, which were timed to coincide with the Review Conference and looked at the bioweapons threat and countering the spread of Weapons of Mass Destruction. At the request of the Review Conference President, the UK had successfully teamed up with South Africa to facilitate the negotiation of text for the final report on the intersessional process, which had reached an impasse, and despite a last-minute bid by a small group of countries to adopt an alternative, unbalanced programme.

87 Japan, Australia, Canada, Republic of Korea, Switzerland, Norway, New Zealand.

88 To assist States which have been exposed to danger as a result of a violation of the BTWC.

89 This reads: "ARTICLE X (1) The States Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Parties to the Convention in a position to do so shall also cooperate in contributing individually or together with other States or international organizations to the further development and application of scientific discoveries in the field of bacteriology (biology) for prevention of disease, or for other peaceful purposes. (2) This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention or international cooperation in the field of peaceful bacteriological (biological) activities, including the international exchange of bacteriological (biological) agents and toxins and equipment for the processing, use or production of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention". See [Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological \(Biological\) and Toxin Weapons and on their Destruction](#) for the full text of the Convention.

15.16 Overall, the Minister said, the EU and UK met their objectives. The EU had played a constructive role in supporting preparations for the Review Conference, for example through participation in conferences and by raising the Review Conference in the margins of Regional Workshops in Peru and Serbia in 2011, while promoting national implementation and CBMs. The Minister expected this technical cooperation to be the main vehicle for EU influence on implementation of the BTWC over the next few years. He would be looking to make full use of the scope of the mandate, particularly in relation to science and technology, national implementation, CBMs⁹⁰ and Article VII.⁹¹

The Eighth Review Conference

15.17 In his Explanatory Memorandum of 12 October 2015, the Minister explains that the proposed new Council Decision aims to set out the EU's position for the 8th Review Conference and to consolidate progress achieved through Joint Action 2012/429/CFSP; and that Articles proposed under this Council Decision have the following objectives:

- to build and sustain confidence in compliance;
- to support national implementation, including by engaging more with NGOs;
- supporting the UN Secretary General's Mechanism, established to investigate unexplained biological or toxin incidents (not yet called into action for cases involving biological weapons); and
- promoting universal membership of the BTWC.

The Government's view

15.18 The Minister says:

“The Government is committed to countering the proliferation of weapons of mass destruction. As the only multilateral agreement to ban the development, production, and stockpiling of biological and toxin weapons, the Government supports all practical efforts to strengthen the BTWC. The Government therefore welcomes this Council Decision since it is closely aligned with our own objectives of increasing adherence to and effective implementation of the BTWC, including through ensuring a more productive fourth intersessional work programme for the period 2017–2020.”

90 These CBMs now consist of six measures, A to G (without D):

CBM A Part 1: Exchange of data on research centres and laboratories;

Part 2: Exchange of information on national biological defence research and development programmes.

CBM B Exchange of information on outbreaks of infectious diseases and similar occurrences caused by toxins.

CBM C Encouragement of publication of results and promotion of use of knowledge.

CBM E Declaration of legislation, regulations and other measures.

CBM F Declaration of past activities in offensive and/or defensive biological research and development programmes.

CBM G Declaration of vaccine production facilities. See [“The Confidence Building Measures”](#) for full information.

91 Article VII of the BWC requires States Parties to assist States which have been exposed to danger as a result of a violation of the Convention. To date, these provisions have not been invoked. See [Article VI](#) for further information.

15.19 The Minister concludes by noting that the Council Decision is likely to be adopted at the 16 November 2015 Foreign Affairs Council.

Previous Committee Reports

None, but see (32938), —: Thirty-fifth Report HC 428–xxxi (2012–13), [chapter 12](#) (29 June 2011).

16 EU Burundi: consultations under the Cotonou Agreement

Committee’s assessment	Politically important
Committee’s decision	Cleared from scrutiny
Document details	(a) Commission Communication: <i>opening of consultations under Article 96 of the Cotonou Partnership Agreement</i> ; (b) Council Decision concerning restrictive measures in view of the situation in Burundi; (c) Council Regulation 2015 concerning restrictive measures in view of the situation in Burundi
Legal base	(a) Article 96 of the Cotonou Agreement; — (b) Article 29 TEU, unanimity (c) Article 215 TFEU, QMV
Department	Foreign and Commonwealth Office
Document Numbers	(a) (37174), 12919/15 + ADD 1, COM(15) 500 (b) (37155), —; (c) (37156), —

Summary and Committee’s conclusions

16.1 The Cotonou Agreement, signed in 2000, is the principal instrument in the EU’s development policy towards African, Caribbean and Pacific (ACP) countries. Article 8 covers normal political dialogue. Article 96 allows for enhanced consultations between the EU and a partner State if either one is considered to be in breach of the “essential” political elements in Article 9: human rights, democratic principles and the rule of law, or to provide good governance. If no remedy is found, co-operation with the State concerned may be suspended, in whole or in part.⁹²

16.2 The Commission Communication proposes the opening of consultations with Burundi under Article 96. The overall objective of the dialogue will be to encourage Burundi to commit to take action within an agreed time-frame in the critical areas of democracy, human rights and the rule of law, on the basis of the principles set out in the Arusha Agreement.

92 See [“Cotonou Agreement”](#) for full details.

16.3 Depending on the outcome of the consultations, the EU and Member States may decide to impose appropriate measures, suspending or partially suspending the provision of EU development assistance through the European Development Fund. Any such step would require a Council Decision and would normally be agreed at the end of the consultation period lasting up to 120 days.

16.4 The EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini) issued a statement on behalf of the EU on 23 July 2015 declaring that the EU would set in motion procedures in preparation for opening Article 96 consultations. The EU gave advance warning of this step in the conclusions of the EU Foreign Affairs Council of 22 June (see “Background” for further detail).

16.5 On 2 October 2015, the EU adopted travel restrictions and an asset freeze in respect of four persons whose activities are undermining democracy or obstructing efforts to achieve a political solution to the current crisis in Burundi, in particular through acts of violence, repression or incitement to violence, including acts which constitute serious human rights violations. The Commission’s proposal is thus the customary counterpart, where the country concerned is an ACP partner. As the Commission says:

“The current crisis is evidence of both an escalation of the violence and an entrenchment of political positions, in a country which was already fragile and divided, and which has systematically failed to ensure respect for the rule of law and the application of democratic principles.”

