House of Commons

European Scrutiny Committee

Eleventh Report of Session 2015–16

Documents considered by the Committee on 2 December 2015

HC 342-xi

House of Commons

European Scrutiny Committee

Eleventh Report of Session 2015–16

Documents considered by the Committee on 2 December 2015

Report, together with formal minutes

Ordered by the House of Commons
to be printed 2 December 2015

HC 342-xi
Published on 11 December 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 Eve Samson (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

Meeting Summary

The Committee considered the following documents

Capital Markets Union

On 28 October, we recommended for debate in European Committee B a Commission Communication about an action plan for establishing a Capital Markets Union, and two proposed Regulations in support of the Capital Markets Union. That debate has been scheduled for 3 December. On the evening of 1 December, the Economic Secretary to the Treasury (Harriet Baldwin) wrote to us with a detailed account of developments in relation to the proposed Regulations, one of which is to be considered at the ECOFIN (Economic and Financial Affairs) Council on 8 December. In particular, her letter draws our attention very belatedly to a Justice and Home Affairs issue in relation to that proposed Regulation. The Government implies that it might purport to opt into the proposed Regulation, even though it does not have a legal base found in Part Three, Title V TFEU (Treaty on the Functioning of the European Union) concerning an Area of Freedom Security and Justice. But, as the Government is well aware, we do not believe that the UK opt-in is engaged in the absence of such legal base. Rather, it should seek an additional Title V legal base or an amendment which dissipates the concern. Given the Government's unacceptably late provision of this information, we intend to consider these developments in more detail at our next meeting, and in the meantime we recommend that the correspondence is included in the debate pack.

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 two more applications, from Finland and Ireland, 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 further examples of the use made by other Member States of an EU financial instrument of apparent little efficacy.

Improving gender balance on company boards

The Government provides a further update on developments on this proposed Directive which seeks to improve the gender balance on the boards of publicly listed companies. Progress within the Council has been slow, but the Luxembourg Presidency is expected to

press for a General Approach at the forthcoming Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on 7 December. The Government remains opposed to regulatory intervention at EU level, but there are signs that the blocking minority (of which the UK forms part) is crumbling. Although there now appears to be a reasonable prospect of securing qualified majority support for the proposal at the EPSCO Council, based on a Presidency compromise text, the Government does not request a scrutiny waiver and indicates that it will oppose the proposal if it is brought to a vote.

The Government is asked to report back on the outcome of the Council, explaining how the UK voted and providing a copy of the text of any General Approach agreed. As the House supported a Reasoned Opinion on the proposed Directive in January 2013, the Committee makes clear that it intends to keep a close eye on trilogue negotiations. The Government is therefore also asked to provide regular progress reports once trilogue negotiations are underway, as well as an early assessment of the areas in which it considers that a compromise may be possible, and the implications for companies in the UK.

Data Protection package and Commission Communications on EU-US data flows

The Data Protection package is comprised of a proposed General Data Protection Regulation and a proposed Directive relating to data processing for police and criminal justice cooperation (the PCJ Directive). Its purpose is to update the EU's 1995 data protection rules in line with technological developments, to strengthen online privacy rights and to address divergent national implementation. General Approaches have been agreed on both proposals and trilogues are ongoing. The Government now informs us that although many difficult issues have yet to be resolved, the last trilogue is planned for 15 December. It also responds to the Committee's question about ease of access to personal data in medical records for research purposes, indicating that the Council is more favourable to such access than the European Parliament. We retain both proposals under scrutiny, but request as much detailed information as possible from the Government on trilogue outcomes before our last meeting of 16 December. We remain particularly interested in key issues such as the Right to be Forgotten, the One Stop Shop mechanism, Joint and Several Liability and research access to medical data.

We also report on three Commission Communications which all relate to the transfer and processing of the personal data of EU citizens to the US, one of which is new. This document provides guidance on using alternative means (Standard Contractual Clauses and Binding Corporate Rules) for such transfers to the US for commercial purposes, following the invalidation of the "Safe Harbour" Decision by the CJEU in the *Schrems* case. The Government notes the guidance and assures us that it is engaging at both national and EU levels to ensure legal continuity of data transfers. It also informs us of plans to conclude the second Safe Harbour Decision in three months' time. In light of this, we retain under scrutiny the Commission Communication on the review of the Safe Harbour Decision but clear the other two Communications. We also draw the documents to the attention of the Culture, Media and Sport Committee, the Business, Innovation and Skills Committee, the Justice Committee, and the Joint Committee on Human Rights.

2015 EU Justice Scoreboard

This non-legislative document provides data, drawn from a variety of sources, on the quality, independence and efficiency of national justice systems to assist Member States to provide more effective justice and to aid economic growth. It is unremarkable except for the fact that there are substantial gaps in data relating to the UK, meaning that there is little information about UK rankings in various areas addressed by the Commission's review. Also, the Government has prevaricated in forming policy on the document: the previous Government questioned Commission competence to produce such a document and the resource implications of the submission of data for this annual exercise. This has resulted in an unacceptable delay of some eight months in the Government's deposit of its Explanatory Memorandum, for which the Justice Secretary apologises. We express our dissatisfaction at this lapse in the Government's scrutiny obligations. Although we clear the document, we ask the Minister to clarify what the current Government's policy is in relation to Commission competence and submission of justice-related data to the Commission. We also draw our Report to the attention of the Justice Committee and the Business, Innovation and Skills Committee.

1 Gender balance on corporate boards

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Innovation and Skills Committee and the Women and Equalities Committee
Document details	Proposal for a Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures
Legal base	Article 157(3) TFEU; co-decision; QMV
Department	Business, Innovation and Skills
Document Numbers	(34423), 16433/12 + ADDs 1–3, COM(12) 614

Summary and Committee's conclusions

1.1 The proposed Directive seeks to redress the gender imbalance on the boards of many publicly listed companies by introducing new procedural requirements for the recruitment and selection of executive and non-executive directors. Although drafted in gender-neutral terms, the objective of the Directive is to increase the presence of women on company boards so that they comprise at least one third of all directors (executive and non-executive) or 40% of non-executive directors by 2020.

1.2 Whilst endorsing the objective of greater gender balance on company boards, the Government has consistently opposed EU legislation on the grounds that establishing an EU-wide quantitative objective would be tokenistic, counter-productive and tantamount to introducing quotas. It has advocated, instead, national measures which can be better tailored to the business culture and company law requirements of each Member State. Our predecessors also questioned the necessity for action at EU level and recommended issuing a Reasoned Opinion which the House endorsed in January 2013.

1.3 Progress since then has been slow, not least because the range and diversity of company systems have hampered efforts to agree measures that would work in all 28 Member States. The European Parliament broadly supports the Commission proposal but a number of Member States — sufficient to constitute a blocking minority within the Council — share the Government's concerns. Whilst continuing to oppose the proposed Directive, the Government has been willing to explore possible compromise proposals to protect against the eventuality that the blocking minority may not be sustainable.

1.4 The Government has provided regular progress reports on negotiations within the Council. Until recently, the blocking minority (of which the UK forms part) has remained secure. In her latest update, the Minister for Intellectual Property (Baroness Neville-Rolfe) explains that the Luxembourg Presidency intends to seek a General Approach at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on 7 December, provides further details of the compromise text on which it would be based, and indicates that the blocking minority "is not as strong as it once was and positions could easily shift in the coming weeks".

1.5 **We note that the Government intends to continue its voluntary and business-led approach to increasing the representation of women on company boards, with a particular focus on FTSE 350 companies, and opposes any regulatory intervention at EU level. As the Minister does not request a scrutiny waiver ahead of the EPSCO Council on 7 December, we infer that she intends to oppose the proposed General Approach. We ask her to report back to us on the outcome of the Council explaining how the UK voted and providing a copy of the text of any General Approach agreed.**

1.6 **We note that the legislative Resolution adopted by the European Parliament in November 2013 broadly supports the thrust of the Commission's original proposal.[1] We ask the Minister to provide regular progress reports on trilogue negotiations, once underway, and would welcome an early assessment of the areas in which she considers that a compromise may be possible, as well as the implications for publicly listed companies in the UK.**

1.7 **We draw this chapter to the attention of the Business, Innovation and Skills Select Committee and the Women and Equalities Committee. Meanwhile, the proposal remains under scrutiny.**

Full details of the documents: Proposal for a Directive on improving the gender balance among non-executive directors of companies listed on the stock exchange and related measures: (34423), 16433/12 + ADDs 1–3, COM(12) 614.

Background

1.8 Our earlier Reports (listed at the end of this chapter) provide a detailed overview of the proposed Directive, the Government's position, and the grounds on which our predecessors recommended that the House issue a Reasoned Opinion. Whilst rejecting the case made by the Commission for EU legislative action on subsidiarity grounds, we have also sought to explore:

- the trajectory of change within the UK, and across the EU, in securing more balanced gender representation on company boards;[2]
- the number of publicly listed companies in the UK likely to be affected by the draft Directive — although the Government has indicated that there are approximately 950 such companies in the UK, those qualifying as small or medium-sized enterprises (SMEs) would be excluded from its application;
- the scope of possible derogations from the proposed Directive and their application to publicly listed UK companies; and
- stakeholder views on the proposal.

1.9 When we considered the proposed Directive in September, we noted that it was only likely to progress further if the UK and other like-minded Member States were unable to

1 See the European Parliament's legislative Resolution of 20 November 2013.

2 BoardWatch tracks the appointment of women to FTSE 100 and FTSE 250 company boards.

sustain a blocking minority. We asked the Minister how confident she was that the blocking minority could be sustained and how substantial the risk that it might unravel.

1.10 We made clear that we expected to receive early warning and, if possible, sight, of any compromise proposal on which the Presidency might seek to secure a General Approach, accompanied by a detailed assessment of its content and policy implications for the UK, as well its impact on *all* UK publicly listed companies, not just the FTSE-100 companies. We also sought further information on the so-called "flexibility clause" and how it would apply in the UK. A press release issued after the EPSCO Council in June highlighted some "fine-tuning" of this clause to "allow Member States to choose their gender balance methods".[3]

The Minister's letter of 13 October 2015

1.11 In her first letter, the Minister confirms that little progress has been made during the current Luxembourg Presidency. Although the proposal was placed on the agenda for the EPSCO Council on 5 October, it was withdrawn to allow further discussion. She also confirms that the blocking minority is "still standing", without disclosing the identity of the Member States backing the Government's position, but adds that "some movement, in both directions, may occur in the coming months" as a number of Member States reconsider their positions.

1.12 The Minister explains that the inclusion of a "flexibility clause" would not, as currently drafted, be of benefit to the UK as it covers a wider range of companies — likely to be between 450 and 550 large listed companies — than the FTSE 100 and FTSE 250 companies targeted by the Government. The percentage of women represented on the boards of these companies continues to increase. A further report from Lord Davies will be published on 29 October and set out recommendations to improve gender balance which will inform the Government's future policy.

The Minister's letter of 26 November 2015

1.13 The Minister expects the Luxembourg Presidency to press for a General Approach to be agreed at the EPSCO Council on 7 December. She provides a copy of the latest compromise text, noting that it bears a *limité* marking and cannot therefore be published or reported on in any detail which would bring its contents into the public domain.

1.14 The Minister confirms that the Government continues to oppose any regulatory intervention at EU level. She suggests that it would undermine the progress made so far in the UK and that there could be a negative impact on business practice, "not only by moving away from business-led arrangements for increasing representation of women on boards, but by introducing EU rules for selecting candidates for appointment which might be a burden on companies". The Minister notes that Lord Davies published a summary report on 29 October reviewing the progress made during the last five years in implementing the recommendations contained in his Women on Boards report and highlights the following achievements:

[3] See the Council press release of 19 June 2015.

> "More women on FTSE 350 boards than ever before, with representation of women more than doubling since 2011 — now 26.1% on FTSE 100 boards and 19.6% on FTSE 250 boards. 550 new women appointments.
>
> "Dramatic reduction in the number of all-male boards — 152 across FTSE 350 in 2011, now no all-male boards in the FTSE 100 and only 15 in the FTSE 250."[4]

1.15 His latest report sets "a new voluntary, business-led target, for women's representation on Boards of FTSE 350 companies, of 33% to be achieved in the next five years".

1.16 The Minister provides further details on the proposed flexibility clause and the impact of the Directive on UK listed companies:

> "The proposed Directive sets out a mechanism in Article 4a for selecting candidates for appointment. It is designed to achieve the objectives of the Directive (in brief 40% of non-executive positions in listed companies being held by members of the under-represented sex or 33% of both executive and non-executive directors in those companies being held by members of the under-represented sex).
>
> "The Directive does not apply to small or medium sized companies, even if they are listed. The 'flexibility clause' in Article 4b allows a Member State to introduce alternative measures which either achieve the Directive's objectives or come close to doing so. In addition, if the Member State has met one of the two Directive objectives, with or without taking measures to do so, it is not required to implement Article 4a. This flexibility clause is time limited; it cannot be relied on beyond the end of 2022 unless one of the objectives has been met or the Member State has in place legislation which fulfils certain criteria. The amendments in the latest draft of the proposed Directive affect aspects of the 'flexibility clause' but do not change the potential impact of the proposed Directive on the UK. The proposed Directive contains a requirement to set individual objectives in some circumstances and there are reporting requirements. Member States are also required to designate a body which will promote gender balance on the boards of listed companies. The revisions also extend the implementation date and the date on which the Directive will cease to have effect."

1.17 The Minister explains that if the Directive is agreed on the basis of the latest Presidency compromise text, the voluntary targets set by Lord Davies for the next five years would not be sufficient to come within the scope of the flexibility clause, unless the UK can demonstrate that the boards of UK listed companies comprise 40% of non-executive directors or 33% of non-executive and executive directors of the under-represented sex. This is unlikely because the scope of the proposed Directive — encompassing around 450-550 UK listed companies — is broader than the Lord Davies-led Women on Boards initiative which focuses on FTSE 350 company boards. The Minister continues:

> "The Government agrees that the progress made so far by the Women on Boards initiative must be sustained and that we need a renewed focus on the Executive Pipeline where progress is slow. We have accepted Lord Davies' recommendation to

[4] See Lord Davies' Five Year Summary Report, *Improving the Gender Balance on British Boards*.

establish a new review on women on boards, with a new reviewer. We believe that this work must remain business led if it is to have full impact and we therefore expect that the remaining recommendations published in October will be for the new steering group to consider."

1.18 The Minister makes clear that the Government is continuing to engage with the UK's blocking minority partners, at official and Ministerial level, but adds:

"I am aware that the blocking minority is not as strong as it once was and positions could easily shift in the coming weeks."

Previous Committee Reports

Third Report HC 342-iii (2015–16), chapter 9 (9 September 2015); Thirty-seventh Report HC 219-xxxvi (2014–15), chapter 4 (18 March 2015); Thirty-first Report HC 219-xxx (2014–15), chapter 2 (28 January 2015); Ninth Report HC 219-ix (2014–15), chapter 6 (3 September 2014); Sixth Report HC 219-vi (2014–15), chapter 1 (9 July 2014); Twenty-eighth Report HC 83-xxv (2013–14), chapter 3 (18 December 2013); Thirty-third Report HC 86-xxxiii (2012–13), chapter 8 (27 February 2013); Twenty-third Report HC 86-xxiii (2012–13), chapter 1 (12 December 2012).

2 Data Protection in the EU

Committee's assessment	Legally and politically important
Committee's decision	(a), (b) and (d) Not cleared from scrutiny; further information requested; (c) and (e) Cleared from scrutiny; further information requested. Drawn to the attention of the Culture, Media and Sport Committee, the Justice Committee, the Business, Innovation and Skills Committee and the Joint Committee on Human Rights
Document details	(a) Proposal for a General Data Protection Regulation; (b) Proposal for a Police and Criminal Justice Data Protection Directive (PCJ Directive); (c) Commission Communication on *EU and US data flows*; (d) Commission Communication on *Safe Harbour*; (e) Commission Communication on *EU-US data transfer following the Schrems judgment*
Legal base	(a) Article 16(2) and 114(1) TFEU; ordinary legislative procedure; QMV (b) Article 16(2) TFEU; ordinary legislative procedure; QMV; (c),(d),(e) —
Department	Culture, Media and Sport
Document Numbers	(a) (33649), 5853/12 + ADDs 1–2, COM(12) 11; (b) (33646), 5833/12 + ADDs 1–2, COM(12) 10; (c) (35608),

17067/13, COM(13) 846; (d) (35609), 17069/13, COM (13) 847; (e) (37262), 13819/15, COM(15) 566

Summary and Committee's conclusions

2.1 The Commission initially proposed the Data Protection package, comprising the General Data Protection Regulation (document (a)) and the Police and Criminal Justice Data Protection Directive (the PCJ Directive, document (b)), in January 2012. This was to update the EU's 1995 data protection rules in line with technological developments in the use of personal data and to strengthen online privacy rights, increase consumer confidence, boost growth and address divergent national implementation of the existing rules.

2.2 Previous scrutiny conducted on the Data Protection package by our predecessors, the Justice Committee and ourselves has been extensive and is summarised at paragraphs 2.9–2.12 below. The Parliamentary Under-Secretary of State and Minister for Intellectual Property at the Department for Culture, Media and Sport (Baroness Neville-Rolfe) now responds by letter to our Report of 28 October,[5] in particular, to our question about whether the General Approach text of the proposed Regulation prevents the processing of data in NHS medical records for research or other purposes and whether the EP position differs from that of the Council.

2.3 We also report on new document (e), the subject of the Minister's Explanatory Memorandum. This document relates to the Commission's "Safe Harbour decision" which used to provide the legal basis for the transfer of personal data of EU citizens for commercial purposes to US companies which have signed up to certain privacy Principles.[6] On 6 October the Court of Justice (CJEU) in the case of *Schrems*[7] invalidated the Commission's Decision because it did not ensure an adequate level of protection for EU citizens in terms of their rights under the EU's Charter of Fundamental Rights.[8] Document (e) simply clarifies that EU-US data transfers can no longer take place on the basis of that Decision but highlights alternative tools that can be used (Standard Contractual Clauses and Binding Corporate Rules) which are explained further at paragraphs 2.16–2.17.[9] The Minister simply notes that document (e) has no policy or legal implications as such and that the Government is engaged at both EU and national levels to ensure lawful continuity of data transfer outside the EU and to ensure that robust, second Safe Harbour Decision is

5 Seventh Report HC 342-vii (2015-16), chapter 5 (28 October 2015).

6 The current 1995 Data Protection Directive (Directive 95/46/EC) sets out rules for transferring personal data from the EU to non-EU countries. Under these rules, the Commission may decide that a non-EU country ensures an "adequate level of protection". These decisions are commonly known as "adequacy decisions". On the basis of the 1995 Directive the Commission adopted the Safe Harbour Decision in 2000 which recognised the Safe Harbour Principles issued by the US Department of Commerce as providing adequate protection for the purposes of personal data transfer under the current 1995 Directive. A US company wishing to take part must self-certify its compliance with the Principles. A failure to comply with the Principles is actionable under federal or state law on grounds of deception.

7 Maximillian Schrems v Data Protection Commissioner (joined party Digital Rights Ireland): C-362/14.

8 Respect for private and family life (Article 7), protection of personal data (Article 8) and right to an effective remedy (Article 47).