16.6 The Minister for Europe (Mr David Lidington) says sham elections in July 2015 saw President Nkurunziza obtain an illegitimate third term, which was preceded by the Burundian Government cracking down on anti-third term protests in April, and consistently asserting that everything is fine in Burundi and that the international community is mistaken and interfering. Human rights atrocities continue on a daily basis, including targeted killings. Burundi is teetering on the edge and could very easily descend into civil war. The Burundian Government will soon run out of money to pay the army and police. The Burundian Government’s refusal to engage in political dialogue with the international community has led to an increased risk of civil strife, and a deepening of the refugee crisis. The international community, including the East Africa Community, have lost patience with Burundi. The UK and EU continues to encourage Burundi to deliver the conditions set out by the East Africa Community on freedom of expression, disarming youth groups and ensuring the security of the Burundian population. A political settlement must be reached that respects the Arusha Accords.⁹³

16.7 The Burundi government has no one to blame but itself, having had many opportunities to respond to its neighbours and the wider International Community over many years. The reasons for the proposed action are manifold and well-founded. We therefore now clear the Commission Communication.

93 See [Arusha Peace and Reconciliation Agreement for Burundi](#) for full details. The Arusha Peace and Reconciliation Agreement of 2000 aimed to institutionalize a democratic system for power-sharing between the Hutu and Tutsi political parties, and initiated a three year transitional period with a grand coalition government. Although considered as an important step to bring peace to Burundi, the Arusha Agreement did not include cease-fire agreements with any of the major rebel groups, its implementation was delayed, and the civil war continued. See [Power-sharing and Peacebuilding in Burundi](#) for full background.

16.8 We are currently holding the related Council Decision and Council Regulation regarding the travel restrictions and asset freeze under scrutiny (see “Background”, paragraphs 16.17–16.19, for details). The Minister has now provided the information that was lacking in his previous Explanatory Memorandum. We therefore now clear that Council Decision and Council Regulation from further scrutiny.

Full details of the documents: (a) Commission Communication concerning the *opening of consultations with Burundi under Article 96 of the Cotonou Partnership Agreement*: (37174), 12919/15 + ADD 1, COM(15) 500; (b) Council Decision (CFSP) 2015/1763 of 1 October 2015 concerning restrictive measures in view of the situation in Burundi: (37155), —; (c) Council Regulation (EU) 2015/1755 of 1 October 2015 concerning restrictive measures in view of the situation in Burundi: (37156), —.

Background

16.9 The BBC country profile describes Burundi as:

“one of the world’s poorest nations, [which] is struggling to emerge from a 12-year, ethnic-based civil war. Since independence in 1962 it has been plagued by tension between the usually-dominant Tutsi minority and the Hutu majority. The ethnic violence sparked off in 1994 made Burundi the scene of one of Africa’s most intractable conflicts.”

16.10 The BBC profile goes on to note that Pierre Nkurunziza, a former Hutu rebel leader, became the first president to be chosen in democratic elections since the start of Burundi’s civil war in 1994. Burundi was then plunged into its worst crisis since the end of a civil war in 2005, when Mr Nkurunziza’s ultimately successful bid for re-election to a third term sparked protests by opposition supporters who said the move was unconstitutional. Operating in a turbulent political climate, Burundi’s media are subject to self-censorship and occasional government censorship. In June 2013 President Nkurunziza approved a new media law, which critics condemned as an attack on press freedom. The law forbids reporting on matters that could “undermine national security, public order or the economy”.⁹⁴

The 22 June 2015 Council Conclusions

16.11 On this day, the Council adopted the following Conclusions on developments in Burundi:

“1. The political deadlock in Burundi and the deteriorating security and economic situation have serious consequences for the population and pose risks for the region as a whole. Faced with this critical situation, the EU welcomes the fact that the region has mobilised to find a solution. The decisions on the situation in Burundi adopted at the African Union (AU) summit of 13 June, as well as the conclusions of the East African Community (EAC) summit of 31 May 2015, establish an indispensable framework for enabling Burundi to overcome the crisis.

94 See [Burundi Country Profile](#).

“2. Recalling the Council conclusions of 16 March and 18 May 2015, the EU shares the view expressed by the AU, the EAC and the United Nations (UN) that only through dialogue and consensus, in compliance with the Arusha Agreement and the Burundian Constitution, can a lasting political solution be found in the interests of security and democracy for all Burundi’s people. It calls on all Burundian stakeholders to resume dialogue on all areas of disagreement between the parties, and undertakes to support them in this.

“3. The European Union calls for full compliance with the conditions identified by the AU and the EAC, which are vital for the credibility and smooth running of the electoral process in a way that is peaceful, inclusive and transparent, and does not infringe political freedoms, including freedom of expression. The EU calls for greater coordination, supports the mediation efforts made by the AU, the EAC and the UN, and is ready to support the implementation of the specific measures recently announced by the AU. Both the EAC and the AU have clearly declared that conditions conducive to the holding of elections are not currently in place. There is a strong likelihood that it will not be possible to put such conditions in place within the time frames provided for in the Burundian Constitution. The EU urges the Burundian Government to accept that this is an accurate reflection of the situation, and to respond to the decisions taken by the Peace and Security Council of the AU by taking specific steps as soon as possible.

“4. Echoing the United Nations High Commissioner for Human Rights, the EU expresses its deep concern at the numbers of victims and cases of serious human rights violations reported since the beginning of the crisis, particularly those abuses attributed to the security forces and to members of the Imbonerakure. It asks that leaders bring to a halt to the actions that are at the root of this violence, and urges the Burundian authorities to ensure that these events are fully investigated, and that those responsible are brought to justice. The EU reiterates that there can be no impunity for those responsible for serious human rights violations, and that they must be held individually responsible and brought to account in a court of law. In this context, the EU considers that it is of particular importance that the human rights observers and military experts announced by the AU be deployed immediately.