9 The CJEU also clarified in Schrems that an adequacy decision under Article 25(6) of the current Directive is conditional on a finding by the Commission that in the third country concerned there is a level of protection of personal data which, while not necessarily identical, is "essentially equivalent" to that guaranteed within the EU by virtue of the Directive read in the light of the Charter of Fundamental Rights. This is clearly relevant to other adequacy decisions and the relevant provisions currently being negotiated in the proposed Data Protection package.

agreed. This is currently under negotiation but is expected by the Commission to be agreed in three months' time.

2.4 **We thank the Minister for her letter and for the General Approach texts for both Data Protection proposals (documents (a) and (b)) which we continue to retain under scrutiny.**

2.5 **We note that the last formal trilogue session is planned for 15 December. We also note the Commission's aspiration, set out in its Work Programme, that co-legislators should reach agreement on the Data Protection package by the end of year. Given that our last meeting before the Christmas recess is planned for Wednesday 16 December, we ask that consideration be given to providing us with as much detailed information as possible in advance of that last meeting, including draft texts, if clearance of the proposals or a scrutiny waiver will be sought. It is important that the Minister's responses continue to take account of the concerns outlined in the Opinion provided by the previous Justice Committee.**

2.6 **We note that the Government itself had "serious reservations" about the General Approach text of the draft Regulation, despite supporting it. We may have outstanding concerns on key issues such as the use of medical data for research purposes, the Right to be Forgotten, the One Stop Shop mechanism and Joint and Several liability of data controllers and processors.**

2.7 **As concerns documents (c), (d) and (e), we ask the Minister to update us, to the extent that she can, on the progress in the negotiations on the second Safe Harbour decision. In light of the Commission's estimate that the negotiations will be concluded in three months' time, we will continue to retain document (d) under scrutiny, but now clear (c) and (e).**

2.8 **We draw all the documents and this Report to the attention of the Culture, Media and Sport Committee, the Business, Innovation and Skills Committee, the Justice Committee and the Joint Committee on Human Rights.**

Full details of the documents: (a) Proposal for a Regulation on the protection of individuals with regards to the processing of personal data and the free movement of such data: (33649), 5853/12 + ADDs 1–2, COM(12) 11; (b) Proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties and the free movement of such data: (33646), 5833/12 + ADDs 1–2, COM(12) 10; (c) Commission Communication on *Rebuilding Trust in EU and US data flows*: (35608), 17067/13, COM(13) 846; (d) Commission Communication on the *Functioning of the Safe Harbour from the perspective of EU citizens and Companies Established in the EU*: (35609), 17069/13, COM(13) 847; (e) Commission Communication on the *Transfer of Personal data from the EU to the United States of America under Directive 95/46/EC following the judgment by the Court of Justice in Case C-362/14 (Schrems)*: (37262), 13819/15, COM(15) 566.

Background and previous scrutiny

2.9 Not long after the publication of the Data Protection package, our predecessors requested, received and endorsed an opinion[10] from the former Justice Committee. In brief, the former Justice Committee considered that the proposed Regulation (document (a)) in its original prescriptive form, would not produce a proportionate, practicable, affordable or effective system of data protection. That Committee also considered that the PCJ Directive (document (b)) as then drafted provided a weaker level of data protection to the data subject compared with the proposed Regulation. However, it recognised that the limited application of the PCJ Directive to the UK, due to Article 6a of Protocol 21 of the TFEU would beneficial as UK law enforcement authorities would not be bound by overly prescriptive requirements with respect to the domestic processing of data (which would continue to be covered by the Data Protection Act 1998).

2.10 A General Approach on document (a) was agreed at the 15 June JHA Council (before this Committee was formed) which the UK Government supported despite "serious reservations". The Government has since provided a fuller explanation of those reservations in relation to Right to be Forgotten,[11] the One-Stop-Shop Mechanism[12] and the nature of liability of data controllers and processors and sanctions. We were unconvinced that the unusual approach of supporting a text with "serious reservations" (as opposed to abstention or opposition) would lead to greater negotiating influence over the text in trilogues and asked the Government to provide us with evidence of this as trilogues progress.

2.11 Following a reallocation of departmental responsibility for data protection policy from the Ministry of Justice to the Department for Culture, Media and Sport, the Government supported a General Approach on the PCJ Directive at the 8-9 October JHA Council (during the Conference recess). In our last Report, we noted how the Government had now addressed the extent to which that General Approach met the concerns of the previous Justice Committee.

2.12 A full account of Commission Communications (c) and (d) is set out in our predecessors' Report of 12 February 2014.[13] They were produced in the light of the Snowden allegations that the communications of EU citizens had been monitored by US intelligence agencies. Both documents are linked by their focus on the importance of data sharing for the digital economy and the need to ensure adequate data protection for EU citizens in respect of data transfer to the US. Document (c) sets out the Commission's overarching strategy on restoring trust and adequate data protection for EU citizens on all transatlantic data flows, including those falling under the EU-US "Umbrella Agreement" concerning data sharing for law enforcement purposes, whilst document (d) is narrower in focus, comprising a review of the Safe Harbour Decision. The latter sets out a total of 13

10 Third Report, Justice Committee (2012–13), 24 October 2012.

11 This, according to the Commission, is the proposed right of data subjects, where they no longer want their data processed and there are no legitimate grounds for retaining it, to request and enforce deletion of that data by a data controller.

12 This mechanism, according to the Commission, aims to create consistency in the application of data protection law across the EU. In particular, that when the processing of personal data takes place in more than one member state, a single supervisory authority should be competent for monitoring all these activities, namely the authority of the member state where the controller or processor has its main establishment.

13 Thirty-sixth Report HC 83-xxxiii (2013–14), chapter 9 (12 February 2014).

recommendations, which the CJEU referred to in *Schrems*. In particular, it highlights three areas of concern relating to the lack of transparency of the privacy policies of US member companies and the uneven application and enforcement of the Principles.

The Minister's letter of 19 November 2015

2.13 The Minister first addresses progress in the negotiations of the second proposed "Safe Harbour" agreement:

> "I understand that Commissioner Jourova was in Washington last week to continue talks with the US authorities on 'Safe Harbor 2.0' We have not yet received any details on the outcome of that meeting or on how the negotiations more generally but will continue to seek information from both sides and will update you when there are significant developments to report."

2.14 She then considers progress in trilogues on two legislative proposals:

> "The UK has been provided with good access to both the Presidency and the Commission during the trilogue process. This maybe in part because of the decision to support the General Approach in June. That said, the trilogue process is notoriously opaque and it is difficult therefore to reach a clear assessment of the direction of travel. We do know, however, that many of the most controversial points in the text have not been addressed yet as the negotiators go for 'quick wins' and leave the difficult items for later. My officials continue to engage with Member States, the Presidency, the Commission and MEPs to promote our goals and to push for greater transparency. This is important since I understand that the intention is to conduct the last formal trilogue session on December 15. Again, I will inform you of developments as things progress."

2.15 The Minister then addresses our more specific question about the processing of NHS medical records for research or other purposes under the proposed Regulation:

> "The General Approach Council text does not prevent the processing of NHS medical records data for research purposes (article 5 1(b) and articles 81 and 83 are relevant). The European Parliament's text however, would appear to significantly restrict processing for research purposes. The UK has been very clear that the position under General Approach must be preserved and my officials have been working closely with NHS Europe and the Wellcome Trust to make this point in Brussels. I believe that this was the subject of discussion at trilogue last week but there has not yet been a readout of those discussions."

New document (e)

2.16 The negotiations on Safe Harbour 2, which began in January 2014, are ongoing but are estimated to complete in three months' time. The Commission highlights in this document that until Safe Harbour 2 is agreed, there are other tools permitted for the transfer of data to third countries which do not provide an adequate level of data

protection under the current Data Protection Directive:[14] Standard Contractual Clauses (SCCs) and Binding Corporate Rules (BCRs). Article 26(4) of the Directive allows the Commission to issue model clauses or SCCs which those transferring data to non-EU countries can use to fulfil the requirements set down by the Directive.[15] SCCs can also be approved by national Data Protection Authorities (DPAs). BCRs are internal rules (such as a Code of Conduct) adopted by multinational group of companies which define its global policy with regard to the international transfers of personal data within the same corporate group to entities located in countries which do not provide an adequate level of protection. BCRs, authorised by the national DPA, ensure that all transfers are made within a group benefit from an adequate level of protection. This is an alternative to the company having to sign SCCs each time it needs to transfer data to a member of its group.

2.17 In addition to identifying SCCs and BCRs as alternative tools to an adequacy decision, the Commission also outlines the various ways that personal data can be transferred to a third country under the derogations set out in Article 26(1) of the current Directive.

The Government's view on document (e)

2.18 In an Explanatory Memorandum of 24 November, the Minister comments:

> "This Commission Communication is not legally binding and does not have any policy implications. It was published in response to the Court of Justice of the EU's ruling on the Schrems case, and aims to provide guidance on the tools that can be used to transfer data to the US in the absence of an adequacy decision.
>
> "In light of the Schrems judgment, DCMS worked closely with the ICO to help businesses understand the implication of the Court's ruling. The ICO issued guidance on how to continue transferring data on its website. HMG Ministers are also encouraging the European Commission to conclude negotiations with the US on a robust Safe Harbor 2.0 which meets the conditions set out by the Court of Justice of the EU."

Previous Committee Reports

(a) and (b): Seventh Report HC 342-vii (2015–16), chapter 5 (28 October 2015); Fifth Report HC 342-v (2015–16), chapter 5 (14 October 2015); First Report HC 342-i (2015-16), chapter 41 (21 July 2015); Thirty-six Report HC 219-xxxv (2014–15), chapter 11 (11 March 2015); Thirty-first Report HC 219-xxx (2014–15), chapter 5 (28 January 2015); Twenty-second Report HC 219-xxi (2014–15), chapter 9 (26 November 2014); Twelfth Report HC 219-xii (2014–15), chapter 8 (10 September 2014); Forty-seventh Report HC 83-xlii (2013–

[14] 95/46/EC.

[15] Such as:

- Personal data should be collected only for specified, explicit and legitimate purposes;
- the persons concerned should be informed about such purposes and the identity of the data controller;
- the persons concerned should be informed about such purposes and the identity of the data controller;
- any person concerned should have a right of access to his/her data and the opportunity to change or delete data which is incorrect;
- If something goes wrong, appropriate remedies must be available to put things right, including compensation or damages through the competent courts.

14), chapter 14 (30 April 2014); Thirteenth Report HC 83-xiii (2013–14), chapter 24 (4 September 2013); Eighth Report HC 83–viii (2013–14), chapter 11 (3 July 2013); Third Report HC 83-iii (2013–14), chapter 15 (21 May 2013); Thirty-first Report HC 86–xxxi (2012–13), chapter 7 (6 February 2013); Twenty-sixth Report HC 86–xxvi (2012–13), chapter 11 (9 January 2013); Eighth Report HC 86–viii (2012–13), chapter 5 (11 July 2012); Fifty-ninth Report HC 428–liv (2010–12), chapters 7 and 8 (14 March 2012); (c) and (d): Seventh Report HC 342-vii (2015-16), chapter 5 (28 October 2015); Fifth Report HC 342-v (2015-16), chapter 5 (14 October 2015); First Report HC 342-i (2015-16), chapter 41 (21 July 2015); Thirty-sixth Report HC 219-xxxv (2014-15), chapter 11 (11 March 2015); Thirty-first Report HC 219-xxx (2014–15), chapter 5 (28 January 2015); Twenty-second Report HC 219-xxi (2014–15), chapter 9 (26 November 2014); Twelfth Report HC 219-xii (2014–15), chapter 8 (10 September 2014); Forty-seventh Report HC 83-xlii (2013–14), chapter 14 (30 April 2014); Thirty-sixth Report HC 83-xxxiii (2013–14), chapter 9 (12 February 2014); (e) None.

3 Network Information Security across the EU

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Business, Innovation and Skills Committee
Document details	Draft Council Directive to ensure a high common level of network and information security across the European Union
Legal base	Article 114 TFEU; ordinary legislative procedure; QMV
Department	Culture, Media and Sport
Document Numbers	(34685), 6342/13 + ADDs 1–2; COM(13) 48

Summary and Committee's conclusions

3.1 The proposed Directive, of early 2013, aims to put measures in place in order to avert or minimise the risk of a major attack or technical failure of information and communication infrastructures (ICT) in Member States.

3.2 In essence, it aims to put measures in place in order to avert or minimise the risk of a major attack or technical failure of information and communication infrastructures (ICT) in Member States. It includes:

— obliging all Member States to produce a national cyber security strategy, including establishment of "competent authority" and a Computer Emergency Response Team (CERT) in each Member State;

— mandating information sharing between Member States, as well as establishing a pan-EU cooperation plan and coordinated early warnings and procedure for agreement of EU coordinated response for cyber incidents;

— promoting the adoption of good risk management practices by the private sector through expanding the requirement of obligatory security breach disclosure (currently imposed only upon the telecoms sector) to the finance, energy, transport and health sectors, as well as to "providers of internet society services"; and

— encouraging the take up of cyber security standards, with possible harmonisation measures being taken by the Commission.[16]

3.3 As of last November, on the two outstanding issues of *scope* (much the more important) and *operational cooperation*, differences of view still obtained between the UK and some other Member States — with the European Parliament (EP) seemingly in their camp — and the Commission and some other Member States.

3.4 In January 2015, the Minister for Culture and the Digital Economy at the Department for Culture, Media and Sport (Mr Edward Vaizey) then said that "some considerable differences" had emerged between the positions of the Council and the EP on which businesses should be included within the Directive's scope. The Council wished to focus on those businesses that provided critical services on whose networks a cyber-incident would cause major disruption to society or the economy; and only Member States were in the position to identify these businesses at a national level — retaining these two principles within the text was of utmost importance to the Government.

3.5 On the other hand, the EP wanted to include all businesses within the sectors identified in the Directive (the original list included energy, transport, health, finance, banking and digital services; see "Background" for detail) with an exception for micro-enterprises. The Latvian Presidency intended to schedule sufficient time at working group level to debate this issue of scope and critical infrastructure and also to reach agreement on the unresolved issue of whether digital services should be included. The Minister firmly believed that such businesses should not be included within the scope of the Directive; this pause in proceedings would "give us sufficient time to properly consider any possible compromise text".

3.6 The Minister then reported in March 2015 that:

— in order to bridge the gap between the Council and the Parliament the Presidency had "suggested some stronger criteria for Member States to use when determining which companies would fall within scope", which he believed "would be sufficiently flexible for there to be minimal change to the way that the UK currently identifies critical operators";

— though the UK had pushed extremely strongly to exclude digital services from the scope of the Directive and had some support for this position in Council, "we have encountered strong opposition from those countries that want digital services included in the final agreement";

[16] See "Background" below for further detail.

— in order to reach a compromise, the Presidency had suggested reducing the list of digital sectors so that it would include search engines, e-commerce platforms and cloud computing services but exclude e-payment gateways, application stores and social media;

— given this reduction and the important concession that it would be up to Member States to identify which companies should be in or out of scope, he considered this to be a considerable narrowing of scope;

— his officials would also be working closely with their counterparts in the EP to encourage them to stick to their position that digital services should be entirely out of scope during the informal trilogue; and

— the third informal trilogue would take place "at some point in late March".

3.7 The Minister then:

— said that, given the upcoming election, it would be impossible to communicate the detail of any informal agreement to the Committee before Parliament was prorogued;

— listed the changes secured to the original text during the course of the negotiation, which he hoped that the Committee would agree were important; and

— asked the Committee to release the file from scrutiny in order for the Government to take part in the formal vote on the Directive, which he expected to take place in early summer.

3.8 In a subsequent press release of 11 March 2015, the Council confirmed that the Latvian presidency was "ready to resume informal trilogue meetings with the European Parliament with a view to reaching a deal on a draft directive on network and information security", on the basis of a mandate agreed by the Permanent Representatives Committee on 11 March 2015; that the trilogue would be the first one on this proposal under the current presidency and the third one in total; and that the meeting was scheduled to take place in late April, as requested by the EP.[17]

The then Committee's assessment

3.9 The then Committee again commended the Minister for the openness that had characterised his approach to this difficult dossier, which they regarded as worthy of wider study, as "best practice", by the Cabinet Office and scrutiny teams across Whitehall.

3.10 However, there was still much uncertainty about important elements of what remained of the original text. The EP had changed its tune before. By early summer, there would be not only a new Government but also a new Committee. And even if there were one but not the other, the new Committee would be interested in the final outcome.

[17] The press release also contained a summary of the objectives of the Directive, of the proposed rules being negotiated with the European Parliament and of the purported benefits to consumers and citizens. See Network and information security: presidency re-launches talks with EP for details.

3.11 The then Committee was therefore unable to accede to the Minister's request for scrutiny clearance. However, they recognised that, in the circumstances, it might well be impossible for the Minister to submit the final text of the draft Directive to its successor for scrutiny prior to a formal vote in Council. That being so, they professed themselves confident that their successors would not object to the Minister agreeing to its adoption, should he (or his successor) decide that it was in the national interest so to do.

3.12 But they expected nonetheless that the Minister, or his successor, would deposit any final text along with a fresh Explanatory Memorandum, outlining its provisions in detail, and explaining why he (or she) voted as he (or she) did at the end of the day.

3.13 In the meantime, they continued to retain the document under scrutiny.[18]

3.14 The Minister then wrote in early September. The EP had broadly accepted the Council's fundamental principles — that the decision as to whether a company provided an "essential service" or not should be left up to Member States, and that this list had national security implications and therefore could not be publicly disclosed. The Minister judged that concessions made in exchange on operational cooperation would not "impact on how the UK currently identifies its Critical National Infrastructure", and that this compromise represented "an acceptable outcome for the UK".

3.15 With regards to the "internet enablers" (see "Background" for definition), the Presidency's new "principles based" and "much lighter-touch approach" would result in consistent rules for digital companies across the EU and avoid the patchwork approach about which he was previously concerned. The Presidency's paper also included an option for voluntary reporting of network incidents and suggested reducing the number of sectors included in scope. From contact with Parliamentarians, the Minister believed that the paper was close to a position that the EP could accept. Further discussion during September would inform the drafting of a detailed legal text which would "then be submitted to the European Parliament for consideration".

3.16 Though disappointed that the majority of Council was not amenable to removing digital sectors from scope altogether, the Minister judged that the Presidency's paper set out "sensible principles that will significantly reduce the regulatory burden on these types of businesses". His final judgement, however, would depend on the detailed text that emerged from the Council working group discussions; he undertook to write again, "outlining this detail when it has been agreed" (see "Background" for further details).

3.17 The Minister now says that the working group has developed a text on the role that digital service providers will play that meets his "light touch/consistent across the EU" objectives, based on the following principles:

- exclusion of companies with under 50 employees;
- the digital service provider will have a relationship with one supervisory Member State only, not with all the countries to which they offer services;

[18] See Thirty-seventh Report HC 219-xxxvi (2014–15), chapter 5 (18 March 2015).

- a separate Annex for digital service to clarify that they should be treated differently to the "essential" infrastructure operators;
- companies will be able to identify the security measures that are appropriate and proportionate to manage the risks posed;
- notification of only the most "substantial" incidents; and
- light touch supervision only when "evidence" of non-compliance is presented to a Member State.

3.18 Stakeholders (unspecified) have confirmed that this text is "a notable improvement on the previous approach". The Minister is "content" that this will provide "the necessary safeguards to avoid a patchwork of different rules for digital companies across the EU" and "represents a much lighter approach than the original text"; all in all, the Minister believes most companies will be able "to retain the security approach that they already have in place, considerably reducing the regulatory burden on them".

3.19 Looking ahead, the Minister says that the Presidency is "planning to informally test this new text with the European Parliament in late November to take on board their feedback". Nevertheless, "[t]here are still a few outstanding areas that will require further discussion and negotiation, for example the legal definition of the digital service providers". However, "[g]iven the progress secured by the Luxembourg Presidency I expect that Council will be asked to formally endorse a final text of the Directive in the New Year" (see "Background" for further details).

3.20 **The matters uppermost in our mind revolve around two issues. Firstly, the final *scope* of the proposed Directive, where — as the Minister makes clear — still further discussion and negotiation is required, for example the legal definition of the digital service providers.**

3.21 **Secondly, *the negotiating process*. As long ago as March 2014, the European Parliament (EP) adopted a First Reading position. Then, a year later, the Minister was anticipating agreement during the prorogation based on a much-changed text (see above). Instead, there have been a number of subsequent "informal" exchanges involving the Presidency, the relevant Council working group, the Commission and the EP, with a further one in prospect, "informally" testing the latest text and with the "feedback" then to be taken into account. Somewhere along this timeline the Minister seemingly expects all the remaining uncertainties to be resolved, such that a formal Council position can be adopted in the New Year — with a view to adoption of the proposal at its second reading.**

3.22 **The process is opaque. In the first instance, the Committee would like the Minister to write to us again as soon as the informal testing of the new text with the EP has been completed, outlining how matters then stand and what his expectations are on timing and process.**

3.23 **Then, in due course, we shall need to hear from the Minister, via the depositing of a final text under cover of a fresh Explanatory Memorandum, explaining precisely what is now within the scope of the Directive and how it will affect the UK enterprises thus**

involved, and outlining the general benefits to the UK as well as the EU. Given the lack of clarity at this juncture, it is difficult to say precisely when that should be, other than well before it goes to the Council; whether that be for endorsement of its formal first reading position; or if there is to be agreed, at that level, a text for further negotiation (as opposed to "testing") with the EP. This is to enable any questions that may continue to arise to be dealt with prior to that Council meeting.

3.24 **We also ask the Minister to look backwards, along the negotiating process this year, and explain how it was conducted; in particular, at which stages decisions were taken in COREPER, and whether and to what extent he himself was involved in giving COREPER direction or guidance before the process moved to the next stage.**

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

3.26 **We also draw these developments to the attention of the Business, Innovation and Skills Committee because of the importance of the central issue — protecting critical digital and digitally-dependent infrastructure — and the fact that the "end game" is now clearly in prospect.**

Full details of the documents: Draft Directive concerning measures to ensure a high common level of network and information security across the Union: (34685), 6342/13 + ADDs 1–2, COM(13) 48.

Background

3.27 The Commission's starting point was that the NIS Directive should cover "key internet enablers, i.e. those players whose services, delivered through the internet, empower key economic and social activities". The Commission thus originally proposed to extend the obligation to report significant cyber incidents to:

— key internet companies (e.g. large cloud providers, social networks, e-commerce platforms, search engines);

— the banking sector and stock exchanges;

— energy generation, transmission and distribution;

— operators of air, rail and maritime transport and logistics;

— health; and

— public administration.

3.28 These sectors are "the ones for which the importance to ensure cybersecurity is widely recognised". Hardware manufacturers and software developers are exempted; ditto specific sectors or sub-sectors (e.g., insurance, water, food supply). Internet Service Providers or the network owners already report incidents under the risk management and incident reporting obligations under the EU Telecom Framework Directive, where the European Network and Information Security Agency plays the central role (see ENISA). News agencies and publishers, even when they provide IT and/or online services, are not covered; they are "not key internet enablers like large eCommerce or cloud platforms,

booking engines or social networks. Neither are Web browsers like Mozilla Firefox or websites like Wikipedia or content management systems like Wordpress".

3.29 To ensure that companies do not end up dealing with 27 systems for reporting breaches, common reporting systems would be developed through implementing measures. Specific templates could also be developed by ENISA, which had already brought together national regulators to develop harmonised national measures for risk management and incident reporting as part of the EU telecoms rules.

3.30 The Commission was not a standard-setting body; the proposed Directive aimed to lift the quality and assurance of cybersecurity, not impose any specific technical standards or mandate particular technological solutions.

3.31 The proposed Directive does, however:

> "impose the take-up of a minimum level of security by obliging critical infrastructure operators, key internet companies and public administrations to manage risks and report significant incidents. It also details a minimum set of NIS capabilities which Member States are required to put in place (e.g. a well-functioning Computer Emergency Response Team (CERT) which is adequately staffed and resourced). Member States are free to go beyond and adopt or maintain stricter security requirements."[19]

3.32 In the 18 months since the draft Directive first emerged, a number of contentious issues were satisfactorily resolved, and have been reported to the House (see the previous Committee's several Reports for details).[20]

The Minister's letter of 2 September 2015

3.33 The Minister) says that whilst the issue of "scope" had not yet been concluded, "progress has been made over the last couple of months".

3.34 He continued thus:

> "In terms of which infrastructure companies should fall within scope of the Directive, the European Parliament has broadly accepted the Council's fundamental principles that the decision as to whether a company provides an 'essential service' or not should be left up to Member States and that this list has national security implications so cannot be publicly disclosed. In exchange, the Council has agreed to provide more clarity on the role of the cooperation group in discussing companies that offer services in more than one Member State and to send publicly available information on their selection processes to the Commission. I do not believe that

[19] For the full Commission summary of the draft Directive, see Proposed Directive on Network and Information Security – frequently asked questions of 7 February 2013.

[20] See Sixteenth Report HC 219-xvi (2014–15), chapter 1 (29 October 2014); Fifteenth Report HC 219-xv (2014–15), chapter 1 (22 October 2014); Thirteenth Report HC 219-xiii (2014–15), chapter 6 (15 October 2014); Twelfth Report HC 219-xii (2014–15), chapter 4 (10 September 2014); First Report HC 219-i (2014–15), chapter 2 (4 June 2014); Thirty-fifth Report HC 86-xxxv (2012–13), chapter 6 (13 March 2013); Fortieth Report HC 86-xxxix (2012–13), chapter 4 (24 April 2013); Forty-fifth Report HC 83-xl (2013–14), chapter 2 (2 April 2014); also see (34680), 6225/13: Thirty-fifth Report HC 86-xxxv (2012–13), chapter 3 (13 March 2013).

these concessions will impact on how the UK currently identifies its Critical National Infrastructure and so this compromise represents an acceptable outcome for the UK.

"With regards to the internet enablers, in July the Presidency produced a principles based document that sets out a much lighter-touch approach to these companies. If accepted by Council, these principles would result in consistent rules for digital companies across the EU and would avoid the patchwork approach that I was previously concerned about. The paper also includes an option for voluntary reporting of network incidents and suggests reducing the number of sectors included in scope.

"This paper will be discussed by Council during September. These discussions will then inform the drafting of a detailed legal text which will then be submitted to the European Parliament for consideration. From contact with Parliamentarians, I believe that the Presidency's paper is close to a position that the European Parliament could accept.

"Whilst it is disappointing that the majority of Council was not amenable to removing digital sectors from scope altogether I judge that the Presidency's paper sets out sensible principles that will significantly reduce the regulatory burden on these types of businesses. My final judgement of whether this approach would be acceptable to the UK will depend on the detailed text that emerges from the Council working group discussions in September. I will write to the Committee outlining this detail when it has been agreed."

The Minister's letter of 19 November 2015

3.35 Recalling his concerns that any obligations on digital service providers should be "light touch and consistent across the EU", the Minister says that discussions in the working group since early September have "moved the negotiation in a positive direction", such that it has developed a text for digital service providers that meets these objectives based on the following principles:

- "exclusion of micro and small enterprises (i.e. companies with under 50 employees);
- "the digital service provider will have a relationship with one supervisory Member State to avoid complicated supervisory relationships with all the countries that they offer services to;
- "a separate Annex for digital service to clarify that they should be treated differently to the 'essential' infrastructure operators;
- "companies will be able to identify the security measures that are appropriate and proportionate to manage the risks posed, I believe that this will enable most companies to retain the security approach that they already have in place, considerably reducing the regulatory burden on them;
- "notification of only the most 'substantial' incidents;

- "light touch supervision only when 'evidence' of non-compliance with the Directive is presented to a Member State."

3.36 The Minister then continues as follows:

> "Discussions with stakeholders have confirmed that they believe that this text is a notable improvement on the previous approach. I am content that this will provide the necessary safeguards to avoid a patchwork of different rules for digital companies across the EU and represents a much lighter approach than the original text."

3.37 Looking ahead, the Minister says:

> "The Presidency is planning to informally test this new text with the European Parliament in late November to take on board their feedback. There are still a few outstanding areas that will require further discussion and negotiation, for example the legal definition of the digital service providers.
>
> "Given the progress secured by the Luxembourg Presidency I expect that Council will be asked to formally endorse a final text of the Directive in the New Year."

Previous Committee Reports

Thirty-seventh Report HC 219-xxxvi (2014–15), chapter 5 (18 March 2015); Sixteenth Report HC 219-xvi (2014–15), chapter 1 (29 October 2014); Fifteenth Report HC 219-xv (2014–15), chapter 1 (22 October 2014); Thirteenth Report HC 219-xiii (2014–15), chapter 6 (15 October 2014); Twelfth Report HC 219-xii (2014–15), chapter 4 (10 September 2014); First Report HC 219-i (2014–15), chapter 2 (4 June 2014); Thirty-fifth Report HC 86-xxxv (2012–13), chapter 6 (13 March 2013); Fortieth Report HC 86-xxxix (2012–13), chapter 4 (24 April 2013); Forty-fifth Report HC 83-xl (2013–14), chapter 2 (2 April 2014); also see (34680), 6225/13: Thirty-fifth Report HC 86-xxxv (2012–13), chapter 3 (13 March 2013).

4 National Emissions Ceilings

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; but scrutiny waiver granted
Document details	Proposed Directive on the reduction of national emissions of certain atmospheric pollutants and amending Directive 2003/35/EC
Legal base	Article 192(1)TFEU; ordinary legislative procedure; QMV
Department	Environment, Food and Rural Affairs
Document Numbers	(35693), 18167/13 + ADDs 1–7, COM(13) 920

Summary and Committee's conclusions

4.1 The National Emissions Ceiling Directive (2001/81/EEC) led to reductions in emissions of the main atmospheric pollutants, but significant adverse health and environmental impacts still remained. The Commission put forward this proposal in December 2013 in order to address those impacts, and to align EU law with new international commitments. However, as the Commission had not provided an assessment of the impact of the new measures, and the Government had said it would be undertaking its own analysis, our predecessors decided on 29 January 2014 to retain the document under scrutiny, pending further information.

4.2 During the course of 2014, they received from the Government information on the estimates which the Commission had subsequently provided on the cost and benefits, and on the UK's own estimates (which put the benefits at broadly the same level as the Commission, but believed that the cost could be considerably higher). The Government then wrote on 14 January 2015 to say that the proposal would be modified as part of the legislative follow-up to the 2030 Climate and Energy Agreement, and this was followed by another letter on 25 February, which said that the Commission had suggested some changes to the ceilings previously proposed for 2030, and had also given an updated impact analysis for both the EU as a whole and for the UK (although, in the latter case, UK officials were continuing their own analysis). The Government also said that the European Parliament (EP) (was progressing its consideration, and that its lead committee was expected to vote on a draft report before the summer. In view of this, it concluded by asking whether, given the limited time before the dissolution of Parliament, the document could be released from scrutiny.

4.3 In their Report of 18 March 2015, our predecessors said that they would have found it helpful to have been given more detailed information about the ceilings now proposed for 2030, and that, before taking a view, they would also like to see the results of the Government's own analysis of the proposal. Given this, and the general importance of the proposal, they said that they did not think it would be right to release the document from scrutiny at that stage, but, as they did not wish to unduly fetter the Government's negotiating freedom during the Election period, they said that they would be willing to grant a waiver, subject to the Government providing further information as the negotiations progressed.

4.4 We ourselves have since received several updates, the most recent in a letter of 18 November 2015, which suggests that, as a result of a helpful plenary vote in the EP on 28 October, the Luxembourg Presidency has been prompted to push for agreement on a General Approach at the Environment Council on 16 December. In the meantime, the latest version of the Council text incorporates many of the points put forward by the UK, the main outstanding issue being the ceilings proposed for 2030, where the Government has been pressing for adjustments to deliver real reductions in emissions, whilst being realistic, proportionate and evidence-based, believing that relatively small changes could significantly reduce the cost of the proposals to the UK.

4.5 The Government has also said that it expects the Commission to present revised ceilings, which it hopes will be very close to those put forward by the UK, and to what

would be needed if it is to support a General Approach. It has therefore asked if we now have sufficient information to clear the proposal, and so strengthen its negotiating position.

4.6 **We are grateful to the Government for its updates, from which we note that it expects a text close to the UK position to be presented shortly. The Government has asked if we could now grant scrutiny clearance to provide it with maximum negotiating freedom if there is a move to agree a General Approach in the Council on 16 December. We were of course pleased to see that changes acceptable to the UK have been proposed, but we also note that there is still a considerable difference between the Commission's cost estimates and those of the Government: and, whilst the Government believes that relatively small changes to the ceilings proposed could significantly reduce the cost so far as the UK is concerned, we are reluctant to clear the proposal whilst uncertainty remains on such an important aspect of it. However, in order not to unduly fetter the Government's negotiating position at the forthcoming Council, we are willing to grant a further scrutiny waiver, subject to the Government informing us of the outcome of that meeting.**

Full details of the document: Proposed Directive on the reduction of national emissions of certain atmospheric pollutants and amending Directive 2003/35/EC: (35693), 18167/13 + ADDs 1–7, COM(13) 920.

Background

4.7 In its Communication[21] setting out a *Clean Air Programme for Europe*, the Commission noted that, in order to reduce air pollution and comply with the provisions of the Gothenburg Protocol to the Convention on Long-range Transboundary Air Pollution (CLRTAP), the National Emissions Ceilings Directive (2001/81/EEC) had required Member States to establish national programmes and emissions inventories to limit their emissions of the main pollutants from 2010 onwards. However, although these had given rise to a range of reductions, significant adverse health and environmental impacts remained.

4.8 The Commission accordingly put forward this draft Directive in December 2013. It seeks to address these impacts, and to align EU law with new international commitments arising from an amendment to the Gothenburg Protocol adopted in 2012. As our predecessors noted in their Report of 29 January 2014, the proposal laid down more detailed conditions for national plans and inventories, and set out new national emission reduction commitments, to be met by 2020 and beyond. Thus, new ceilings would apply from 2020 and 2030 for sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds (NMVOC), ammonia and fine particulate matter (P_{25}), as well as a new ceiling for methane for 2030, and Member States would be required to limit their annual emissions of these pollutants in 2025 to levels consistent with a linear trajectory between 2020 and 2030, unless this would entail disproportionate costs. The proposal also stipulated the measures to be taken to control emissions of ammonia from agriculture and black carbon (a component of particulate matter, which is a short lived climate pollutant).

[21] See: (35690), 18155/13: Thirty-third Report HC 83-xxx (2013–14), chapter 13 (29 January 2014).

4.9 In addition, the proposal sought to address some of the perceived shortcomings in the implementation of the current Directive by providing for Member States to adopt national air pollution control programmes describing how their ceilings will be met, and for enhanced co-ordination between emission reductions and air quality as well as climate change and biodiversity protection. However, as the impact assessment published by the Commission had related to the over-arching Clean Air Programme, and not to individual measures within the package, or their impact on the UK, our predecessors noted that the Government would be undertaking its own analysis of the impact. They therefore decided to retain the document under scrutiny, pending further information.

4.10 The Committee subsequently received a number of updates from the Government. The first, on 10 April 2014, said that the Commission had now provided estimates of the costs and benefits of the new limits for each Member State, and had suggested that annual costs in the UK in 2030 would be €0.3 billion (£0.2 billion) and the health benefits some €3.8 billion (£2.6 billion). However, the Government added that it was important to understand the Commission's assumptions, how the impacts would be distributed between sectors and businesses, and possible non-quantified costs and benefits, and that officials would be meeting the Commission to discuss these issues.

4.11 A further update on 9 July 2014 said that the Commission had undertaken to refine its figures, and that, in parallel, the UK had been continuing its own analysis. This suggested that annualised health benefits would be in the region of €3.7–5.0 billion (£2.6-3.5 billion) (with around half being attributable to emission reductions in other Member States), and that there would also be environmental benefits. However, it went on to note that, whilst these figures were broadly in line with those of the Commission, the Government estimated that the cost could be considerably higher.

4.12 The Government next wrote on 15 January 2015, noting that the Commission Work Programme for 2015 had said that the proposal would be modified as part of the legislative follow up to the 2030 Climate and Energy Agreement, and that the UK would be seeking further clarification about the implications. This was followed by a letter of 25 February, saying that the Commission had recently updated its impact analysis, and had suggested some changes to the ceilings proposed for 2030, which would make those for nitrogen oxides, particulate matter, sulphur dioxide and ammonia more stringent. It had also calculated that the annual cost for the EU-28 would fall from €3.3 billion (£2.3 billion) to €2.2 billion (£1.55 billion), with a corresponding fall for the UK from €303 million to €173 million (£213 million to £122 million) (although the Government was continuing its own analysis of the proposal, based on UK evidence).

4.13 More generally, the Government also said that the EP was considering the proposal, with the lead committee (ENVI) expected to publish a draft report in mid-March, and to vote on it before the summer. In the meantime, officials were flagging up UK concerns, but, given the limited time before the dissolution of Parliament and General Election, it was keen for this document to clear Parliamentary scrutiny at the earliest opportunity, and expressed the hope that it had provided sufficient information for this.

4.14 In the event, our predecessors said in their Report of 18 March 2015 that they would first like to have more detailed information about the ceilings now proposed for 2030, to know whether the Government agreed with the Commission's latest cost and benefit

figures, and to see the Government's own analysis. However, in order not to fetter the Government's negotiating freedom before a successor Committee had been appointed, they did grant a scrutiny waiver, whilst making it clear that they expected the Government to provide further information as the negotiations progressed.

Subsequent developments

4.15 As a consequence, we ourselves have received several updates from the Parliamentary Under-Secretary at the Department for Environment, Food and Rural Affairs (Rory Stewart), outlining the recent course of discussions in the Council and EP.

4.16 As a result, the current position would appear from his letter of 18 November to be as follows:

- in contrast to the position taken in the relevant EP Committees, a plenary vote supported the ceilings proposed by the Commission, weakened a move by the Environment Committee to have binding ceilings for 2025, largely removed methane from the proposal, required the Commission to carry out an impact assessment to consider the inclusion of mercury, provided for the Commission to review the ammonia ceiling in 2022 (and, if appropriate, to consider further ceilings after 2030), and set out specific measures for Member States to consider in order to reduce emissions of NOx and particulate matter;

- these changes address a number of UK concerns that the amendments proposed by the Environment Committee would have significantly increased the cost of the proposal;

- they have also prompted the Luxembourg Presidency to push for a General Approach at the Environment Council on 16 December, although the Government says will be extremely challenging; and

- in the meantime, the latest version of the Council text incorporates many of the points advanced by the UK, notably by deleting methane from the proposal and removing a provision which would have allowed emissions to be offset against those from international shipping (thereby ensuring consistency with the Gothenburg Protocol).