“5. The EU is determined to adopt, if necessary, targeted restrictive measures against those whose actions might have led or might lead to acts of violence and repression and serious human rights violations, and/or might hamper the search for a political solution within the framework proposed by the AU and the EAC. As a preventive measure, the Council requests that the High Representative initiate preparatory work to that end.

“6. The EU recalls the obligations under the Cotonou Agreement in terms of respect for human rights, democratic values and the rule of law, and the possibility of instituting the consultation procedures provided for in the Agreement, including Article 96. Depending on the reaction of the Burundian Government to the decisions taken by the Peace and Security Council of the AU and on future developments, the EU is prepared to institute those procedures, including in the area of cooperation, in order to ensure that Burundi respects those commitments. The EU underlines that

the obligations under the Cotonou Agreement also apply to all States which are party to it.

“7. The EU is also deeply concerned about the continued outflow of refugees to neighbouring countries. It reiterates its support for the humanitarian organisations present in the region which are addressing the refugees’ immediate needs. It congratulates the authorities of the host countries for their open and welcoming attitude towards those seeking refuge beyond their borders.”⁹⁵

The EU High Representative’s declaration

16.12 On 23 July 2015, the EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini) said:

“Despite the efforts of the international community, and in particular the recent initiative of President Museveni with a view to facilitating an inter-Burundian dialogue, it seems clear that insufficient progress has been made in implementing the decisions adopted by the African Union on 13 June and by the East African Community on 6 July. Only by implementing those decisions in full would it have been possible to hold credible and inclusive elections in Burundi yielding representative results. In going ahead with the elections, the government has decided otherwise.

“In the absence of a meaningful national dialogue which could lead to a political consensus, Burundi will be unable to return to the path of stability, democracy and development which started with the adoption of the Arusha Agreement. The EU will therefore launch the preparatory work for specific consultations as provided for in Article 96 of the Cotonou Agreement in order to ensure that the Burundian government makes the commitments necessary to remedy the crisis. Respect for human rights, democratic principles and the rule of law is an essential element of the cooperative relationship between the EU and Burundi, which is governed by the Cotonou Agreement.

“The EU urges the government and the opposition parties to resume the dialogue in order to achieve a consensual outcome which will lead to the re-establishment of an inclusive and democratic political system. The EU fully supports the efforts being made to that end by the East African Community, the African Union and the United Nations.

“The European Union is deeply concerned about the humanitarian, socioeconomic and security-related impact of the crisis in the country and in the region as a whole. In that context, we welcome the dispatch by the African Union of human rights observers and military experts to oversee the disarmament of the groups affiliated to the political parties. The European Union commends the generosity of neighbouring countries in sheltering refugees from Burundi and reaffirms its solidarity with the Burundian people and with the host communities, including through the mobilisation of humanitarian aid for the thousands of refugees.

95 See [Conclusions on Burundi](#).

“The EU notes that violence cannot be used for political ends and once again calls on all stakeholders and political leaders to both condemn and discourage it. In particular, this refers to the activities of the armed groups, such as the recent attacks in the province of Kayanza. In line with the Council conclusions of June 2015, the European Union is preparing to adopt, where necessary, restrictive measures targeted at those whose actions might have led or might lead to acts of violence and repression and to serious human rights violations, and/or which might hamper the quest for a political solution.”⁹⁶

16.13 On 2 October 2015, the EU adopted travel restrictions and an asset freeze in respect of four persons whose activities are undermining democracy or obstructing efforts to achieve a political solution to the current crisis in Burundi, in particular through acts of violence, repression or incitement to violence, including acts which constitute serious human rights violations.

16.14 In reporting the imposition of these measures, the BBC said on 2 October:

- the EU has imposed an asset freeze and travel ban on three Burundi officials accused of ordering excessive force against peaceful protestors;
- the officials — overseeing intelligence and security bodies — are close to President Pierre Nkurunziza;
- the EU has also imposed sanctions on a former general who took part in a failed coup in May;
- Burundi’s foreign minister has defended the use of force, saying the demonstrations were violent;
- President Nkurunziza’s decision to pursue a third term in office triggered street protests and the coup attempt; and
- opponents of the president say the decision was unconstitutional.⁹⁷

16.15 At that time, the Minister for Europe said that:

- the Government remained concerned about the continuing human rights atrocities, including targeted killings, taking place in Burundi, as well as the impunity enjoyed by perpetrators;
- the Burundian government’s refusal to engage in political dialogue with the international community was contributing towards destabilising the country; and
- implementing a sanctions regime was the most effective option to encourage all parties in Burundi to abide by political process and engage with the international community, and hold those responsible for violence to account.

96 See [“Declaration by High Representative on the Burundi presidential election”](#).

97 See [Burundi crisis: Nkurunziza aides and coup plotter face EU sanctions](#).

Our assessment

16.16 No questions arose from the EU's actions; and in the circumstances outlined, we did not take issue with the Minister for Europe's over-riding of scrutiny. But we considered it unsatisfactory that all we knew of the background had been obtained from elsewhere.

16.17 The Minister did not say who the individuals affected by these measures were, nor provide any information on what they had done to warrant being thus targeted. We would also have expected him to have explained what the continuing human rights atrocities taking place in Burundi were, who was being subject to targeted killings, and who the perpetrators enjoying impunity were; and to have explained what the international community was seeking to do in which the Burundian government was refusing to engage; and who all parties were that the EU was thereby seeking to encourage to engage in political dialogue. In short, the Committee asked to know somewhat more about what was going on, who was being targeted, and why.

16.18 In the meantime, we retained the Council Decision and Council Regulation under scrutiny.⁹⁸

The Commission Communication

16.19 The Commission's proposal follows a period of intensified political dialogue, building on the political dialogue already conducted under Article 8 of the Cotonou Agreement, which took place between October 2014 and May 2015. This focused on the political climate in Burundi, in particular as the situation escalated in the run-up to legislative and presidential elections in summer 2015. The issues covered included: human rights abuses; the lack of an independent justice system; political violence perpetrated by the *Imbonerakure*, the youth wing of the ruling party, National Council for the Defence of Democracy–Forces for the Defence of Democracy (CNDD-FDD); restrictions on civil liberties and limitations to the freedom of expression and assembly; and the issuing of threats against dissidents, including those within the ruling party.

16.20 The Commission notes that political violence escalated following the announcement on 25 April 2015 that President Pierre Nkurunziza would seek a third mandate. To date, the crisis has resulted in over 120 deaths and thousands of casualties, and forced over 190,000 people to seek refuge in Tanzania, Uganda, Rwanda and the Democratic Republic of Congo, exacerbating the risk of a spill-over of the violence into the surrounding region. Opposition demonstrations have been harshly put down, numerous media outlets have been closed and there has been a generalised increase, across the political spectrum, in the use of violence for political ends. This included a failed coup and ongoing attacks by armed groups of various persuasions, most recently the assassination of General Adolphe Nshimirimana, the attempted murder of Pierre Claver Mbonimpa, a prominent human rights defender, and the murder on 15 August 2015 of Colonel Jean Bikomagu, a former Army Chief.

16.21 In sum, the Commission says:

98 See (37155), — and (37156), —: Fifth Report HC 342–v (2015–16), chapter 12 (14 October 2015).

“The current crisis is evidence of both an escalation of the violence and an entrenchment of political positions, in a country which was already fragile and divided, and which has systematically failed to ensure respect for the rule of law and the application of democratic principles.”

16.22 The Commission says that:

- the overall objective of the dialogue on these issues would be to encourage Burundi to commit to take action within a specified time-frame in the critical areas of democracy, human rights and the rule of law, on the basis of the principles set out in the Arusha Agreements;
- this dialogue would give the Burundian authorities an opportunity to state their case on the points raised by the EU;
- the Commission could then decide whether, on that basis, it could support the country’s efforts to improve compliance with Article 9 of the Cotonou Partnership Agreement; and
- cooperation activities financed by the European Development Fund or by other instruments under the EU’s general budget that are currently ongoing should continue during the consultation period, on the condition that the special conditions set out in the financing agreements are observed.⁹⁹

16.23 In his Explanatory Memorandum of 15 October 2015, the Minister for Europe says that, depending on the outcome of the consultations, the EU and Member States may decide to impose appropriate measures, suspending or partially suspending the provision of EU development assistance through the European Development Fund; and explains that any such step would require a Council Decision and would normally be agreed at the end of the consultation period lasting up to 120 days.

The Government’s view

16.24 The Minister comments as follows:

“Sham elections in July 2015 saw President Nkurunziza obtain an illegitimate third term. Since the Burundian Government began to crack down on anti-third term protests in April, it has consistently been asserting that everything is fine in Burundi and that the international community is mistaken and interfering.

“Human rights atrocities continue on a daily basis, including targeted killings. Burundi is teetering on the edge and could very easily descend into civil war. The Burundian Government will soon run out of money to pay the army and police.

“The Burundian Government’s refusal to engage in political dialogue with the international community has led to an increased risk of civil strife, and a deepening of the refugee crisis. The international community, including the East Africa Community, have lost patience with Burundi.

99 For full background, see [EU relations with Burundi](#).

“The UK and EU continues to encourage Burundi to deliver the conditions set out by the East Africa Community on freedom of expression, disarming youth groups and ensuring the security of the Burundian population. A political settlement must be reached that respects the Arusha Accords.

“The EU has imposed travel restrictions and asset freezes against those in Burundi who have acted in ways to undermine democracy. Burundi faces a future of political isolation if it fails to create a genuinely inclusive Cabinet and Parliament, with opposition representation beyond the party of Rwaswa.

“Following the Article 96 consultations, the EU may agree to implement appropriate measures. This will allow the EU to partially or fully suspend its development cooperation (provided through the European Development Fund), whilst continuing to provide support to the most vulnerable through civil society organisations and NGOs. Benchmarks for resumption of cooperation will be agreed with the Burundian authorities. This is an important tool to help us achieve our strategy, especially in providing incentives for the Burundian Government and the ruling party to engage in dialogue, and hold those responsible for violent acts to account.”

Previous Committee Reports

None, but see (37155), — and (37156), —: Fifth Report HC 342–v (2015–16), chapter 12 (14 October 2015).

17 The role of EU external action in addressing the refugee crisis in Europe

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Home Affairs Committee and the International Development Committee
Document details	Joint Communication by the European Commission and the EU High Representative for Foreign Affairs and Security Policy: <i>Addressing the refugee crisis in Europe: the role of EU external action</i>
Legal base	—
Department	Home Office
Document Numbers	(37092), 11877/15, JOIN(15) 40

Summary and Committee's conclusions

17.1 The European Union (EU) is facing the most serious refugee crisis since the end of the Second World War, prompted by instability and conflict, human rights abuses and persecution in many parts of the world. The crisis is compounded by individuals fleeing poverty in search of a better life within the EU. Nearly 600,000 irregular migrants have crossed the Mediterranean during 2015 and more than 3,000 have lost their lives.¹⁰⁰ Despite the enormity of the challenge, the impact is far greater in other parts of the world. According to the UN Refugee Agency (UNHCR), 86% of the estimated 59.5 million refugees and internally displaced people in 2014 were in less economically developed countries.¹⁰¹ Syria continues to generate the largest numbers of internally displaced people and refugees, with Lebanon, Jordan and Turkey the principal countries of refuge.

17.2 The Communication is part of a broader package of measures put forward by the Commission to address the unprecedented migratory flows across the Mediterranean during 2015. It describes the action being taken by the EU externally to engage with countries of origin, transit and refuge, and with a range of international organisations, to address the root causes of the crisis and to mitigate its impact.

17.3 The Minister for Countering Extremism (Lord Ahmad) welcomes the Communication, noting that “long-term engagement with origin and transit countries is a fundamental aspect of a sustainable response to the migratory situation in the Mediterranean”.

17.4 The Communication provides a useful overview of the tools and policies available to the EU to address the causes and consequences of the refugee crisis in its external relations with the most affected countries and regions. We welcome the thorough and informative Explanatory Memorandum provided by the Minister which identifies the

¹⁰⁰ See the latest [update](#) by the International Organisation for Migration.