4.17 The Minister adds that the ceilings for 2030 remain the main outstanding element, where he recalls that the Government has pushed throughout for adjustments to ensure that these deliver real reductions in emissions, whilst being set at a level which is realistic, proportionate and evidence-based. He says that, like the Commission, the Government estimates the air quality benefits to be around £3–4 billion a year, with further non-monetised benefits to ecosystems, but that, whereas the Commission estimates the costs of the proposal would be €173 million (£122 million) a year, the UK analysis shows that the ceilings proposed by the Commission could cost €1.2–1.9 billion (£844 thousand to £1.3 billion) to meet, and in some cases could not be met at all.

4.18 The Minister goes on to say that the high cost and achievability of these ceilings is a key issue for the UK. He has therefore been pressing for changes to those proposed for sulphur dioxide, nitrogen oxides, ammonia and fine particulate matter (P_{25}) so as to

ensure that these are set at proportionate and economically efficient levels, his view being that relatively small changes could reduce the costs of the proposal to the UK to around £100 million a year, whilst still ensuring annual benefits of £2–3 billion. He also says that, in response to the concerns raised by Member States, the Commission is expected to present revised ceilings, which he hopes will be very close to those put forward by the UK, and to what is needed if the UK is to support a General Approach on the proposal.

4.19 The Minister summarises the position by saying that he believes that overall the negotiations are moving in the right direction, and that the Council position is likely to represent a substantial improvement for the UK as compared with the original proposal. He also says that, in view of the limited time before the December Council, he is keen that the proposal should clear Parliamentary scrutiny at the earliest opportunity, and hopes that we have now have sufficient information to do that and so support the negotiating position he has outlined.

4.20 The attached Annex shows the percentage emission reduction commitments as compared with 2005 (a) for the EU as a whole and (b) the UK which would arise from (i) the Commission's original proposal, (ii) its updated proposal in January 2015, and (iii) the proposal put forward by the UK in September 2015.

Previous Committee Reports

Thirty-third Report HC 83-xxx (2013–14), chapter 4 (29 January 2014) and Thirty-seventh Report HC 219-xxxvi (2014–15), chapter 11 (18 March 2015).

Annex: Percentage emission reduction commitments compared with 2005

(a) the EU as a whole and (b) the UK from (i) the original Commission proposal. (ii) the Commission's updated proposal in January 2015, and (iii) the proposal put forward by the UK in September 2015

	Sulphur dioxide		Nitrogen oxides		NMVOC		Ammonia		Particulates		Methane
	2020-2029	2030+	2020-2029	2030+	2020-2029	2030+	2020-2029	2030+	2020-2029	2030+	2030+
(a) EU											
(i)	59%	81%	42%	69%	28%	50%	6%	27%	22%	51%	33%
(ii)	59%	81%	42%	65%	28%	46%	6%	25%	22%	54%	
(b) UK											
(i)	59%	84%	55%	73%	32%	49%	8%	21%	30%	47%	41%
(ii)	59%	89%	55%	74%	32%	39%	8%	24%	30%	53%	
(iii)	59%	84%	55%	70%	32%	39%	8%	11%	30%	46%	

5 School milk and fruit schemes

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information awaited; but scrutiny waiver granted
Document details	(a) Proposed Regulation regarding aid schemes for the supply of fruit and vegetables, bananas and milk in educational establishments; (b) Proposed Regulation regarding the fixing certain aids and refunds related to the common organisation of the markets in agricultural products; (c) Impact Assessment accompanying proposed Regulation regarding the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments; (d) Summary of the Impact Assessment accompanying proposed Regulation regarding the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments
Legal base	(a) Articles 42 and 43(2) TFEU; ordinary legislative procedure; QMV; (b) Article 43(3); QMV; (c) and (d) —
Department	Environment, Food and Rural Affairs
Document Numbers	(a) (35785), 5958/14, COM(14) 32; (b) (35786), 6054/14, COM(14) 31; (c) (35787), 6059/14 + ADDs 1–2, SWD(14) 28; (d) (35788), 6062/14, SWD(14) 29

Summary and Committee's conclusions

5.1 The main aim of the EU School Milk and Fruit Schemes is to increase consumption of these products in the short term, whilst having an educational influence on eating habits in the long term. However, there have been a number of differences between them in the funding and distribution arrangements, the level of EU contribution, and the involvement of Member States. In view of this, and of evidence that consumption of these products had been declining in the face of competition from convenience foodstuffs, a number of changes were made in the context of the reform of the Common Agricultural Policy (CAP) in 2013.

5.2 Nevertheless, the two Schemes continued to remain separate, and the Commission put forward in January 2014 a proposal (document (a)) that a common legal and financial framework should be established for the distribution of fruit and vegetables and of milk to schoolchildren, based largely on those aspects of the two Schemes which were considered to have worked well. These included a greater focus on the two core products, introducing separate budgetary envelopes for allocation between Member States, and establishing thresholds for supporting educational measures.

5.3 In their Report of 12 March 2014, our predecessors noted that, whilst the UK had not participated in the School Fruit Scheme, it had been actively involved in that for School

Milk (and indeed had provided top up subsidies for schools receiving EU funds), and had welcomed the Commission's proposals in principle. However, as the Government had said that it would be examining the proposal further in order to ensure that it would improve implementation and provide better value for money, they decided to hold the documents under scrutiny, pending further information.

5.4 The Government has since provided a number of progress reports, charting the course of the negotiations and identifying the main issues for the UK. In its most recent update, it says that the text now on offer is satisfactory as regards the four main outstanding policy aspects (the budgetary ceilings, the allocation of aid between Member States, product eligibility, and the funding of educational measures), but that there is an unresolved issue regarding the legal base. The Commission had proposed that this should be Article 43(2) TFEU, involving joint adoption by the Council and EP, but the Council Legal Service has said that the fixing of subsidies and aid rates falls within the exclusive competence of the Council under Article 43(3), whereas the EP has made it clear that it will not proceed with the negotiations unless it is given a joint role in deciding the overall budget, its distribution between Member States, and the basis on which they may transfer aid between the two schemes.

5.5 The Government has also said that, this legal issue apart, the EP had largely supported the proposal, which was now unlikely to change significantly, and could be put to a formal vote in the Agricultural Council on 14–15 December. It has therefore asked for scrutiny clearance in order to achieve the best possible outcome, but has stressed that, given the possible implications for other proposals, it will not compromise on the question of the Treaty base without the endorsement of the Council Legal Service.

5.6 **We are grateful to the Government for this update, and have noted the current position within the Council and the request for scrutiny clearance. However, we would hesitate to release the documents from scrutiny, whilst the issue of the legal base remains unresolved, bearing in mind the Government's comment that an inappropriate transfer of powers to the EP could have wider implications. That said, we are sympathetic to the need for the Government to have as much negotiating flexibility as possible to achieve a satisfactory outcome, and we are therefore prepared to grant a scrutiny waiver, subject to the Government informing us of the outcome of the Council.**

Full details of the documents: (a) Proposed Regulation amending Regulation (EU) No. 1308/2013 and Regulation (EU) No. 1306/2013 as regards aid schemes for the supply of fruit and vegetables, bananas and milk in educational establishments: (35785), 5958/14, COM(14) 32; (b) Proposed Council Regulation amending Regulation (EU) No. 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products: (35786), 6054/14, COM(14) 31; (c) Commission Staff Working Document: Impact Assessment accompanying proposed Regulation amending Regulation (EU) No. 1308/2013 and Regulation (EU) No. 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments: (35787), 6059/14 + ADDs 1–2, SWD(14) 28; (d) Commission Staff Working Document: Summary of the Impact Assessment accompanying proposed Regulation amending Regulation (EU) No. 1308/2013 and Regulation (EU) No. 1306/2013

as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments: (35788), 6062/14, SWD(14) 29.

Background

5.7 The EU has had in place two similar instruments specifically targeting children:

- the School Milk Scheme, through which grants have been available since 1977 for the sale of reduced-rate milk products in schools; and
- the School Fruit Scheme, which has co-financed the distribution of fruit and vegetables in schools since the 2009–10 school year.

5.8 The Milk Scheme in particular was originally seen as a way of disposing of surplus stocks, but the Commission gradually came to identify better nutrition as the main objective, with the aim of both Schemes being to increase or maintain the consumption of these products in the short term, whilst having an educational influence on eating habits in the long term. However, there have been a number of significant differences between them, notably:

- Aid for school milk has been a fixed-rate EU subsidy with a maximum eligible quantity per school day and per pupil, but there has been no budgetary ceiling, the EU contribution having been based on the sum of the eligible applications received. There is no obligation on Member States to contribute, and each educational establishment decides whether or not to take part: also, although the scheme may take a number of different forms, there are three main models — subsidies for milk products included in canteen meals; and milk sold outside canteens either at a reduced price, or distributed free of charge; and
- EU aid for fruit and vegetables (including processed fruit and vegetables and banana products) has been based on a single distribution model, and has accounted for 50% of the cost of the produce distributed (including certain associated charges), with the remainder usually being financed by the Member States. An overall budget ceiling of €90 million (£63 million) has been shared among the participating Member States, with each Member State free to decide how to divide its national allocation among potential applicants. However, this support has been conditional on the mandatory adoption of accompanying educational measures, (which, although ineligible for EU funding, have been considered a crucial part of the scheme).

5.9 Although the School Fruit Scheme sought to take on board some of the criticisms made of the School Milk Scheme, a number of subsequent external evaluations, including a Special Report[22] by the Court of Auditors in 2011, concluded that, although the underlying rationale of the two Schemes was still relevant, consumption — particularly of fruit and vegetables — had continued to decline in the face of increased preferences for highly processed and convenience food stuffs. Furthermore, this tendency was expected to persist, with children, particularly in urban areas, becoming increasingly disconnected from food

[22] See (33301) 16099/11: HC 428-xlii (2010–12), chapter 21 (23 November 2011).

traditions and methods of production. It was also suggested that the impact of the Schemes, both in encouraging consumption in the short term, and in bringing about a longer term change in eating habits, had been limited, and that this required certain weaknesses in their design and functioning to be addressed.

5.10 As a result, a number of changes were incorporated in Regulation (EU) No. 1308/2013, which gave effect to the most recent reform of the Common Agricultural Policy (CAP). These included increasing the basic rate of EU co-financing for the School Fruit Scheme from 50% to 75%; enabling co-financing to be applied to certain accompanying educational measures within a threshold to be established by the Commission; and increasing the overall budget from €90 million to €150 million (£63 million to £105 million) a year. However, the two schemes continued to be separate with different financing arrangements: in particular, it was not possible at that stage to agree more than a limited change to the School Milk Scheme, and there also continued to be no overall ceiling on EU expenditure under it.

5.11 As the Commission considered that this still left a number of significant problems, it proposed in January 2014 (document (a)) that Regulation (EU) No. 1308/2103 should be amended so as to establish a common legal and financial framework for the distribution of fruit and vegetables and milk to schoolchildren. This would be based largely on those existing elements of the two schemes which were considered to have worked well, but would:

- re-focus distribution on two core products, which had been the most widely distributed — fresh fruit and vegetables (including bananas) and drinking milk — thus excluding processed products and reducing the organisational burden for schools;
- introduce separate budgetary envelopes of €150 million (£105 million) for fruit and vegetables and €80 million (£56 million) for milk to be allocated to Member States, although they could within certain limits transfer their allocations between the two Schemes;
- within these allocations, establish thresholds for supporting educational measures and other eligible activities, such as evaluation, monitoring and communication;
- limit the level of EU contribution for fruit and vegetables through a maximum aid per portion, rather than through co-financing levels, thereby bringing the Scheme into line with that for School Milk;
- increase the level of subsidy for school milk, whilst allowing Member States to continue to provide national top-ups (or attract private funding); and
- extend the requirement for supporting educational measures to milk distribution, thereby bringing the two Schemes into line, and focus on long term issues, such as nutrition and health, and environmental matters: and, subject to approval by national health authorities, Member States would be able to choose educational themes covering agricultural products other than fruit and vegetables and milk, with the objective of promoting healthy diets.

5.12 As our predecessors noted in their Report of 12 March 2014, the Government had commented that the proposals were of direct interest to the UK, which had not participated in the EU School Fruit Scheme (taking the view that it was financially more effective to run its own scheme), but which had not only participated in the School Milk Scheme, but had also provided additional 'top-up' subsidies from national budgets to schools receiving EU funds. It had also said that the Commission's proposals were welcome in principle as they aimed to increase the share of fresh fruit and vegetables and milk products in children's diets, and also because they sought to reduce the administrative and organisational burdens currently associated with the Schemes. In particular, it had noted that Member State participation in the School Milk Scheme would in future be on a voluntary basis, but that they would still be able to continue with their own national initiatives.

5.13 However, the Report noted that the Government intended to scrutinise the Commission's main recommendations closely to ensure they would genuinely improve implementation, and not create additional burdens for paying agencies, local authorities or schools. The UK would therefore work with the Commission and other Member States in order to achieve better value for money, though it cautioned that it was not at that stage clear that the proposals would achieve this. The Government said that it would be undertaking its own analysis of the proposals, in order to inform and influence the negotiations, but thought that agreeing the different elements in the package might take one to two years.

5.14 Our predecessors concluded by noting that the aim of these proposals was to further streamline and re-focus the operation of the two schemes in response to previous criticisms, that they had in general been welcomed by the Government, and that they therefore seemed unlikely to give rise to any major issues. However, as the Government had said that it would be looking at the proposals more closely, they decided to hold the documents under scrutiny, whilst in the meantime drawing them to the attention of the House.

Subsequent developments

5.15 We and our predecessors have since received a number of progress reports from the Minister for Farming, Food and Marine Environment at the Department for Environment, Food and Rural Affairs (George Eustice), identifying the main issues for the UK, and charting the course of the negotiations (which at one point had been put on hold whilst the Commission carried out a further evaluation of the proposals). In particular, he told us on 16 July 2015 that the Commission had concluded that the two schemes were in fact an important way of encouraging consumption of these products, and had asked the Council to resume its examination of them. He also said that the EP had largely supported the proposal, but had proposed an increase of €20 million (£14 million) a year in the funding for school milk.

5.16 The Minister has now sent us a further letter of 23 November, indicating that there could be a formal vote in the Agricultural Council on 14–15 December, and that the position on the main elements of the proposal is as follows:

Budget

The EP's call for the maximum budget ceiling for the EU School Milk Scheme to be increased from €80 million to €100 million (£56 million to £70 million) a year also has the support of a majority in Council, and, although the introduction of a ceiling is an improvement on the existing demand led arrangement, the UK is sceptical about the need for any higher ceiling because the Commission's initial proposal exceeds actual expenditure under the current scheme. However, it has signalled that it would not oppose the Council's negotiating mandate, provided a legally sound position on the Treaty base issue is maintained (see below);

Allocation of aid

The Commission's proposed allocation keys reflect the historical use of funds for school milk as well as school population size, and, whilst some Member States have pressed to remove the historic allocation key, this would not make a significant difference to the UK's share of funds, which in any event will exceed the amount of funding which it claims under the existing, demand-led system;

Eligible Products under the new scheme

The EP and a majority of Member States are seeking to extend the range of eligible products and include some processed foods. However, the latest Presidency text makes clear that Member States are free to decide which products to support and whether to involve their national health authorities, and this would allow the design of a scheme which fully reflects the UK's domestic approach to nutrition and healthy eating; and

Educational Measures

A large majority of Member States and the EP favour compulsory educational measures, but whilst the UK would like to have as much flexibility as possible, the key concern is to avoid any minimum level of spend for such measures. However, it has successfully argued for the removal of any minimum level of national expenditure on these measures, and is thus free to establish the most cost effective approach for the UK.

5.17 However, the Minister also says that he has concerns about the unresolved question of the legal basis of document (a)). He recalls that, whilst the Commission had proposed that the legislation be jointly adopted by the Council and the EP under Article 43(2)TFEU, the advice of the Council Legal Service was that the fixing of subsidies and rates of aid falls within the exclusive competence of the Council under Article 43(3). In order to address this issue, the latest Presidency text transfers all "measures on aid" into a separate Council-only Regulation under Article 43(3), but the EP has said that it will not proceed with the negotiations unless it is given a joint role in deciding the overall budget for the schemes, the criteria used for distributing aid amongst Member States, and the amount of aid which Member States may transfer between their separate budgets for fruit and vegetables and milk. He says that the Presidency has asked Member States to be flexible on these points, but that there is a risk that any inappropriate transfer of powers to the EP could have

implications for other dossiers. He is therefore unwilling to compromise on these legal issues without the endorsement of the Council Legal Service.

5.18 The Minister concludes by saying that the proposal is now unlikely to change significantly before the next Agriculture Council, and he asks if we would now be prepared to grant scrutiny clearance in order to enable him to secure the best possible outcome.

Previous Committee Reports

Thirty-Ninth Report HC 83-xxxvi (2013–14), chapter 3 (12 March 2014).

6 Towards the World Humanitarian Summit: A global partnership for principled and effective humanitarian action

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the International Development Committee
Document details	Commission Communication: *Towards the World Humanitarian Summit: A global partnership for principled and effective humanitarian action*
Legal base	—
Department	International Development
Document Numbers	(37067), 11677/15 + ADD 1, COM(15) 419

Summary and Committee's conclusions

6.1 The World Humanitarian Summit (WHS) is an initiative of the UN Secretary-General (UNSG) and will take place on 23–24 May 2016 in Istanbul. Building on previous UN initiatives, the Summit is designed as an open and inclusive dialogue to engage diverse actors including civil society, faith groups, affected populations, the private sector, and Member States in a collective exercise to examine the effectiveness of humanitarian action and agree appropriate recommendations, so that humanitarian action taken by the EU, Member States and other actors better meets the needs of people affected by conflict and disasters.

6.2 The Communication outlines the European Commission's vision and key recommendations; the Commission Staff Working Document accompanying the

Communication comprises examples of work already underway with the EU to make humanitarian action more fit for purpose (see our previous Report for details).[23]

6.3 In submitting it for scrutiny in October, the Parliamentary Under-Secretary of State at the Department for International Development (Baroness Verma) agreed with the Commission that the international humanitarian system was under unprecedented strain, failing to address ever increasing risk and subject to an increasing deficit between appeals and resources. The WHS thus provided a unique opportunity to improve outcomes for the millions of people affected by crises every year. The Minister also agreed that the Summit should make progress on better linking humanitarian, development and climate action, building resilience to natural disasters and securing much better outcomes in protracted, conflict-related crises. First and foremost, she wanted an agreement on practical steps that would "drive radical change to the nature and scope of humanitarian action" and "deliver a truly global commitment to address the growing risks of humanitarian crises, driven by the values of our shared humanity".

6.4 The Minister also outlined four thematic areas where she saw potential to move the agenda forwards at the Summit, and which she said have much in common with the Commission's recommendations for action: namely, *Protection of Civilians; Building Resilience; Smarter Crisis Financing;* and *Women and Girls* (also see our previous Report for details).

6.5 In the immediate future, the Minister said that there would be an "orientation" debate on the WHS at the October "Development" Foreign Affairs Council, with the possibility of Council Conclusions in late 2015 or early 2016.

Our assessment

6.6 With an annual budget of €1 billion (£719 million) per year for its humanitarian and civil protection activities, and provides funding to over 200 partner organisations that implement humanitarian actions on the ground, the Commission would clearly have a major role in the Summit, and in implementing its recommendations. What happened between October and then within the Councils of the EU was thus politically important.