¹⁰¹ See the [summary](#) of UNHCR's Global Trends Report for 2014.

areas in which he considers EU action can be most effective and describes the contribution being made by the UK. We are content to clear the Communication from scrutiny but draw it to the attention of the Home Affairs Committee and the International Development Committee.

Full details of the documents: Joint Communication by the European Commission and the EU High Representative for Foreign Affairs and Security Policy: *Addressing the refugee crisis in Europe: the role of EU external action*: (37092), [11877/15](#), JOIN(15) 40.

Background

17.5 In May, the Commission published a Communication setting out *A European Agenda on Migration* which proposed a series of actions to address the immediate humanitarian crisis in the Mediterranean and a range of longer-term measures to lay the foundations for a “fair, robust and realistic” EU migration policy. These included closer cooperation with third countries to tackle migration “upstream” and to promote political stability, including additional funding (€30 million (£21.6 million) for 2015–16) for Regional Development and Protection Programmes¹⁰² in North Africa, the Horn of Africa and the Middle East and the establishment (by the end of 2015) of a pilot multi-purpose centre in Niger to provide a source of reliable information on migration, as well as local protection and resettlement opportunities for those in need.

17.6 Further information on the *European Agenda on Migration* and on the additional measures proposed by the Commission since then to address the humanitarian crisis in the Mediterranean and to relieve the pressure on the asylum systems of frontline EU Member States is contained in the Reports listed at the end of this chapter.

17.7 This latest Communication focuses on the role of EU external action and complements a range of measures published in September concerning mechanisms for the relocation of individuals in need of international protection, the designation at EU level of safe third countries of origin, and an EU Action Plan on Return.

The Communication

17.8 The Communication, produced jointly by the Commission and the EU High Representative for Foreign Affairs and Security Policy (Federica Mogherini), explains that the focus of EU activity in 2015 has been to save lives, ensure protection for those in need, and manage borders and mobility. Whilst recognising that the composition of migratory flows across the Mediterranean is mixed, the Communication highlights the “exponential increase” in the numbers seeking international protection from Syria, Iraq and Afghanistan and describes how the EU is responding by providing urgent humanitarian assistance, securing access to asylum, and addressing root causes, notably conflict, political violence, human rights abuses and poverty. It highlights the important contribution made by the EU external cooperation and development budget — totalling €96.8 billion (£71.3 billion) for the period 2014–20 — in promoting jobs and growth, peace and security, human rights and good governance in the countries and regions from which refugees and migrants

¹⁰² These are intended to support long-term capacity-building to enable the countries or regions concerned to provide effective protection.

originate. New and innovative forms of funding include Regional Trust Funds which enable the EU, Member States and other participating donors to respond flexibly and rapidly to changing needs.

17.9 The Communication describes the action taken by the EU in the key countries and regions affected by the refugee crisis.

Syria and Iraq

17.10 As well as supporting efforts to achieve a political solution to the conflicts in Iraq and Syria, the Communication notes that the EU has contributed €1.8 billion (£1.3 billion) from its budget since 2011 to provide humanitarian, development, economic and stabilisation funding to address the needs of internally displaced people in these countries, and of refugees and host communities in Jordan, Lebanon and Turkey. An EU Regional Trust Fund for Syria (“the Madad Fund”) has been established to provide a coherent response on a regional scale, encompassing humanitarian needs in Syria and in neighbouring host countries. Other initiatives include:

- the establishment of an EU Office in southern Turkey to coordinate cross-border operations in Syria;
- the use of Regional Development and Protection Programmes in countries of refuge and transit in the Middle East; and
- increased humanitarian assistance for Syria, Lebanon, Jordan and Turkey to support community centres, food security, livelihoods, schooling and vocational training and for Iraq to support the most vulnerable and provide medical assistance.

Turkey

17.11 The Communication notes that Turkey hosts the largest number of refugees worldwide. The EU has initiated a “dedicated dialogue” to help support Syrian refugees in Turkey, enhance border control and combat the organised criminal gangs involved in people smuggling. It has provided €175 million (£126 million) during 2015 to help Turkey respond to the crisis in Syria and Turkey’s allocation of funding from the Instrument for Pre-Accession Assistance will almost double (from €130 million (£93.8 million) for the period 2007–13) to €245 million (£178.24 million) for the period 2014–16. A Frontex liaison officer will be deployed to Ankara by the end of 2015 to strengthen operational cooperation and support efforts to identify and return those with no need for international protection. The EU is continuing its visa liberalisation dialogue with Turkey and supporting Turkey’s efforts to implement its readmission agreement with the EU.¹⁰³ Chapter 1 of this Report contains further information on the EU’s proposed Action Plan with Turkey to enhance cooperation on migration management and support for refugees.

¹⁰³ Chapter 1 of this Report provides more up-to-date information on the EU’s evolving relationship with Turkey.

Western Balkans

17.12 The EU has increased its support to non-EU Western Balkans countries, notably Serbia and the former Yugoslav Republic of Macedonia, to provide emergency assistance to refugees in transit to Hungary, whilst also seeking to develop their reception and asylum processing capabilities and their capacity to combat organised people smuggling. An €8 million (£5.82 million) region-wide support programme will seek to improve migration management across the Western Balkans. The Communication underlines the need for enhanced operational cooperation at the borders of the EU and the Western Balkans and notes that Frontex has signed working arrangements with Serbia, Montenegro, Albania, Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia. In October, the high-level Conference on the Eastern Mediterranean and Western Balkans route issued a Declaration setting out the key actions to be taken by participating countries to support countries hosting large refugee populations (Lebanon, Jordan and Turkey) and transit countries, strengthen cooperation to combat organised criminal gangs involved in people smuggling and human trafficking, address the root causes of forced displacement, and increase engagement with countries of origin and the wider international community.¹⁰⁴

Africa

17.13 The migration challenges presented by Africa stem from a combination of:

“demographic pressure, environmental stress, extreme poverty, internal tensions and institutional weaknesses which, in some parts, have spilled over into open conflict, increased fragility, displacement, criminality, terrorism and radicalisation., as well as irregular migration and trafficking and smuggling as well as an even greater humanitarian caseload.”¹⁰⁵

17.14 Turning first to Libya, the Communication highlights the EU’s active role in supporting the UN-led dialogue to achieve a peaceful settlement and a government of national unity, as well as the contribution it is making through the provision of humanitarian and development assistance to vulnerable migrant communities. The EU is also seeking to promote development and security in Niger, a key transit route, through its mission EUCAP Sahel Niger,¹⁰⁶ and is helping to establish a “multipurpose centre” in Agadez to provide assistance to stranded migrants and support their return home or their integration in host communities. In neighbouring Mali, EUCAP Sahel Mali¹⁰⁷ is supporting the training of Malian security forces to promote stability and democratic order.