6.7 In the first instance, we asked the Minister to update the Committee on the outcome of the "orientation" debate, her views on it and what the next steps would then be.

6.8 In the meantime, we retained the Commission Communication under scrutiny.

6.9 We also drew these developments to the attention of the International Development Committee.[24]

6.10 The Minister says that the main features of a comprehensive orientation debate were:

— a shared ambition for the Summit, and the need for serious reform of the existing humanitarian system;

[23] See Fifth Report HC 342-v (2015–16), chapter 7 (14 October 2015).

[24] *Ibid*.

— notable common priorities including: "a smarter approach to humanitarian financing; more effective linkages between humanitarian and development assistance; and the need for renewed political commitment to the laws of war and the protection of civilians";

— the Government leading calls for a reformed approach to finance, blending public and private approaches and moving beyond the initial emergency response to focus on education and livelihoods; and

— better enforcement of International Humanitarian Law (IHL) to protect civilians; and a bold approach to gender equality in humanitarian action, including a global coordinated approach to prevent and respond to gender-based violence.

6.11 She notes that the Netherlands proposed early Council Conclusions emphasising the urgency of a clear roadmap for the preparatory process, to ensure delivery of a strong set of practical initiatives at the Summit. The Luxembourg Presidency now envisage concise Council Conclusions in December 2015, followed by a second set of Conclusions setting out a more detailed EU position on the Summit in the spring of 2016, after publication of the Secretary General's report. The Minister endorses this approach, which she says would underline that EU Member States' united ambition for the Summit to deliver serious reform, guarantee an ambitious report from the UN Secretary General,[25] and send a clear message to the heads of UN agencies that change is required (see "Background" for further details).

6.12 **We look forward to a further Report from the Minister, enclosing the December Council Conclusions, providing her assessment thereof and updating us on the UN Secretary General's report and on how she then expects the rest of the preparatory process to be taken forward.**

6.13 **In the meantime, we shall retain the Commission Communication under scrutiny.**

6.14 **We again draw these developments to the attention of the International Development Committee.**

Full details of the documents: Commission Communication: *Towards the World Humanitarian Summit: A global partnership for principled and effective humanitarian action*: (37067), 11677/15 + ADD 1, COM(15) 419.

Background

6.15 The European Commission's Humanitarian aid and Civil Protection department (ECHO) aims to save and preserve life, prevent and alleviate human suffering and

[25] On 21 May 2015, the UN Secretary General established a High-Level Panel on Humanitarian Financing, to be co-chaired by European Commission Vice President Kristalina Georgieva and Sultan Nazrin Shah. The UN Secretary General said that this initiative would bring together distinguished individuals with a wide range of experience and expertise, including Hadeel Ibrahim, Badr Jafar, Trevor Manuel, Linah Mohohlo, Walt Macnee, Margot Wallström and Dhananjayan Sriskandarajah. The Panel would examine humanitarian financing challenges and identify ways in which the gap between rising needs and the resources available to meet them could be closed; and also work on generating solutions around the issues of more timely and predictable funding, as well as ways in which resources can be used more effectively. The Panel was expected to submit its recommendations in November 2015, which would help frame the discussion at the World Humanitarian Summit in May 2016. See Secretary-General Appoints High-Level Panel on Humanitarian Financing for full details.

safeguard the integrity and dignity of populations affected by natural disasters and man-made crises. Headquartered in Brussels with a global network of field offices, ECHO aims to ensure rapid and effective delivery of EU relief assistance through its two main instruments: humanitarian aid and civil protection. Since November 2014, ECHO operates under the mandate of Mr Christos Stylianides, EU Commissioner for Humanitarian Aid and Crisis Management.

6.16 The annual EU budget for humanitarian and civil protection actions amounts to approximately €1 billion (£719 million); the total 2014–20 budget being €6.6 billion (£4.6 billion), with the precise annual figures being decided at the end of each year. An EU Emergency Aid Reserve can also be called upon to respond to unforeseen events and major crises, financing notably humanitarian, civilian crisis management and protection operations in non-EU countries. ECHO provides funding to over 200 partner organisations which implement humanitarian actions on the ground. These include non-governmental organisations (NGOs), international organisations and United Nations agencies (UN).[26]

6.17 The Commission sees the summit as presenting the global community "with a unique opportunity to establish an international consensus reaffirming the principles of humanitarian aid and strengthening humanitarian action", bringing together governments, donors, implementing organisations,[27] the private sector and representatives of affected populations who:

> "where needed, should commit to more effective ways of working together for the common objective of saving lives and alleviating suffering. As a result, the summit will influence, and possibly even change, the current humanitarian *modus operandi* to better serve people in need."

6.18 As major humanitarian donors, and thus key policy-setters with global operational experience, the EU and its Member States, and the Commission, would be "expected by many stakeholders to contribute to the success of the summit". The Communication, building on the European Consensus on Humanitarian Aid,[28] accordingly:

> "sets out the Union's vision for reshaping humanitarian action and proposes recommendations that should be endorsed by the summit. The underlying message is to build and reinforce partnerships among a multitude of actors. It is only through linked and coordinated action that the global community can respond to the

[26] See Humanitarian Aid and Civil Protection for full information.

[27] Implementing organisations deliver humanitarian aid, e.g. UN agencies, international organisations, Red Cross and Red Crescent Movement, NGOs. They can be international, regional, national, or community-based.

[28] The European Consensus on Humanitarian Aid was jointly agreed by the Member States meeting within the Council, the European Parliament and the European Commission, thus confirming their commitment to the principles underpinning EU humanitarian aid, to enhance existing commitments for good donor practice across the EU, in partnership with other humanitarian stakeholders, and to put in place the foundations for working more closely together to ensure the most effective implementation of EU humanitarian aid in the years to come. The objective of EU humanitarian aid is to provide a needs-based emergency response aimed at preserving life, preventing and alleviating human suffering and maintaining human dignity wherever the need arises if governments and local actors are overwhelmed, unable or unwilling to act. EU humanitarian aid encompasses assistance, relief and protection operations to save and preserve life in humanitarian crises or their immediate aftermath, but also actions aimed at facilitating or obtaining access to people in need and the free flow of assistance. EU humanitarian assistance is provided in response to man-made crises (including complex emergencies) and to natural disasters as needed. See European Consensus on Humanitarian Aid for full information.

escalating and multifaceted crises and disasters that demand humanitarian assistance."[29]

6.19 The Communication makes a number of recommendations for the Summit under the following themes: *reaffirming humanitarian values; access*; *protection at the heart of humanitarian response; the basics of humanitarian effectiveness; partnership with local, national and regional actors*; *efficient and sufficient humanitarian financing*; and *partnership with development actors*. The Commission's recommendations are detailed in our previous Report.[30]

The Minister's letter of 13 November 2015

6.20 The Minister confirms that the 26 October 2015 Foreign Affairs Council (FAC) "in development format" held an orientation debate on the World Humanitarian Summit, at which the Secretary of State for International Development (Justine Greening) represented the UK, the Commissioner for Humanitarian Aid and Crisis Management, Christos Stylianides, presented the Commission Communication, and Commission Vice President, Kristalina Georgieva, updated Ministers on the work of the Secretary-General's High Level Panel on Humanitarian Financing (which Ms Georgieva co-chairs).

6.21 The Minister continues as follows:

> "Ministers held a comprehensive orientation debate. There was a high level of convergence among Member States in terms of their ambition for the World Humanitarian Summit, and the need for serious reform of the existing humanitarian system. Notable common priorities included: a smarter approach to humanitarian financing; more effective linkages between humanitarian and development assistance; and the need for renewed political commitment to the laws of war and the protection of civilians.
>
> "The UK led calls for a reformed approach to finance, blending public and private approaches and moving beyond the initial emergency response to focus on education and livelihoods; better enforcement of International Humanitarian Law (IHL) to protect civilians; and a bold approach to gender equality in humanitarian action, including a global coordinated approach to prevent and respond to gender-based violence.
>
> "Several Member States commented on the importance of a clear roadmap for the preparatory process leading up to the Summit in May 2016, including how Member States and other stakeholders engage with the Summit Secretariat to ensure delivery of a strong set of practical initiatives at Istanbul. The Netherlands proposed early Council Conclusions on the World Humanitarian Summit to emphasise the urgency of defining this roadmap, and establish a common EU vision for the Summit. The Foreign Affairs Council agreed to return to the issue of preparations for the World Humanitarian Summit in due course."

---

29 Commission Communication 11667/15, p.3.

30 See Fifth Report HC 342-v (2015–16), chapter 7 (14 October 2015).

6.22 Turning to the next steps, the Minister says:

> "Discussions on the World Humanitarian Summit, specifically Council Conclusions, have subsequently continued in the Council Committee for Humanitarian Affairs and Food Aid (COHAFA), attended by officials). The Luxembourg Presidency have proposed concise Council Conclusions on the Summit in December 2015, followed by a second set of Conclusions setting out a more detailed EU position on the Summit in the spring of 2016, after publication of the Secretary General's report."

6.23 The Minister then says:

> "We agree that it would be useful to have a short set of Council Conclusions under the Luxembourg Presidency. The purpose would be to send a clear message that as a group, EU Member States are united in their ambition for the World Humanitarian Summit to deliver serious reform. This would also help to ensure that we secure an ambitious report from the Secretary General, and send a clear signal to the heads of UN agencies that change is required. Council Conclusions could also usefully underline that as governments, Member States have a wider role to play in restoring humanity, working together to improve compliance with international law, particularly IHL.
>
> "Other Member States, including the Netherlands as the incoming Presidency, are also supportive of this approach. We expect the Council Conclusions to be agreed in December, with early negotiations on the text beginning in COHAFA."

Previous Committee Reports

Fifth Report HC 342-v (2015-16), chapter 7 (14 October 2015).

7 Review of the European Neighbourhood Policy

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information awaited; drawn to the attention of the Foreign Affairs Committee
Document details	Joint Communication: *Review of the European Neighbourhood Policy*
Legal base	—
Department	Foreign and Commonwealth Office
Document Numbers	(37290), 14315/15 + ADD 1, JOIN(15) 50

Summary and Committee's conclusions

7.1 The European Neighbourhood Policy (ENP) was designed in 2003 and encompasses. 16 of the EU's neighbours in two regions — the *Eastern Partnership*: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine; and the *Southern Neighbourhood*: Algeria, Egypt,

Israel, Jordan, Lebanon, Libya, Morocco, the Occupied Palestinian Territories, Syria and Tunisia. The ENP offers those neighbours a privileged relationship, building upon a mutual commitment to common values — democracy and human rights, rule of law, good governance, market economy principles and sustainable development. The ENP includes political association and deeper economic integration, increased mobility and more people-to-people contacts. ENP sector policies cover a broad range of issues, including employment and social policy, trade, industrial and competition policy, agriculture and rural development, climate change and environment, energy security, transport, research and innovation, as well as support to health, education, culture and youth.

7.2 The level of ambition of what is essentially a bilateral relationship depends on the extent to which these values are shared in practice. It is primarily an EU bilateral policy tool, offering closer political and economic integration through the creation of individual country Actions Plans with each of the partners, which set out a package of reforms for the next three-five years. The European Neighbourhood Instrument (ENI), with a budget of €15.4 billion (£11.06 billion) for the period 2014–20, is the main financial instrument for implementing the ENP.[31]

7.3 The ENP 2011 review produced a stronger focus on the promotion of deep and sustainable democracy, economic development, and conditionality (the "more for more principle"). Each year, there is an overview, supplemented by an annual progress report on each partner country. The Joint Communication *Neighbourhood at the Crossroads: Implementation of the European Neighbourhood Policy in 2013* hinted at the broader, strategic questions that arose from developments over the preceding 12 months, in which the "Arab Spring" was a major factor. Then, following requests from Member States, in March 2015, having announced "a fundamental review" of the ENP's principles and scope, and how its instruments should be used, a Joint Consultation Paper was adopted by the Commission, launching a formal consultation, with view to engaging with a range of stakeholders, including Member States, partner countries, national parliaments, NGOs, universities and think-tanks.[32]

7.4 Commenting on the ENP a month later, the Minister for Europe's (Mr David Lidington) general conclusion was: "the success of the policy is directly dependent on the ability and commitment of governments to reform and to deepen relations with the EU".

The ENP Review

7.5 Introducing the Review on 18 November, EU High Representative/Commission Vice President Federica Mogherini said:

> "A stronger partnership with our neighbours is key for the European Union, while we face many challenges within our borders and beyond. The terrorist attacks in Paris on Friday, but also recent attacks in Lebanon, Egypt, Turkey and Iraq, show once more that we are confronted with threats that are global and have to be tackled by the international community united. We have to build together a safer

[31] See European Neighbourhood Policy for full details.

[32] For the Committee's consideration of the Joint Consultation, see (36714), —: Joint Consultation Paper — *Towards a new European Neighbourhood Policy*: Thirty-ninth Report HC 219-xxxvii (2014–15), chapter 13 (24 March 2015).

> environment, try to solve the many crises of our common region, support the development and the growth of the poorest areas, and address the root causes of migration. This is precisely the purpose of the current review of the ENP which will promote our common values and interests, and will also engage partners in increased cooperation in security matters. The measures set out today seek to find ways to strengthen together the resilience of our and our partners' societies, and our ability to effectively work together on our common purposes."

7.6 The Commissioner for European Neighbourhood Policy and Enlargement Negotiations, Johannes Hahn, said:

> "Our most pressing challenge is the stabilisation of our neighbourhood. Conflicts, terrorism and radicalisation threaten us all. But poverty, corruption and poor governance are also sources of insecurity. That is why we will refocus relations with our partners where necessary on our genuinely shared common interests. In particular economic development, with a major focus on youth employment and skills will be key" (see "Background" for further details).[33]

7.7 Addressing the European Parliament Foreign Affairs Committee (EP/FAC) on the same day, the HR noted that respondents to the consultations overwhelmingly favoured retaining one framework for eastern and southern partnerships, but changes in the ways in which policy was conducted. The main message was that there had to be a shift from the assumption that the EU was "at the centre", to an approach whereby equal partners with common problems and common opportunities worked together. The Review focused on five key principles:

- greater economic development and job creation;
- energy cooperation;
- security;
- migration, both regular and irregular, and the protection of refugees; and
- working with "the neighbours of the neighbours" to tackle common challenges.

7.8 The HR concluded by noting that this was the beginning of the process; the Commission would now discuss the Review with partner countries individually and EU Member States, with the aim of lighter working methods and a less bureaucratic approach.

7.9 Commissioner Hahn explained that the Review was a set of guidelines on how the EU wished to cooperate with its neighbours; the EU had also tried to articulate its own interests more. The one word to describe the EU's goals for the coming years was "stability": to bring about a stabilisation of the EU's neighbourhood. The four cornerstones of the policy were:

- a more differentiated way of approaching each of the different countries;
- a greater focus on the thematic aspects;

[33] Also see Press release.

- partners to feel a degree of ownership of the policy; and
- longer-term financial planning with a high degree of flexibility.

7.10 It was important to think about cooperation not just bilaterally but also at a sub-regional level, for example the Maghreb or Southern Caucasus countries. A pragmatic approach could and would not be at the cost of the fundamentals: an active neighbourhood policy was one way of pursuing key principles — the rule of law, independence of the judiciary, media freedom and institutional freedom.

7.11 The Minister for Europe is pleased to see the Government's contributions on differentiation and security reflected in the Review. Overall, given the "vastly differing" political and security situations in the eastern and southern neighbourhood, "tailor-made, differentiated partnerships are essential to their success". The Review "aligns with UK strategic policy objectives"; the "key now" is:

> "shaping the architecture of implementing this Review to maximise the impact of this work and make real changes to the prosperity and security of our neighbourhood and ultimately the lives of citizens in Partner countries."

7.12 The Review is in line with commitments made at the EU-Eastern Partnership Summit held in Riga in May 2015, in which the Prime Minister and Foreign Secretary participated, through prioritising good governance, security, economic development, and sectoral reforms. The main tool — which the Minister supports — will continue to be Association Agreements (AAs) including Deep and Comprehensive Free Trade Areas (DCFTAs); currently only Georgia, Moldova and Ukraine have taken up the opportunity; the key priority is full and effective implementation. He welcomes recent moves to open negotiations with Tunisia. For partners who are not currently interested in a DCFTA, the Minister welcomes a more flexible approach to strengthen trade and investment relations that reflects mutual interests, and the continued use of the multilateral framework to offer cooperation on regional issues.

7.13 Given the dramatic changes in the Southern Neighbourhood particularly since 2011, the Minister fully supports "a recalibrating of the ENP's policies and operating processes to reflect both the changed needs of the region and the interests of EU Member States". The Review "correctly identifies stabilisation as a key priority". He welcomes "the new focus on security co-operation between the Southern partners and the EU". At the same time, he is also "pleased to note that in parallel, the EU will continue to pursue promotion of universal values, including democracy, human rights and the rule of law in these countries". The Minister also welcomes the highlighting of the socio-economic issues that underlie "the problems currently besetting the region — extremism, terrorism, migration" — and "the renewed focus on economic development, job creation and the empowerment of women".

7.14 The Minister notes that the consultation confirmed the EU's key role in ensuring that partner countries are stable and, to that end, economic and social development needs to be factored into the EU's approach. The EU should also be active in areas such as capacity building, modernisation of the economy and fostering innovation. There is a case for deploying existing instruments effectively manner, such as better cooperation with the European Investment Bank (EIB) or the International Monetary Fund (IMF). Furthermore, new instruments could play a role. In order to leverage additional resources

and ensure EU aid has the maximum impact, there is a strong case for greater partnerships with the private sector as well as blending grants and loans.

7.15 The Minister also notes that the consultation revealed strong support for giving energy cooperation a greater place in the ENP, both as a security measure (energy sovereignty) and as a means to sustainable economic development. He agrees, saying that "the most effective means of improving our energy security is the completion of a fully functioning competitive energy market", supports "the delivery of greater interconnection, both within the EU and with third party supply and transit countries which allow energy to flow to where it is needed efficiently and from multiple sources" and strongly supports "the emphasis on increasing energy independence in the neighbourhood, through diversification of sources and supplies".

7.16 The Minister welcomes "the addition of a security dimension to the ENP", it being "essential that the EU takes a holistic approach to its neighbourhood, with security being a vital part of its stability". The Minister judges the areas highlighted by the ENP review as the right ones, covering "a broad spectrum … from counter terrorism and crisis management to security sector reform".

7.17 Noting the "clear priority" for EU institutions to work together better on the ENP, particularly the Commission and European External Action Service (EEAS), he says that, unfortunately the text "is not as clear as we would like in ensuring the ENP actively works with other international partners, with NATO being a clear priority". He will therefore "continue to work with the Commission and in wider EU fora to ensure that the ENP is developed in closer coordination, both internally within EU institutions and with external organisations and partners".

7.18 Turning to Migration and Mobility, the Minister notes that the Review states that the stability of the Neighbourhood requires EU-ENP cooperation, and that "ENP partners who work with the EU on migration can expect closer EU cooperation on visa liberalisation and mobility issues". Though there are a number of existing regional migration dialogue mechanisms, the Review "makes clear that a new Thematic Framework could be developed for more effective cooperation with countries outside the Neighbourhood". While illegal migration should be tackled, the Commission believes that "mobility and people-to-people contacts should also be promoted, including through mechanisms to fill gaps in the EU labour market with skills offered by third country migrants". Potential measures include: revising the EU Blue Card Directive, to facility EU entry and residence for highly skilled migrants; facilitating academic mobility; promotion of a skilled labour migration scheme; dialogue with business on EU labour market needs and where migration could help fill gaps; development of "circular migration", helping seasonal sectors such as agriculture and tourism; allowing migrants temporary residence in the EU while conducting business in their country of origin; improving the transfer of remittances to facilitate this; and creation of a new start-up fund (Startback) to fund the return to their countries of origin of migrants who can bring skills developed during their time in the EU. The Minister says:

> "We support the view of many other Member States that decisions on legal migration fall within Member State competence. The UK's legal migration routes for economic migrants are demand-led and are intended to ensure the UK attracts those it needs to support growth."

7.19 Nonetheless, the EU "needs a more integrated and comprehensive migration response, linking short-term humanitarian measures with longer-term development and security responses", and "should help ENP partners develop their asylum and protection procedures, especially to protect vulnerable refugees and meet their basic needs (including through both new and existing capacity building programmes in North Africa, the Horn of Africa, and the Middle East). The Minister also strongly supports "the assertion that the EU and ENP will work on addressing the root causes of illegal migration", with work to be conducted on better returns and readmission processes, ensuring that EU (and ENP) nations can return those individuals not in need of international protection to their countries of origin, where those persons can be reintegrated; thus "[r]eadmission will have a central place in all dialogues with countries of origin and transit of illegal migrants".

7.20 Border management engagement will be improved. The Minister is "supportive of any EU efforts made to strengthen the security of the EU external border", noting that "the EU, including through FRONTEX and EUROPOL, will work with 'interested partner countries' on training and capacity building, leading to better information exchange, capacity, and operational and technical cooperation on border management".[34]

7.21 **Responding to interventions during her meeting with the EP/FAC, the High Representative said there was nothing the Commission were doing that was "business as usual"; its first year had been one of "crisis management". Security and migration were the most pressing challenges. Whether, as she felt, on both issues the EU and its neighbours were on the same page, remains to be seen. The Minister also rightly raises caveats about EU over-ambition on the migration front.**

7.22 **In any event, the Review was undoubtedly timely. The much-criticised "technocratic" approach of the first decade had clearly been overtaken by both the reaction of some "partners", by some in the "outer neighbourhood" and (c.f. Harold Macmillan) "events". Security, migration and economic development are now front and centre. "Shared values" remain on the agenda, and help will continue to be given to those who are seeking to promote and develop a democratic, law-based polity. But pragmatism and variable geometry — "tailor-made, differentiated partnerships" — are now fully part of the European Neighbourhood Policy fabric.**

7.23 **What will be "key", as the Minister says, is implementation, so as "to maximise the impact… [and] make real changes to the prosperity and security of our neighbourhood … [and] the lives of citizens in Partner countries". It is thus odd that, while jettisoning the customary annual country reports, no clear alternative is provided for assessing impact. The 2014-2020 budget is large — €15.4 billion (£11.06 billion) of EU taxpayers' money.[35] The Commission and the EAS need to be held regularly to account for their performance, especially given what the Minister has had to say before about the failings of the present reporting system (c.f. paragraph 7.29 below) and what he says now about their failings in coordinating with other actors in this area. We would therefore like the Minister to explain how the performance of partner countries and of the Commission\EAS is to be assessed in the absence of annual progress reports (which such reports continue to be central to the not-dissimilar enlargement process).**

---

34 See "Background" for the Minister's full analysis and comments.

35 €1 = £0.7182.

7.24 **We would also like to know — as the Commission/EAS take the Review forward in consultation with partner countries and Member States — whether, and when, there will be further opportunities to take stock.**

7.25 **When the Minister forwards to us the Council Conclusions that he expects the December Foreign Affairs Council to adopt on the Review, we would like him to explain how these Council Conclusions will drive the European Neighbourhood Policy forward in the right way.**

7.26 **In the meantime, we shall retain the Joint Communication under scrutiny.**

7.27 **We also draw these developments to the attention of the Foreign Affairs Committee.**

Full details of the documents: Joint Communication: *Review of the European Neighbourhood Policy*: (37290), 14315/15 + ADD 1, JOIN(15) 50.

Background

7.28 At their 4 March 2015 joint press conference, the EU High Representative Federica Mogherini and Enlargement Commissioner Johannes Hahn announced the publication of a Joint Consultation Paper — *Towards a new European Neighbourhood Policy* — and thus launched this current review.[36] The HR noted that the region had changed greatly in the last ten years, and particularly since 2011. The EU needed "to review our policy, our way of working, our partnership with the countries of our region": to move from an approach based on the evaluation of progress to "a more political dialogue, to a more political partnership, to a more cooperation oriented approach between equal partners". In particular, with the region "in flames, both to the East and South", the EU needed "to use all the potential of our bilateral relations with partners in the region to have an effective impact on our region". She and Commissioner Hahn would, in the next months, work together "to have better and more effective instruments to work in our neighbourhood".[37]

7.29 Then, on 24 April, the Commission published its 2014 Report on implementation of the ENP, along with the customary country reports. The picture was, as ever, very varied: the Minister's comment on the Eastern Partnership report could be applied to a great deal of EU support to ENP (and other) partners generally:

> "the report focuses on a lot of the process rather than on the impact of this work. It would benefit from a more critical analysis of why, or why not, programmes have worked and how this learning, and therefore new priorities, will be reflected over the next year" (see our predecessors' Report for details).[38]

---

36 For summary details, and the Committee's thoughts thereon see paragraphs 0.22–0.26 of (36714), —: Joint Consultation Paper — *Towards a new European Neighbourhood Policy*: Thirty-ninth Report HC 219-xxxvii (2014–15), chapter 13 (24 March 2015); and for full information, (35946), 8595/14: Forty-eighth Report HC 83-xliii (2013–14), chapter 12 (7 May 2014).

37 See Press Release for full details.

38 See First Report HC 342-i (2015–16), chapter 60 (21 July 2015).

Review of the European Neighbourhood Policy (ENP): stronger partnerships for a stronger neighbourhood

7.30 On 18 November 2015, the Commission and the High Representative "unveiled the main lines" of the ENP, "spelling out the Union's renewed approach to its eastern and southern neighbours". The following features were highlighted:

"Stabilisation, differentiation and ownership

"The ENP will take stabilisation as its main political priority in this mandate. Differentiation and greater mutual ownership will be further key elements of the new ENP, recognising that not all partners aspire to comply with EU rules and standards, and reflecting the wishes of each country concerning the nature and scope of its partnership with the EU. The EU will uphold and continue to promote universal values through the ENP, seeking more effective ways to promote democracy, human rights, fundamental freedoms and rule of law.

"Key sectors

"The new ENP will mobilise efforts to support inclusive economic and social development; creating job opportunities for youth will be among key measures of economic stabilisation. There will be a new focus on stepping up work with partners countries in the security sector, mainly in the areas of conflict-prevention, counter-terrorism and anti-radicalisation policies. Safe and legal mobility on the one hand and tackling irregular migration, human trafficking and smuggling on the other are further priorities. Finally, greater attention will be paid to working with partners on energy security and climate action.

"More flexibility, effectiveness and a new partnership approach

"The EU is offering to refocus relations with its neighbours in order to address the political priorities regarded by both sides as the basis of the partnership. This option will be discussed with partners, and is key to increasing their sense of ownership. The aim is also to involve Member states more intensively in the definition and implementation of policy in neighbourhood countries.

"The new ENP will introduce some new working methods, including the abolition of the traditional annual package of country reports. Reporting will now be more tailor-made to the nature and working calendar of each relationship.

"The new ENP will seek to deploy the available financial resources in a more flexible manner, so that the EU can react more swiftly to new challenges in the neighbourhood. Stronger engagement with civil society, social partners and with youth, is foreseen.

"On a regional level, the Eastern Partnership will be further strengthened in line with commitments at the Riga Summit in 2015. The Union for the Mediterranean can play an enhanced role in supporting cooperation between southern neighbours. The

new ENP will also seek to involve other regional actors, beyond the neighbourhood, where appropriate, in addressing regional challenges.

"**Next steps**

"In the coming months, the proposals unveiled today in the Joint Communication, will be discussed with Member States and partner countries, with a view to jointly determine new priorities and the shape of future relations."[39]

The Joint Communication

7.31 After an introductory section, the Joint Communication is divided into the following sections:

- Stabilising the neighbourhood;
- Building a stronger neighbourhood and stronger partnership;
- Good governance, democracy, rule of law and human rights;
- Proposed joint priorities for cooperation;
- The security dimension;
- Migration and mobility;
- The regional dimension;
- More effective delivery.

7.32 The key areas mentioned in the Review are helpfully summarised and commented upon by the Minister in his Explanatory Memorandum of 26 November 2015, as follows:

"Eastern Partnership

"The Review envisages a further strengthening of the Eastern Partnership in line with commitments made at the EU-Eastern Partnership Summit held in Riga in May 2015. This Summit, in which the Prime Minister and Foreign Secretary participated, reaffirmed a clear message of support for the sovereign choices of Eastern Partners and reconfirmed the EU's support for the implementation of real reforms in Eastern Partnership States to deliver tangible results for their citizens. The Review analyses how this can be achieved through prioritising good governance, security, economic development, and sectoral reforms.

"The Review aims to implement real, pragmatic differentiation between countries, recognising that some relationships will be transformational, whereas others will be more transactional. It gives the flexibility to facilitate these aims and to focus on commonly identified shared interests. It also recognises the importance of better

[39] See Press release.

strategic communications to help underpin reforms by communicating what they mean in a tangible way.

"The main tools the Eastern Partnership offers partner countries are deeper political association and economic integration with the EU through formal Association Agreements (AAs) including Deep and Comprehensive Free Trade Areas (DCFTAs) and practical co-operation through multilateral sectoral platforms. Currently only Georgia, Moldova and Ukraine have taken up the opportunity of pursuing AAs/DCFTAs with the EU. These mechanisms will be maintained and full and effective implementation of these agreements will continue to be a key priority for these Partners. For those Partners who do not wish to pursue such a model, we welcome the more flexible approach to strengthen trade and investment relations that reflect mutual interests. We also welcome the continued use of the multilateral framework to offer cooperation on regional issues.

"Southern Neighbourhood

"The Southern Neighbourhood has dramatically changed since the inception of the ENP in 2004 and particularly so after the Arab Spring in 2011. We therefore fully support a recalibrating of the ENP's policies and operating processes to reflect both the changed needs of the region and the interests of EU Member States.

"The paper correctly identifies stabilisation as a key priority and we welcome the new focus on security co-operation between the Southern partners and the EU.

"At the same time, we are pleased to note that in parallel, the EU will continue to pursue promotion of universal values, including democracy, human rights and the rule of law in these countries. The paper also highlights that socio-economic issues underlie the problems currently besetting the region — extremism, terrorism, migration — and we welcome the renewed focus on economic development, job creation and the empowerment of women.

"Good Governance, Democracy, Rule of Law

"Trust in independent and transparent judicial systems is crucial for the projection of human rights and equality in a lawful society. An accountable democratic government both at local and central level, a free press and a thriving civil society are vital features of good governance. The EU will support work that seeks to strengthen these areas. Particular focus will be on implementing processes laid down in the Treaty on European Union, the EU's Action Plan on Human Rights and the EU Gender Action Plan.

"Economic Development for Stabilisation

"Economic Development for Stabilisation has been designated by the Commission, taking into account the views of partners responding to the consultation, as one of the proposed joint priorities for cooperation. The feedback from the consultation confirmed that the EU has a key role to play in ensuring that partner countries are stable and to that end economic and social development needs to be factored into the

EU's approach. Macro-Financial Assistance (MFA) provides support in terms of macroeconomic stability and economic reform and the EU should also be active in areas such as capacity building, modernisation of the economy and fostering innovation. There is a case for deploying in a more effective manner existing instruments, such as better cooperation with the European Investment Bank (EIB) or the International Monetary Fund (IMF). Furthermore, new instruments could play a role. In order to leverage additional resources and ensure EU aid has the maximum impact, there is a strong case for the Commission to promote greater partnerships with the private sector as well as blending grants and loans.

"Trade and Entrepreneurship

"The consultation responses confirmed that granting access to the EU market has been a key tool available to the ENP with regards to promoting prosperity. The EU is a strong proponent of encouraging trade between the EU, ENP partner countries and their trading partners. The consultation responses, though, called for more flexibility on trade agreements. To that end, with regards to Association Agreements, including DCFTAs, which have been concluded with the Ukraine, the Republic of Moldova and Georgia, the key priority is full and effective implementation of the agreements. For partners who are not currently interested in a DCFTA, the EU's approach will be flexible with a focus on lighter options such as the possibility to sign Agreements on Conformity Assessment and Acceptance (ACAAs) under which free movement of industrial products in specific sectors is allowed.

"We support the goal of pursuing agreements on Deep and Comprehensive Free Trade Areas with our neighbourhood partners, and the recent moves to open negotiations with Tunisia are a welcome step.

"Economic Modernisation

"Economic dialogue, policy advice and the mobilisation of financial assistance will form the basis of EU support to partners seeking to modernise their economies. Among the areas this covers are research, science and innovation and, to that end, increased participation of neighbourhood countries in EU initiatives (including Horizon 2020 and the Enterprise Europe Network) will be encouraged. There will also be fostering of a Common Knowledge and Innovation Space between the EU and its neighbours. On agriculture, the EU will provide support to achieve the modernisation of the sector and the development of a resource-efficient economy. Among the other sectors to receive support are maritime economies and the digital economy.

"Employment and Employability: Focus on Youth

"Erasmus+ is a seven year European funding programme for Education, Youth, Training and Sport. The Erasmus+ programme is a valuable tool that helps organisations and citizens to achieve their potential through international education and training and collaborative opportunities. The programme is supported by all EU

Member States, including the UK, and 5 non-EU countries (former Yugoslav Republic of Macedonia, Iceland, Norway, Liechtenstein and Turkey), known as 'participating countries'.

"Under employment and employability: focus on youth, the Joint Communication suggests a focus on jobs and skills, particularly of the young. It mentions a step up in support for Erasmus+, but it is unclear how they intend to achieve this through Erasmus+. Currently, Erasmus+ provides €239m in 2015 funding to participating countries for Higher Education international credit mobility (ICM). This supports study periods for students, and teaching or training periods abroad for staff, to countries around the world. Within this, countries neighbouring the EU are given the highest priority and the largest proportion of funding is allocated for opportunities in these countries.

"There is little scope at the moment to extend this to other education fields, such as vocational education, as the review suggests. The ICM action began in 2015, and needs more time to embed. The UK did not perform well in this action in 2015, although we are working with the Higher Education sector and the Commission to boost our performance. The Commission may consider extending the scope of international mobility to other education and training areas once ICM is fully embedded. This would be a useful addition to the programme.

"Transport and Connectivity

"The UK supports greater connectivity throughout the neighbourhood area. Aligning their strategic transport networks with the existing Trans-European Transport Network (TEN-T) will improve cross-border transport. This in turn improves the functioning of the single market, and the economic development of partner countries.

"Energy Security and Climate Action

"The review states that the EU is committed to strengthen its energy dialogue with neighbourhood countries in energy security, energy market reforms and the promotion of sustainable energy. It strongly relies on its neighbourhood for safe, secure and predictable generation and transportation of energy; and therefore needs to strengthen its dialogue with partner countries on energy security. Equally, energy is key to the stable development and resilience of the partners themselves. The consultation revealed strong support to give energy cooperation a greater place in the ENP, both as a security measure (energy sovereignty) and as a means to sustainable economic development.

"The review highlights several ways in which the EU can promote energy security: initiatives such as establishing gas reserve flow capacity to Ukraine, and completing the Southern Gas Corridor; increasing cooperation on energy efficiency, renewable energy sources and climate change mitigation; enhancing full energy market integration with Moldova, Ukraine and Georgia; supporting sub-regional cooperation as appropriate in the Eastern Mediterranean, the Maghreb and the Southern Caucasus; offering cooperation to promote the production, distribution,

trade and efficient consumption of energy, as regards the Southern Neighbourhood partner countries; and developing a new thematic framework for countries beyond the neighbourhood.

"We agree with this assessment. The most effective means of improving our energy security is the completion of a fully functioning competitive energy market, and we support the delivery of greater interconnection, both within the EU and with third party supply and transit countries which allow energy to flow to where it is needed efficiently and from multiple sources. We strongly support the emphasis on increasing energy independence in the neighbourhood, through diversification of sources and supplies.

"Security Dimension

"We welcome the addition of a security dimension to the ENP. It is essential that the EU takes a holistic approach to its neighbourhood, with security being a vital part of its stability. We judge that the areas highlighted by the ENP review are the right ones. It covers a broad spectrum of security elements, from counter terrorism and crisis management to security sector reform.

"A clear priority has been the need for EU institutions to work better together on the ENP, particularly the Commission and European External Action Service (EEAS). We have also been consistent on the need for provision for the EU and Commission to coordinate closely with other international organisations, particularly NATO.

"Unfortunately, the text is not as clear as we would like in ensuring the ENP actively works with other international partners, with NATO being a clear priority. We will continue to work with the Commission and in wider EU fora to ensure that the ENP is developed in closer coordination, both internally within EU institutions and with external organisations and partners.

"Migration and Mobility

"The dossier states that the stability of the Neighbourhood requires EU-ENP cooperation on migration. It adds that ENP partners who work with the EU on migration can expect closer EU cooperation on visa liberalisation and mobility issues. There are a number of existing regional migration dialogue mechanisms, but the dossier makes clear that a new Thematic Framework could be developed for more effective cooperation with countries outside the Neighbourhood.

"The European Commission believes that while illegal migration should be tackled, mobility and people-to-people contacts should also be promoted, including through mechanisms to fill gaps in the EU labour market with skills offered by third country migrants. Potential measures include:

- "In March 2016, the Commission will revise the EU Blue Card Directive, to facilitate EU entry and residence for highly skilled migrants;
- "Facilitation of academic mobility, and closer EU work with ENP partners on recognition of skills and qualifications;

- "The promotion of a skilled labour migration scheme, possibly including preferential schemes for nationals of ENP countries that cooperate with the EU on migration;
- "Dialogue with business, to better assess EU labour market needs and where migration could help fill gaps;
- "Development of 'circular migration', helping seasonal sectors such as agriculture and tourism;
- "Allowing migrants temporary residence in the EU while conducting business in their country of origin. Improving the transfer of remittances to facilitate this;
- "Creation of a new start-up fund (Startback) to fund the return to their countries of origin of migrants who can bring skills developed during their time in the EU.

"We support the view of many other Member States that decisions on legal migration fall within Member State competence. The UK's legal migration routes for economic migrants are demand-led and are intended to ensure the UK attracts those it needs to support growth.

"The EU needs a more integrated and comprehensive migration response, linking short-term humanitarian measures with longer-term development and security responses.

"The EU should help ENP partners develop their asylum and protection procedures, especially to protect vulnerable refugees and meet their basic needs (including through both new and existing capacity building programmes in North Africa, the Horn of Africa, and the Middle East). We support this.

"We strongly support the assertion that the EU and ENP will work on addressing the root causes of illegal migration. Work will be conducted on better returns and readmission processes, ensuring that EU (and ENP) nations can return those individuals not in need of international protection to their countries of origin, where those persons can be reintegrated. Readmission will have a central place in all dialogues with countries of origin and transit of illegal migrants.

"Border management engagement will be improved. We are supportive of any EU efforts made to strengthen the security of the EU external border. The EU, including through FRONTEX and EUROPOL, will work with "interested partner countries" on training and capacity building, leading to better information exchange, capacity, and operational and technical cooperation on border management."