17.15 Elsewhere in Africa, the EU is supporting efforts to counter Boko Haram and strengthening its dialogue on migration with Nigeria. A Common Agenda on Migration and Mobility was signed in 2015 covering cooperation on legal migration, irregular migration, development and international protection. EU engagement with the Central

¹⁰⁴ See the [Declaration](#) issued by the Conference on 9 October 2015.

¹⁰⁵ See p.7 of the Communication.

¹⁰⁶ [EUCAP Sahel Niger](#) provides advice and training to the Nigerien authorities to help strengthen their security capabilities and combat terrorism and organised crime.

¹⁰⁷ [EUCAP Sahel Mali](#) supports efforts to restore State authority in Mali through the provision of advice and assistance to the police, national gendarmerie and national guard.

African Republic aims to re-establish governance and stability. Similarly, the EU has channelled significant support to Somalia to promote stabilisation, state-building and security.

17.16 Eritrea remains an important origin country for individuals seeking international protection within the EU. The Communication highlights human rights abuses, the indefinite duration of national service and a lack of economic opportunity as the principal “push” factors. In December 2014, the Eritrean Government announced that national service would be reduced to 18 months for new recruits, with effect from January 2015. The EU is continuing to monitor the implementation of this decision. It has also agreed a new National Indicative Programme of €200 million (£145.5 million) to focus on economic development, employment and governance. Eritrea is one of a number of countries in the Horn of Africa participating in the Khartoum Process which provides a forum for dialogue with the EU on migration issues.

17.17 Conflict in South Sudan has caused the displacement of more than two million people. The EU is supporting efforts to stabilise the country and, together with Member States, has provided more than €377 million (£272 million) in humanitarian assistance since 2014. The EU is also providing humanitarian aid and development assistance to countries in the Horn of Africa hosting large refugee communities. The Communication underlines the importance of working towards durable solutions to prevent protracted displacement and the risk of secondary movements to Europe. It says that the Commission will present a new “development-oriented” approach to displacement, to be implemented alongside humanitarian assistance at the outset of a crisis, drawing on pilot projects in North Africa and the Horn of Africa. The EU has also launched regional development and protection programmes in North Africa and the Horn of Africa.

17.18 The Valletta Summit on Migration, in November, will bring together leaders of European and key African countries to discuss a range of migration-related topics.¹⁰⁸

The United Nations and the broader international community

17.19 The Communication emphasises the need for ever closer cooperation with the United Nations Refugee Agency (UNHCR), the UN Development Programme (UNDP) and the International Organisation for Migration, not least to strengthen the effectiveness of EU support to countries hosting large refugee populations and to improve the management of flows within the EU. The EU is also engaging with other international partners which have strong capabilities, including within the Middle East, to increase resettlement opportunities and assistance given to those in need of international protection.

Cooperation on readmission and returns

17.20 The Communication underlines the relatively low rate of return of those who do not have a right to remain within the EU — fewer than 40% of irregular migrants ordered to leave the EU in 2014 did so. The Cotonou Partnership Agreement with African, Caribbean

¹⁰⁸ See Commission [press release](#) on the EU’s cooperation with Africa on migration for further details of the range of instruments and activities.

and Pacific (ACP) countries includes a specific legal base for the return and readmission of ACP nationals which the EU will seek to implement effectively. The EU has concluded 17 readmission agreements with a range of non-ACP countries, is in negotiation with Morocco and Tunisia, and has recently agreed pilot projects on return with Pakistan and Bangladesh. It is also seeking to intervene on transit routes, with the establishment of a multi-purpose centre in Agadez (Niger) to encourage the return of irregular migrants.

Fighting organised crime

17.21 The Communication highlights the role of the EU in building capacity to tackle the criminal networks involved in people smuggling and human trafficking, with a particular focus on the development of police, justice and border management capabilities. The EU has established an Action Plan against migrant smuggling¹⁰⁹ and is deploying migration liaison officers and security experts in key EU delegations in third countries. A number of the EU's common security and defence policy missions contribute to combating organised crime (for example, EUCAP Sahel Niger and EUCAP Sahel Mali). In addition, the EU's naval force in the Mediterranean (EUNAVFOR Med) is gathering intelligence and taking operational action against people smugglers in the Southern Central Mediterranean.¹¹⁰

Conclusions

17.22 The Communication concludes that engagement with third countries is essential to address the refugee crisis, and describes the variety of external tools available to the EU to deepen cooperation. It makes clear that EU support for political and diplomatic efforts to end the conflicts in Iraq and Syria, as well as cooperation and dialogue with countries of origin and transit, should be intensified, adding:

“For many years, the European Union has addressed refugee and migratory challenges through its external action, combining political, development and humanitarian assistance tools. Today's refugee crisis is an acute manifestation of longstanding and complex problems; the roots of the crisis are manifold and will not be solved immediately. Comprehensively addressing these will require an approach that encompasses short- and long-term efforts. Most importantly, solidarity and responsibility will be essential and the different instruments at the Union's disposal, from diplomacy to financial assistance will have to act jointly.”¹¹¹

17.23 Member States are invited to “show determination” in addressing the plight of refugees and the factors pushing them to leave their countries:

“Solidarity, responsibility and unity are necessary to live up to the legal, institutional and moral obligations that the European Union faces today.”¹¹²

109 See our Second Report HC 342–ii (2015–16), [chapter 1](#) (21 July 2015).

110 See our Second Report HC 342–ii (2015–16), [chapter 2](#) (21 July 2015).

111 See p.12 of the Communication.

112 *Ibid.*

The Minister's Explanatory Memorandum of 30 September 2015

17.24 The Minister (Lord Ahmad) welcomes the Communication, noting:

“We have long held the view that long term engagement with origin and transit countries is a fundamental aspect of sustainable response to the migratory situation in the Mediterranean, as well as the new extraordinary pressures on the EU via the Eastern Mediterranean and Western Balkan route.