7.33 The Minister notes that the EU budget funds allocated to the ENI should be allocated to partner countries in line with the ENP's priorities and taking into account the needs and ambition of the partner country. The Commission will undertake an in-depth assessment of options for better addressing the financial needs of neighbourhood countries. The Commission will also examine whether a "flexibility cushion" within the ENI should be established to allow for unforeseen needs to be met. Streamlining administrative procedures will be part of the mid-term review of EU external financing instruments to

take place in 2017. There should be stronger donor co-ordination with other EU funding mechanisms and international financial institutions.

7.34 The Minister welcomes the focus on flexibility in particular as a means of allowing for unforeseen crises to be met effectively. However, any proposed flexibility cushion in terms of the rules, procedures and size will need to be examined in detail before he would be willing to commit to a position. The Minister also welcomes allocations being differentiated between partner countries and taking into account relevant factors, which he considers important in order for the funds to have the maximum impact.

Previous Committee Reports

None, but see Thirty-ninth Report HC 219-xxxvii (2014–15), chapter 13 (24 March 2015) and First Report HC 342-i (2015–16), chapter 60 (21 July 2015).

8 Competition Policy 2014

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the House and to the Business, Innovation and Skills Committee
Document details	Commission Report on *Competition Policy 2014*
Legal base	—
Department	Business, Innovation and Skills
Document Numbers	(36924), 9391/15 + ADD 1, COM(15) 247

Summary and Committee's conclusions

8.1 In June, the Commission published its report on *Competition Policy 2014*, which outlines the main competition policy developments and enforcement actions taken by the Commission in that year.

8.2 The Minister of State for Skills (Nick Boles), states that the document provides a useful round up of the Commission's competition policy work in 2014, but that it has no policy implications in itself.

8.3 **The Committee notes that effective competition policy and enforcement plays an important role in ensuring a well-functioning Single Market, and can contribute to the delivery of the Government's and Commission's priorities of: implementing the Digital Single Market Strategy; increasing transparency in and stability of the financial services sector; and ensuring a level playing field in an Energy Union. We also note that under the state aid framework, the Commission is investigating the compatibility of certain tax practices by multinational companies (in the context of aggressive tax planning)**

and the tax ruling practices of Member States, as a means of ensuring 'fair' tax burdens/practices.

8.4 **The Committee considers the information provided by the Minister on the state aid modernisation (SAM) package helpful. We welcome the increased transparency requirements for, and monitoring of, aid measures (through, for example, the introduction of a transparency database for certain aid measures from July 2016) to help ensure a level playing field for UK businesses operating in the Single Market.**

8.5 **We refer to our** Report chapter on the Commission White Paper '*Towards more effective EU merger control*' and the debate **in European Committee C on 3 November for more detail on EU merger control.**

8.6 **As with previous such reports, we clear this document — which provides a comprehensive account of competition policy and enforcement in 2014 — from scrutiny, but given its political importance draw it the attention of the Business, Innovation and Skills Committee and to the House.**

Full details of the documents: Commission Report on *Competition Policy 2014*: (36924), 9391/15 + ADD 1, COM(15) 247.

Background

8.7 Each year, the Commission provides a round-up of its competition policy and enforcement work in the previous year.

8.8 The Commission considers that improving and expanding the Single Market goes hand in hand with effective competition policy and enforcement, and that efficiently functioning markets will boost competitiveness, jobs and growth in the EU — the Juncker Commission's first political priority.

The Commission's Report of 5 June 2015

8.9 The report outlines the main competition policy developments and enforcement actions taken by the Commission in 2014, providing a detailed assessment on the following areas of activity.

Towards a connected Digital Single Market

8.10 The report highlights the importance of completing the Digital Single Market for growth and competitiveness and the need for EU competition policy to ensure a fair and level digital playing field and to promote competitive markets in broadband and telecoms networks.

8.11 The Commission stresses that state aid plays an important role in the roll out of broadband infrastructure; it notes that it has approved over €10 billion (£7 billion) of broadband state aid in the last three years. Furthermore, the state aid rules on aid for broadband have been reviewed. New Broadband guidelines have been introduced and the General Block Exemption Regulation (GBER) — which allows aid to be given quickly and

easily under simple administrative processes — includes certain aid to broadband infrastructure.

8.12 The report also sets out the Commission's enforcement work, aimed at keeping broadband and mobile networks open and digital services competitive. For example, it:

- imposed a fine close to €39 million (£28 million) on Slovak Telekom and Deutsche Telekom for an abusive strategy to shut out competitors from the Slovak market for broadband services. The Commission also imposed remedies in relation to two mergers of network operators (Hutchison 3G UK/Telefonica Ireland and Telefonica Deutschland/E-plus) to ensure that competition is maintained;
- approved the acquisition of WhatsApp by Facebook;
- has ongoing investigations into alleged abusive practices by Qualcomm concerning communication chipsets used in mobile handsets and mobile broadband devices, and into certain of Google's business practices in relation to online services;
- has launched a preliminary investigation into Google's alleged abusive practices with regard to the Android mobile operating system;
- has clarified its position on the enforcement of Standard Essential Patents;
- has worked to lower interchange fees on payment cards, noting that political agreement was reached on an Interchange Fee Regulation at the end of 2014 that will introduce lower interchange fees for consumer card payments;
- adopted new rules for the assessment of technology transfer agreements, with a revised Technology Block Exemption Regulation; and
- opened formal proceedings against a number of major US film studios and European pay-TV broadcasters to examine whether certain clauses concerning broadcasting and online pay-TV services prevent consumers from cross-border access to pay-TV content.

Making energy markets work better

8.13 The report highlights the importance of energy as an economic input for all sectors and as an expenditure for EU households, and that competition policy plays a key role in helping the EU achieve its goals on energy. It further points to President Juncker's call — as part of his Political Guidelines — for a reform of EU energy policy into a new European Energy Union, focusing on the diversification of energy sources, strengthening the share of renewables, reducing the energy dependency of several EU countries and enhancing energy efficiency.

8.14 The Commission has adopted new Guidelines on state aid for environmental protection and energy (EEAG), which came into force in July. The new guidelines describe how the Commission will assess Member States' support measures aimed at meeting their 2020 climate and energy targets. The Commission considers that the EEAG provide a crucial framework for Member States to intervene in order to support low carbon energy

generation in order to meet EU Greenhouse Gas emissions targets and ensure security of supply whilst decarbonising EU energy systems and taking necessary action to address competitiveness concerns.

8.15 The new EEAG guidelines do not cover nuclear energy. The Commission examined UK plans to support the construction and operation of a new nuclear power plant (Hinkley Point C) and found them to be justified, proportionate and compatible with state aid rules.

8.16 The report highlights the importance of antitrust enforcement actions in the energy sector to tackle market segmentation and abusive or collusive behaviour that keep energy prices artificially high. The Commission adopted two decisions concerning power exchanges in 2014. It also started an investigation into suspected abusive behaviour in the Bulgarian wholesale electricity and gas supply markets and continued its investigation into Gazprom, in relation to pricing practices and potential partitioning of markets in the supply of gas to Central and Eastern Europe. Another current investigation looks into potentially illegal practices related to the oil and biofuels products price benchmarks established by the price reporting agency Platts.

Building a fairer and more transparent financial sector to underpin growth

8.17 The report underlines the central role of competition policy in achieving stability and transparency in the financial system, contributing to limiting distortions of competition within the Single Market, and minimising the use of taxpayers' money.

8.18 The Commission adopted a number of decisions on individual banks as well as on guarantee and liquidity support schemes. In addition, it continued to assess a number of development banks, which have gained importance in view of commercial banks' lending financial constraints post-crisis.

8.19 The Commission adopted two cartel decisions concerning interest rate derivatives in the Swiss franc, imposing fines totalling almost EUR 62 million (£45 million) on RBS and JP Morgan, and EUR 32 million (£23 million) on RBS, UBS, JP Morgan and Credit Suisse. In both cases, the banks agreed to settle with the Commission.

8.20 The report notes that the Directive on Markets in Financial Instruments (MiFID II) and the Regulation on Markets in Financial Instruments (MiFIR), adopted in May 2014, form part of the EU Financial Regulation Agenda and are intended to improve conditions for competition in the trading and clearing of financial instruments.

8.21 Antitrust enforcement in the payment sector included: accepting commitments from Visa Europe on its multilateral interchange fees for credit card payments; continuing with proceedings against Visa Inc. and Visa International in relation to international inter-bank fees; and investigating MasterCard's inter-regional (international) inter-bank fees and its rules relative to cross-border acquiring. The European Court of Justice also upheld the Commission's 2007 MasterCard decision.

8.22 Furthermore, the Council adopted its General Approach on a Regulation on Interchange Fees for card based payments and a proposal to revise the Directive on Payment Services at the end of 2014.

Boosting competitiveness of European industry

8.23 In November 2014, President Juncker announced the creation of the European Fund for Strategic Investment (EFSI), with the objective to enhance investment in Europe by generating €315 billion (£226 billion) investment.

8.24 The Commission also completed the SAM process in July 2014, intended to streamline and simplify state aid rules and processes and link aid closely to growth. As part of the SAM initiative, there are new risk finance guidelines, new rules to facilitate the granting the aid of research, development and innovation and new guidelines on rescuing and restructuring.

8.25 The SAM package also extended the GBER, adding new categories of aid to those exempted from the notification requirements (such as aid for broadband infrastructure), broadening categories already covered (e.g. investment aid for research infrastructure) and setting higher notification thresholds. This is intended to enable Member States to do more without the need to undergo the approval process. At the same time, Member States' obligations in terms of monitoring, transparency and compliance have increased (to guard against abuse of the system).

8.26 The Commission investigated and fined several cartels concerning input and intermediate products, including two cartel in the car parts sector. It also initiated an investigation concerning medium and heavy duty trucks.

State aid control contributing to ensuring a fair tax burden for all

8.27 The report notes that "Tax revenue in the EU accounts for about 90% of total government revenue" and that "President Juncker's Political Guidelines state that 'while recognising the competence of Member States for their taxation systems, we should step up our efforts to combat tax evasion and tax fraud, so that all contribute their fair share'".

8.28 While the EU does not have direct authority over national tax systems, the Commission can investigate whether certain tax regimes constitute unlawful state aid to companies by granting them selective tax advantages. Against this economic and political backdrop, the Commission is looking at the compatibility of some tax practices adopted by large multinational companies — in the context of aggressive tax planning (taking advantage of the technicalities of a tax system or of mismatches between tax systems in order to reduce tax liability) — within the state aid framework. In 2014, it opened formal investigations in relation to Apple in Ireland, Starbucks in the Netherlands, Fiat Finance and Trade in Luxembourg and Amazon in Luxembourg, and continued its wider inquiry into tax rulings, which covers all Member States, in parallel.

Promoting competition culture, in the EU and beyond

8.29 The report notes the Commission's efforts to promote convergence and co-operation between national competition authorities across the EU and worldwide. Activities in 2014 included:

- taking stock of the enforcement record of the Commission and national competition authorities and identifying areas in which further progress can be made;
- launching a public consultation on proposals to improve merger control at an EU level in the White Paper 'Towards More Effective EU Merger Control';
- continuing to promote a common set of competition principles internationally, through cooperation both bilaterally (for example with the Chinese and Indian competition authorities) and through fora such as the Competition Committee of the OECD, the International Competition Network and UNCTAD;
- negotiating a Transatlantic Trade and Investment Partnership with the US, which will include a competition chapter; and
- screening the competition legislation of candidate countries and providing related assistance in adjusting their competition legal frameworks and practices.

Competition dialogue with other institutions

8.30 The report states that DG Competition continued to engage in dialogue with the European Parliament and its Economic and Monetary Affairs (ECON) Committee in particular. The Commission worked closely with the other EU institutions in relation to a Directive on antitrust damages actions, the Swiss Co-operation Agreement (concerning the application of their respective competition laws) and the proposed Regulation on Interchange Fees (see above).

The Minister's Explanatory Memorandum of 22 June 2015

8.31 The Minister notes that this report looks back at the main activities of the Commission in 2014 on competition issues. He sets out the Government's position in respect of two areas.

8.32 First, on the SAM package, he notes:

> "The main innovation in SAM comes from the extension of the General Block Exemption Regulation (GBER) which allows aid to be given quickly and easily under simple administrative processes. This is important as the Commission envisages that 90% of all aid should in future be given under this Regulation. More types of aid are now included in this mechanism, for example small scale infrastructure, and there has been an increase in the amounts of aid which can be given, for example up to €15 million (£10.7 million) can now be given for industrial research as opposed to €7.5 million (£5.4 million) previously.
>
> "The Commission sees SAM as a package which on the one hand gives Member States greater flexibility and reduces the administrative burden of giving good aid and on the other hand gives them greater responsibility for transparency, evaluation and compliance. The Commission have stressed that they expect all Member States to co-operate in delivering their part. Greater freedoms were being given as less would now come under Commission scrutiny but that would entail greater responsibilities.

> "The UK is supportive of the evaluation of state aid measures. Good quality evaluation can help identify which measures are most effective and which are most likely to result in negative competitive impact. We recognise the importance of collecting the evidence from state aid interventions so that we can learn from our own measures as well as those of our fellow Member States. The UK therefore supports steps taken by the Commission to encourage evaluation and to share best practices, but believes that these aims may be best fulfilled in a light-touch and incremental way without recourse to legally binding methodological requirements. Individual evaluations should also be considered indicative rather than absolute until sufficient body of evidence has been produced.
>
> "Transparency is an important part of state aid, as it promotes compliance, reduces uncertainties and enables companies to check whether aid granted to competitors is legal. Thus promoting a level playing field across Member States and companies in the internal market; this is very important in the economic context. Transparency facilitates enforcement for national and regional authorities by increasing awareness of aid granted at various levels. Finally, better transparency makes it possible to reduce reporting obligations and the administrative burden linked to reporting. From July 2016 Member States will need to report on all individual awards of aid made under GBER, and in excess of €500,000 (£360,000) on a transparency database. The format of the database is still under discussion and Whitehall and devolved administration officials have been working to ensure that the system works for the UK and across the EU."

8.33 Second, on the Commission's White Paper '*Towards More Effective EU Merger Control*', the Minister states:

> "The UK responded to this White Paper in 2014. This response set out our views that whilst we accept that non-controlling minority shareholdings may produce anti-competitive effects, we do not regard widening the scope of the EU Merger Regulation to be justified. The UK supported the other proposals in the White Paper, notably the proposed modifications to the case referral system, the removal of jurisdiction over certain full-function joint ventures and exemption from notification of certain categories of transactions which do not normally raise competition concerns."

8.34 Overall, the Minister welcomes the report as a useful round up of the Commission's competition policy work in 2014 and considers that it has no policy implications in itself.

Previous Committee Reports

None.

9 Collect More — Spend Better: Achieving Development in an Inclusive and Sustainable Way

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the International Development Committee and Treasury Committee
Document details	Commission Staff Working Document: *Collect More — Spend Better: Achieving Development in an Inclusive and Sustainable Way*
Legal base	—
Department	International Development
Document Numbers	(37236), 13186/15, SWD(15) 198

Summary and Committee's conclusions

9.1 Commission Communication 5902/15, *A Global Partnership for Poverty Eradication and Sustainable Development after 2015*, was the latest stage in a process that began with Commission Communication 7075/13 — *A decent life for all: ending poverty and giving the world a sustainable future*. That earlier Commission brought together the debate about what international framework should succeed the MDGs[40] and the process to establish new Sustainable Development Goals (SDGs) arising from the Rio+20 — where government leaders agreed that the new SDGs should be coherent and integrated with the post-2015 development agenda.[41]

9.2 With the post-2015 SDGs due to be agreed at the UN in September 2015, *A Global Partnership for Poverty Eradication and Sustainable Development after 2015* set out the Commission's views on the delivery of a new global partnership for poverty eradication and sustainable development after 2015, the principles that should underpin the partnership and the components needed to implement the post-2015 agenda. It also put forward specific proposals on possible contributions by the EU and its Members States. The global partnership would, it was envisaged, provide the "Means of Implementation" for the post 2015 agenda. This was debated in European Committee on 4 November 2015.

9.3 Domestic resource mobilisation (DRM) was a key feature of the Third Financing for Development Conference (FFD) held in July 2015 and is reflected in the outcome document, the *Addis Ababa Action Agenda*, and *The Addis Tax Initiative* (see "Background" for further details).

---

40 The eight goals UN Millennium Development Goals (MDGs) that, in 2000, the UN set itself to achieve, most by 2015: eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality; reduce child mortality; improve maternal health; combat HIV/Aids, malaria and other diseases; ensure environmental sustainability; develop a partnership for development — each with associated targets and benchmarks to measure progress.

41 See (34747), 7075/13: Thirty-ninth Report HC 86-xxxviii (2012–13), chapter 6 (17 April 2013).

The Commission Staff Working Document

9.4 This European Commission Staff Working Document, *Collect More — Spend Better: Achieving Development in an Inclusive and Sustainable Way*, seeks to contribute to preliminary discussion on ways to support developing countries in raising their own domestic resources.

9.5 The Commission highlights ways in which DRM can be enhanced, including by deepening and broadening the domestic resource base, effective debt management and natural capital accounting. It outlines the present challenges to developing countries and proposes ways to assist in tackling them (see "Background" for further details).

9.6 The Parliamentary Under-Secretary of State at the Department for International Development (Baroness Verma) emphasises that this paper is a Commission initiative, not an articulation of agreed EU policy, and will not form the basis of agreed EU policy. She also downplays the two "EU flagship initiatives" talked of therein: the "EU Resource Transparency Initiative" and the "Domestic Revenue Mobilisation Initiative", noting that they are not currently beyond "the proposal stage". She also talks of remaining "alert both to this possibility and to any other potential areas where the document's contents may be used in EU work sectors".

9.7 The Minister nonetheless welcomes "the work that has gone into producing the document" and its focus on the importance of DRM "as a driver for development", which she supports as "a champion of such initiatives, including through our support of the Addis Tax Initiative (ATI) — i.e., the commitment to enhance the mobilisation and effective use of domestic revenues and improving the fairness, transparency, efficiency and effectiveness of tax systems in order to address inequalities". She agrees that developing countries need to intensify their efforts to improve DRM, with the help of developed countries, which she describes as "a key feature" of the ATI, whose "upfront endorsement" by the Commission she welcomes. The Minister also welcomes the focus on the need for developing countries to ensure optimal levels of domestic revenue to fund their own development, describing this as "the most sustainable form of development finance" and "a key policy priority for the UK in the Financing for Development negotiations". Also welcomed is "the acknowledgement that national action should be complemented by international cooperation, for example to combat tax evasion and avoidance", which she emphasises should be extended to combatting corruption and money laundering. Ditto the emphasis on strengthening sustainable debt management.

9.8 The Minister also notes "concerns" about three aspects of the paper thus:

— she says that, rather than developing "a basis of underlying international principles to guide work on standards and regulations", efforts should remain focussed on the OECD's extensive ongoing work;

— she asserts that upgrading the UN tax committee would undermine its expertise, and that the FFD Conference proposal, to increase the number of Committee meetings, is the right way to enhance its work; and

— she disputes the evidence base used for illicit financial flows, arguing that, though volumes are significant and domestic and international collective action is needed to

tackle them, their very nature means that it is not possible to quantify them accurately (see "Background" for further details).