“In order to deliver protection and a degree of stability to those most in need, upstream engagement is as important as the immediate humanitarian response. However, we will continue to make it clear that arrival on EU territory does not automatically lead to the right to remain and that proper screening and assessment processes should be applied to all illegal migrants arriving in the EU.”¹¹³

17.25 The Minister notes that the lack of a political solution in Syria lies at the heart of the crisis, adding:

“12 million people have been displaced thus far. Most are still in Syria, with 4 million in Turkey, Jordan and Lebanon. Only 3% (400,000) have reached Europe. To reduce the push factors driving others to make the dangerous journey (and to place themselves in the hands of criminal people smugglers), we need a reinvigorated political process, and to encourage those in Syria and the region to stay there. This will require further support for their hosts, and ensuring refugees in the region have access to education and jobs. The UK has helped lead the international humanitarian effort thus far, pledging over £1bn — far more than any other country other than the US — and meeting our commitment to spend 0.7% of our gross national income on international aid. UK aid is currently being used to help refugees in Syria, Lebanon, Jordan and Turkey. We agree with the Commission that existing EU external action resources need to be refocused to support sustainable regional protection. We also support the Commission's call for other Member States to contribute to this work.”¹¹⁴

17.26 The Minister underlines the need for “a framework and sense of coherence” regarding the EU's approach to Turkey and the Western Balkans. He continues:

“The Government intends to discuss this [in] more detail with our partners in the EU and the region at the ministerial conference on migration flows through Eastern Mediterranean and Western Balkans on 8 October in Luxembourg. The EU enlargement process provides us with significant political leverage and practical opportunities to achieve this. The Government therefore welcomes the mainstreaming of migration cooperation and funding for technical assistance and capacity building programmes, as an important part of pre-accession processes. This will allow us to develop enhanced partnerships with Turkey and the Balkan States on building effective border management, asylum systems and integration plans, conclusion and more robust implementation of re-admission agreements within the region and further afield, effective returns of individuals not entitled to international

113 See paras 24–25 of the Minister's Explanatory Memorandum.

114 See para 26 of the Minister's Explanatory Memorandum.

protection, as well as on tackling regional organised crime and people smuggling including enhanced intelligence sharing, promoting and protecting human rights.”¹¹⁵

17.27 The EU should be “ready to contribute to stabilisation and economic recovery” in the event that a government of national unity is formed in Libya, with a particular focus on capacity building, humanitarian and security interventions. In Niger and the Sahel region, the Minister calls for rapid progress in setting up the multi-purpose centre in Agadez to deter migrants from travelling further and to facilitate their return. If successful, he suggests that a similar centre should be established in East Africa.

17.28 The Minister identifies the Horn of Africa, and the Valletta Conference, as a priority for the Government, adding that the focus should be:

“on practical projects in source and transit countries, along with commitments to returns for irregular migrants, building on links that Member States have developed and expanding the Regional Development and Protection Programmes, and enhanced law enforcement cooperation. The EU should also explore the scope for establishing safe zones to which migrants could be returned quickly and safely in accordance with international law when voluntary return to the country of origin was not feasible.

“At Valletta we should also send a clear signal that the EU is prepared to dedicate sustained resources to helping African countries meet the economic and development challenges that are driving much migration, including by reprioritising development cooperation and other economic assistance to support this goal. We believe that the combined efforts of the EU and its Member States on Overseas Development Assistance for Africa can be marshalled into a commitment of £7.28bn between now and 2020, through a combination of current and the additional new money already identified by the Commission for its proposed Trust Fund.”¹¹⁶

17.29 The Minister describes the support given by the UK to tackling organised crime involvement in migrant smuggling and human trafficking:

“HMS Enterprise and the Royal Navy Merlin helicopter will continue to form part of the EUNAVFOR MED force which is also contributing to the EU’s overall approach to saving lives in the Mediterranean. We are also deploying Border Force’s cutter ships to Frontex’s Operation Triton to support search and rescue operations in the Mediterranean. We have established an Organised Immigration Crime Task Force bringing together officers from the National Crime Agency, Border Force, Immigration Enforcement and the CPS [Crown Prosecution Service] to pursue and disrupt these organised crime groups. The multi-agency Task Force builds on existing law enforcement capability in the UK and overseas. It focuses on the crime networks in source countries, transit points including the Mediterranean as well as at the UK border and France. The Task Force is already working with international partners sharing intelligence and progressing criminal investigations.

¹¹⁵ See para 27 of the Minister’s Explanatory Memorandum.

¹¹⁶ See paras 30–31 of the Minister’s Explanatory Memorandum.

“The Taskforce includes support to Europol and EU RTF (Regional Taskforces) with intelligence analysis and has also offered additional debriefers and screeners to support Frontex operations in Europe. This will significantly increase the EU’s joint intelligence gathering capacity.

“The UK is also taking action against people smuggling and trafficking in the Horn of Africa as part of a ‘core group’ of EU Member States and African partners leading the EU Khartoum Process. Broader EU efforts under the GAMM [Global Approach to Migration and Mobility], including the Silk Routes Partnership focussed on better managing migratory flows from countries including Afghanistan and Pakistan, also have a useful role to play in securing enhanced cooperation with third countries in the contexts of the current crisis.”¹¹⁷

17.30 The Minister explains that the Commission intends to refocus its aid packages, programmes, projects and other work streams in 2015 and 2016 to reflect the priorities set out in the Communication. The Commission has also called on Member States to increase their funding for humanitarian aid and to support longer-term objectives.

Previous Committee Reports

None, but the following Reports are relevant: Second Report HC 342–ii (2015–16), [chapter 1](#), [chapter 2](#), [chapter 3](#) and [chapter 6](#) (21 July 2015); Third Report HC 342–iii (2015–16), [chapter 8](#) (9 September 2015); Fifth Report HC 342–v (2015–16), chapter 1, chapter 2, chapter 3 and chapter 32 (14 October 2015).

117 See paras 33–35 of the Minister’s Explanatory Memorandum.

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

Cabinet Office

(37113) Commission Report on *the application in 2014 of Regulation (EC) No. 12124/15 1049/2001 regarding public access to European Parliament, Council and Commission documents.*
+ ADD 1
COM(15) 391

Department for Culture, Media and Sport

(37130) European Court of Auditors' Report on *the annual accounts of the Education, Audiovisual and Culture Executive Agency for the financial year 2014 together with the Agency's reply.*
—
—

Department for Environment, Food and Rural Affairs

(37148) Proposal for a Council Regulation amending Regulation (EU) No. 12379/15 2015/104 as regards certain fishing opportunities.
COM(15) 487

(37149) Commission Report on *the progress in establishing marine protected areas (as required by Article 21 of the Marine Strategy Framework Directive 2008/56/EC).*
12667/15
+ ADD 1
COM(15) 481

Department for Transport

(37150) European Court of Auditors' Report on *the annual accounts of the Innovation and Networks Executive Agency for the financial year 2014 together with the Agency's reply.*
—
—

Foreign and Commonwealth Office

(37144) Council Decision (CFSP) 2015/1781 of 5 October 2015 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.
—
—

- (37145) Council Implementing Regulation (EU) 2015/1777 of 5 October 2015
— implementing Regulation (EU) No. 208/2014 concerning restrictive
— measures directed against certain persons, entities and bodies in view
of the situation in Ukraine.
- (37157) Council Decision (CFSP) 2015/1764 of 1 October 2015 amending
— Decision 2014/512/CFSP concerning restrictive measures in view of
— Russia's actions destabilising the situation in Ukraine.
- (37158) Council Regulation (EU) 2015/1797 of 7 October 2015 amending
— Regulation (EU) No. 833/2014 concerning restrictive measures in view
— of Russia's actions destabilising the situation in Ukraine.

HM Treasury

- (33019) Opinion of the European Central Bank on a proposal for a directive
12891/11 on credit agreements relating to residential property (CON/2011/58).
—

Home Office

- (37093) Commission Communication on *Public Procurement rules in*
11885/15 *connection with the current asylum crisis.*
COM(15) 454
- (37101) Proposal for a Council Decision on the signing and provisional
12020/15 application of the Agreement between the European Union and the
+ ADD 1 Republic of Palau on the short-stay visa waiver.
COM(15) 431
- (37102) Proposal for a Council Decision on the conclusion of the Agreement
12023/15 between the European Union and the Republic of Palau on the short-
COM(15) 430 stay visa waiver.
- (37103) Proposal for a Council Decision on the signing and provisional
12025/15 application of the Agreement between the European Union and the
+ ADD 1 Kingdom of Tonga on the short-stay visa waiver.
COM(15) 434
- (37104) Proposal for a Council Decision on the conclusion of the Agreement
12026/15 between the European Union and the Kingdom of Tonga on the
+ ADD 1 short-stay visa waiver.
COM(15) 433

- (37105)
12043/15
+ ADD 1
COM(15) 440
- Proposal for a Council Decision on the signing and provisional application of the Agreement between the European Union and the Republic of Kiribati on the short-stay visa waiver.
- (37106)
12044/15
+ ADD 1
COM(15) 438
- Proposal for a Council Decision on the conclusion of the Agreement between the European Union and the Republic of Kiribati on the short-stay visa waiver.
- (37107)
12046/15
+ ADD 1
COM(15) 435
- Proposal for a Council Decision on the signing and provisional application of the Agreement between the European Union and the Republic of Colombia on the short-stay visa waiver.
- (37108)
12047/15
+ ADD 1
COM(15) 436
- Proposal for a Council Decision on the conclusion of the Agreement between the European Union and the Republic of Colombia on the short-stay visa waiver.
- (37109)
12048/15
+ ADD 1
COM(15) 437
- Proposal for a Council Decision on the signing and provisional application of the Agreement between the European Union and the Republic of Peru on the short-stay visa waiver.
- (37110)
12049/15
+ ADD 1
COM(15) 439
- Proposal for a Council Decision on the conclusion of the Agreement between the European Union and the Republic of Peru on the short-stay visa waiver.

Formal minutes

Wednesday 21 October 2015

Members present:

Sir William Cash, in the Chair

Geraint Davies
Richard Drax
Peter Grant
Kate Hoey
Kelvin Hopkins
Calum Kerr

Craig Mackinlay
Alec Shelbrooke
Kelly Tolhurst
Mr Andrew Turner
Heather Wheeler

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 18 read and agreed to.

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

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

[Adjourned till Wednesday 28 October 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)
- [Geraint Davies MP](#) (*Labour/Cooperative, Swansea West*)
- [Richard Drax MP](#) (*Conservative, South Dorset*)
- [Peter Grant MP](#) (*Scottish National Party, Glenrothes*)
- [Damian Green MP](#) (*Conservative, Ashford*)
- [Nia Griffith MP](#) (*Labour, Llanelli*)
- [Kate Hoey MP](#) (*Labour, Vauxhall*)
- [Kelvin Hopkins MP](#) (*Labour, Luton North*)
- [Calum Kerr MP](#) (*Scottish National Party, Berwickshire, Roxburgh and Selkirk*)
- [Craig Mackinley MP](#) (*Conservative, South Thanet*)
- [Mr Jacob Rees-Mogg MP](#) (*Conservative, North East Somerset*)
- [Alec Shelbrooke MP](#) (*Conservative, Elmet and Rothwell*)
- [Graham Stringer MP](#) (*Labour, Blackley and Broughton*)
- [Kelly Tolhurst MP](#) (*Conservative, Rochester and Strood*)
- [Mr Andrew Turner MP](#) (*Conservative, Isle of Wight*)
- [Heather Wheeler MP](#) (*Conservative, South Derbyshire*)