9.9 **Given its nature, the Minister's seeming sensitivity about the paper may be somewhat over-blown. In its own words, "Collect More — Spend Better"[42] simply aims "to contribute to the domestic public finance discussions" in the context of the 2015 Financing for Development (FfD) conference and the Post-2015 Agenda, given that a key message emerging from the lead up to Addis Ababa was that domestic public finance should be at the heart of all countries' efforts to implement global agreements, such as SDGs, and to achieve the overriding objectives of inclusive growth, poverty eradication and sustainable development. Through the EDF if nothing else, the Commission is a major development actor; it would have seemed odd for it to have made no such contribution to the debate.**

9.10 **The Minister is also dismissive of the proposed EU "flagship initiatives". Nevertheless, we presume that — with the EU and its Member States being the world's largest donors[43] — something substantial on Resource Transparency and Domestic Revenue Mobilisation will emerge at some stage, and that it will be submitted for parliamentary scrutiny. In any event, we should be grateful if the Minister update us in six months' time (assuming nothing is put forward in the interim).**

9.11 **In the meantime, we now clear this Commission Staff Working Document.**

9.12 **We also draw these developments to the attention of the International Development Committee and Treasury Committee.**

Full details of the documents: Commission Staff Working Document: *Collect More — Spend Better: Achieving Development in an Inclusive and Sustainable Way*: (37236), 13186/15, SWD(15) 198.

Background

9.13 Commission Communication 12434/13, *Beyond 2015 — towards a comprehensive and integrated approach to financing poverty eradication and sustainable development* on the Commission's perspectives on financing the post-2015 development framework, is also relevant.[44] Both Communications were examined in a European Committee debate on 11 December 2013.[45]

9.14 A follow-up Joint Communication 10412/14, of June 2014, *A decent Life for all: from vision to collective action*, set out the Commission's and European External Action Service's (EEAS) thinking on the post-2015 development agenda. It was examined on several

---

42 See Collect More — Spend Better.

43 EU collective ODA — EU institutions and Member States — increased to € 58.2 billion in 2014, up 2.4% from 2013, thus growing for the second year in a row and reaching its highest nominal level to date. See The EU remains the world's largest aid donor in 2014 for full information.

44 See (35203), 12434/13: Fourteenth Report HC 83-xiv (2013–14), chapter 7 (11 September 2013) for our consideration of this Commission Communication.

45 The record of the European Committee is available at *Gen Co Deb*, European Committee B, 11 December 2013, cols. 3-20.

occasions by the previous Committee[46] and subsequently debated, in European Committee B, on 11 March 2015.[47]

9.15 With the post-2015 SDGs due to be agreed at the UN in September 2015, at its first meeting on 21 July 2015 the Committee recommended that *A Global Partnership for Poverty Eradication and Sustainable Development after 2015* be debated in the European Committee immediately after the House returns from the "conference" recess, so that the House could then be provided with, and discuss, the Government's analysis of the outcome of both the then upcoming Addis Ababa FfD conference and the September discussions at the United Nations. That debate was held on 4 November 2015, at the end of which the Committee resolved thus:

> "That the Committee takes note of European Union Document No. 5902/15 and Addendum, a Commission Communication: *A Global Partnership for Poverty Eradication and Sustainable Development after 2015*; welcomes this document as a contribution to a debate that is central to sustainable development policy; and supports the Government's approach to the post-2015 development agenda."[48]

9.16 The main outcome of the Third FfD conference was the "Addis Ababa Action Agenda". Heading the seven "Action areas", A-G, is Action area A: Domestic public resources. Paragraph 22 reads thus:

> "We recognize that significant additional domestic public resources, supplemented by international assistance as appropriate, will be critical to realizing sustainable development and achieving the sustainable development goals. We commit to enhancing revenue administration through modernized, progressive tax systems, improved tax policy and more efficient tax collection. We will work to improve the fairness, transparency, efficiency and effectiveness of our tax systems, including by broadening the tax base and continuing efforts to integrate the informal sector into the formal economy in line with country circumstances. In this regard, we will strengthen international cooperation to support efforts to build capacity in developing countries, including through enhanced official development assistance (ODA). We welcome efforts by countries to set nationally defined domestic targets and timelines for enhancing domestic revenue as part of their national sustainable development strategies, and will support developing countries in need in reaching these targets."[49]

9.17 Also relevant is "The Addis Tax Initiative", whose Declaration begins thus:

> "The proposed Addis Ababa Accord sets out the importance of domestic revenue for financing development, calls for substantial additional development cooperation in this area as well as specifically highlights the importance of tackling tax evasion and avoidance:

---

46 See (36070), 10412/14: Twenty-ninth Report HC 219-xxviii (2014–15), chapter 1 (14 January 2015); Twenty-fourth Report HC 219-xxiii (2014–15), chapter 5 (3 December 2014), Ninth Report HC 219-ix (2014–15), chapter 10 (3 September 2014) and Fifth Report HC 219-v (2014–15), chapter 4 (2 July 2014).

47 The record of the European Committee debate is available at *Gen Co Deb*, European Committee B, 11 March 2015, cols 3-18.

48 The record of the debate is available at *Gen Co Deb*, European Committee B, 4 November 2015, cols 3-16.

49 See Addis Ababa Action Agenda for full information.

> "Domestic resource mobilisation and effective use is the crux of our common pursuit of sustainable development and achieving the SDGs.
> "Globally, we commit to support countries that need assistance, including through substantially increasing ODA and technical assistance for tax and fiscal management capacity, particularly to LDCs.
> "We […] agree to cooperate to combat tax evasion as well as tax avoidance."

9.18 Stepping up DRM is described as core to ensuring solid financing of the Post-2015 Development Agenda, and as a more stable and sustainable source of income that strengthens a legitimate relationship between citizens and the state and fosters good governance. The Declaration envisages many developing countries seeking technical assistance to help boost their tax collection through broadening and protecting the domestic tax base, improving domestic tax compliance, and improving tools and procedures to stem both cross-border and domestic tax evasion and tax avoidance. It notes significant progress on the international tax agenda through the G20, OECD and Global Forum work streams, but says that reaping maximum benefit of the outcome of these work streams requires substantial new efforts on the part of developing countries to improve legislation, data-management capabilities, and operations, for which they need technical support. The Addis Tax Initiative is thus "a Partnership in capacity building in the field of domestic revenue mobilisation/taxation", in which "each country takes its responsibilities, cooperates and supports each other" and "declare their commitment to implement" the Accord "in the leading action of raising domestic public revenue, to improve fairness, transparency, efficiency and effectiveness of their tax systems, and commit to step up their efforts as specified below".[50]

9.19 Countries who have joined the Addis Tax Initiative are: Australia, Belgium, Cameroon, Denmark, Ethiopia, European Commission, Finland, France, Italy, Germany, Indonesia, South Korea, Liberia, Luxembourg, Malawi, Netherlands, Norway, Philippines, Sierra Leone, Senegal, Slovenia, Sweden, Switzerland, United Kingdom, and the United States.[51]

The Commission Staff Working Document

9.20 The Commission says that a key message that emerged from the Addis Ababa FFD Conference —"and one that signalled an important paradigm shift" — is that domestic public finance should be at the heart of all countries' efforts to achieve the overriding objectives of inclusive growth, poverty eradication and sustainable development.

9.21 The Commission notes that the 2030 Agenda for Sustainable Development adopted at the September 2015 UN Summit also acknowledged the vital role of domestic public finance in providing essential public goods, the harmful effects of illicit financial flows and the need for countries to increase domestic revenue mobilisation, develop effective, accountable and transparent institutions and ensure sustainable debt management.

---

50 See The Addis Tax Initiative — Declaration for the full text.

51 See Addis Tax Initiative launched for further information.

9.22 The Commission highlights the response of many developing country partners to the many significant challenges facing developing countries in DRM in launching the Addis Tax Initiative. The Commission also notes that participating development cooperation partners undertook to double their collective support in the area of domestic revenue mobilisation/taxation.

9.23 The Commission recalls earlier building blocks:

- Commission Communication *Tax and development — cooperating with developing countries on promoting good governance in tax matters* COM(2010)163;[52] and
- the EU's "Thematic Programme on Global Public Goods and Challenges 2014–2020".[53]

9.24 Against this background, the Commission Staff Working Document analyses ways to support developing countries in providing the resources required to ensure the right mix of public goods and services for sustainable development, and aims to explain what the international community can do to support developing countries' efforts to improve their tax systems and thereby benefit more from their domestic resources, without increasing the tax burden on the poor. The Commission recalls the broader context of the EU's support to developing countries to increase DRM and to use financial resources more effectively, notably — but not exclusively — through budget support. As well as following the objectives of the EU Programme on Global Public Goods and Challenges, the Commission Staff Working Document is seen as providing the framework for two envisaged EU flagship initiatives: the EU Resource Transparency Initiative (EURTI) and the Domestic Revenue Mobilisation Initiative (DRMI).

9.25 The document outlines core elements to expand fiscal space and to support developing countries in three critical areas:

- improved domestic revenue mobilisation;
- more effective and efficient public expenditure and
- debt management.[54]

9.26 In her Explanatory Memorandum of 17 November 2015, the Minister (Baroness Verma) says that the Commission Staff Working Document is not based on discussions within the EU, Member States were not formally consulted on the text during its preparation, and it is thus "not an articulation of agreed EU policy" and "will not form the basis of agreed EU policy".

9.27 With regard to "the possibility that elements from the working document may be drawn upon within two proposed EU flagship initiatives, 'The EU Resource Transparency Initiative' (EURTI) and the 'Domestic Revenue Mobilisation Initiative' (DRMI)", the Minister says that these initiatives are "currently at the proposal stage" and that:

---

52 See Tax and Development: Cooperating with Developing Countries on Promoting Good Governance in Tax Matters of 24 April 2010.

53 See Thematic Programme on Global Public Goods and Challenges 2014-2020 for full information.

54 See 13186/15 for further detail.

> "the UK will remain alert, both to this possibility and to any other potential areas where the document's contents may be used in EU work sectors."

The Government's view

9.28 The Minister welcomes "the work that has gone into producing the document" and its focus on the importance of DRM as a driver for development, which:

> "we support as a champion of such initiatives, including through our support of the Addis Tax Initiative — i.e., the commitment to enhance the mobilisation and effective use of domestic revenues and improving the fairness, transparency, efficiency and effectiveness of tax systems in order to address inequalities."

9.29 The Minister also:

— welcomes the focus on the need for developing countries to ensure optimal levels of domestic revenue to fund their own development, and agrees that this should be achieved through "fair, efficient, transparent and accountable administration of both revenue and expenditure policy";

— says domestic revenue is "the most sustainable form of development finance" and was "a key policy priority for the UK in the Financing for Development negotiations;

— welcomes "the acknowledgement that national action should be complemented by international cooperation, for example to combat tax evasion and avoidance", noting that it "will be important that this international cooperation extends to combatting corruption and money laundering";

— also welcomes "the emphasis on tackling tax avoidance, along with highlighting the work of the instruments such as the African Legal Support Facility, which has sought to empower African countries in terms of negotiation";

— agrees with suggestions in the document that there should be "a focus on the international tax issues of combatting tax avoidance and evasion", but cautions that "we must also not forget the building blocks of effective revenue mobilisation", such as "broadening the tax base, improving systems and increasing transparency, and those factors identified in the paper's 'Domestic Drivers' section";

— also agrees that developing countries need to intensify their efforts to improve domestic revenue mobilisation, with the help of developed countries, which she describes as "a key feature of the Addis Tax Initiative (ATI)", whose "upfront endorsement" by the Commission she welcomes; and

— welcomes also the emphasis on strengthening sustainable debt management, describing as positive that debt is referred to throughout the document and the fact that debt has soared in many developing countries highlighted, albeit on the basis of limited analysis or detail in the document.

9.30 The Minister also set out three "concerns", as follows:

> "Firstly, we do not agree with the call to develop 'a basis of underlying international principles to guide work on standards and regulations'. We support the extensive work that is ongoing within the international community on improving tax transparency through the OECD on Base Erosion and Profit Shifting[55] and the Global Forum on exchange and automatic exchange of information[56] and consider that this is where efforts should be focussed. Additionally, tax policy is a reserved matter and any such international principles would be without legal basis.
>
> "Secondly, there is reference to improving coordination at international and regional levels, including supporting an upgrading of the UN tax committee. The UK agrees that international cooperation and coordination on international tax issues is important and takes a leading role in this through the G20, G7 and OECD. We have also worked hard in these forums to ensure that developing countries are part of, and benefit from, this action. However, the UK does not consider that upgrading the UN Tax Committee would be appropriate, as this would undermine the expert nature of its deliberations. The FFD Conference in Addis Ababa agreed to increase the number of annual meetings of the Committee which we feel is the right way to enhance the Committee's work.
>
> "Thirdly, we do not agree with the use of Global Financial Integrity (GFI) figures as the evidence base for the paper. The UK accepts that volumes of the illicit financial flows (IFFs) are significant and that collective action at the domestic and international level is needed to tackle them. However, given the very nature of IFFs — that they are hidden — it is not possible to quantify them accurately and the UK does not agree with the definition of IFFs used in the GFI methodology."

9.31 Looking ahead, the Minister says no formal discussion of the Working Paper is anticipated but "elements of it may be drawn upon in the consideration of other initiatives being developed concerning resource transparency and domestic revenue mobilisation". She and her officials will "remain vigilant… raise our concerns in EU fora through discussions and meetings… [and] also be mindful of ensuring consistency with the language contained in the Addis Ababa Action Agenda on these issues".

Previous Committee Reports

None, but see (36644), 5902/15: First Report HC 342-i (2015–16), chapter 2 (21 July 2015).

---

55 Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies that exploit these gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid. The OECD describes BEPS as of major significance for developing countries due to their heavy reliance on corporate income tax, particularly from multinational enterprises. The BEPS Action Plan endorsed by the G20 in July 2013 identified 15 key areas to be addressed. A final package was presented by the OECD Secretary General to G20 Leaders at their Antalya summit in November 2015. See Base Erosion and Profit Shifting for full information.

56 The Global Forum on Transparency and Exchange of Information for Tax Purposes is the continuation of a forum which was created in the early 2000s in the context of the OECD's work to address the risks to tax compliance posed by non-cooperative jurisdictions. The original members of the Global Forum consisted of OECD countries and jurisdictions that had agreed to implement transparency and exchange of information for tax purposes. The Global Forum was restructured in September 2009 in response to the G20 call to strengthen implementation of these standards. The Global Forum now has 130 members on equal footing and is the premier international body for ensuring the implementation of the internationally agreed standards of transparency and exchange of information in the tax area. See Global Forum on Transparency and Exchange of Information for Tax Purposes for further information.

10 Single European Sky: Eurocontrol

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Council Decision concerning an EU position on Eurocontrol matters
Legal base	Articles 100(2) and 218(9) TFEU, —, QMV
Department	Transport
Document Numbers	(37319), 14049/15 + ADD 1, COM(15) 805

Summary and Committee's conclusions

10.1 The EU has a Single European Sky programme to deliver a seamless, safe, sustainable, efficient and interoperable European air traffic management system capable of meeting future capacity needs and not artificially constrained by national borders. This is to be achieved in cooperation with Eurocontrol, the European Intergovernmental Organisation for the Safety of Air Navigation, which has 41 members, including the EU and all 28 Member States. This arrangement has the EU as the single regulator and Eurocontrol as the technical and operational delivery partner in view of its considerable expertise and experience.

10.2 Eurocontrol's Permanent Commission is to meet on 8–9 December to consider amendments to the definition of Eurocontrol's roles and the tasks that it performs and proposals to centralise the provision of certain air navigation services, which are currently provided by individual air navigation service providers. This proposed Council Decision is to establish the EU's position at the Permanent Commission Meeting.

10.3 The Government tells us that, although it does not think a Council Decision in relation to amendment of Eurocontrol's role and tasks is strictly necessary, it is willing to support the proposal, subject to some drafting amendments. In relation to centralising services the Government supports the Commission's objection, as set out in the proposed Council Decision, to the Permanent Commission's draft proposal.

10.4 **It is regrettable that the proposed Council Decision was only presented by the Commission on 23 November. But, given the imminent Council consideration of the proposed Council Decision and on the presumption that the Government will not support it if it does not achieve the amendments it is seeking, we clear the document from scrutiny.**

Full details of the documents: Proposal for a Council Decision on the position to be taken in respect of the decisions to be adopted by Eurocontrol's Permanent Commission, on the roles and tasks of Eurocontrol and on centralised services: (37319), 14049/15 + ADD 1, COM(15) 805.

Background

10.5 The Single European Sky (SES) initiative was launched in 2004 in response to the growing problem in air traffic management (ATM) delays in the late 1990s. The principal

objective of the SES is to deliver a seamless, safe, sustainable, efficient and interoperable European ATM system capable of meeting future capacity needs and not artificially constrained by national borders. This is to be achieved by delivery of SESAR (SES ATM Research), which is the technological/industrial complement to the SES and crucial to its realisation.

10.6 Eurocontrol, the European Intergovernmental Organisation for the Safety of Air Navigation, has 41 members, including the EU and all 28 Member States. The UK was one of the six founding members in 1960.

10.7 In 2012 an agreement to enhance cooperation between the EU and Eurocontrol set out the roles of the two organisations with respect to the delivery of the SES, including SESAR, in particular with the EU as single regulator and Eurocontrol as the technical and operational delivery partner in view of its considerable expertise and experience in those areas.

The document

10.8 Eurocontrol's governing body, the Permanent Commission, is meeting on 8–9 December. At that meeting the Permanent Commission will be asked to decide upon two items, which the Commission believes may impact on EU competence in the field of air navigation service provision and the related SES legislation. It has therefore brought forward this proposal for a Council Decision, seeking the agreement of Member States to an EU position on these items. The proposal is accompanied by an annex which sets out the proposed position to be taken by Member States, that is, in seeking a number of changes to the detail of proposed Permanent Commission decisions.

10.9 The first item concerns the definition of Eurocontrol's roles and the tasks that it performs. In December 2013, the Permanent Commission established a Study Group to investigate whether and how the Eurocontrol Convention may require amendment to adapt to changes in the air traffic management landscape in Europe since the current Convention was agreed. These changes include in particular the EU gaining competence for air navigation services and launching its SES initiative to modernise Europe's air traffic management arrangements, with Eurocontrol providing some supporting functions.

10.10 On 19 October, the Study Group tasked Eurocontrol to prepare a paper on future roles and tasks of the organisation following agreement in that group on these matters. On the basis of this, the Permanent Commission will be asked to adopt an Act on roles and tasks during the meeting of the 8–9 December. The Commission wishes to ensure that this Act makes clear the areas of Eurocontrol's activities where there is EU competence. In this regard the proposed Council Decision is intended to ensure that the definition of Eurocontrol's roles and tasks does not conflict with EU law, in particular EU competences, and that it does not prejudge future EU action.

10.11 The second item concerns the financing of Centralised Services. Since 2012, Eurocontrol has initiated a programme to assess and demonstrate the operational, technical and financial feasibility of centralising the provision of certain air navigation services, which are currently provided by individual air navigation service providers (ANSPs). The Commission believes that Eurocontrol will seek to obtain a decision to

launch the demonstration phase of certain Centralised Services. It is concerned that it is premature to do so because the EU does not have sufficient information to evaluate the impacts of such a decision, in particular, whether the decision may prejudge activities that Eurocontrol may perform in support of the SES initiative and whether the proposed Centralised Services may conflict with the EU's activities, notably under the SESAR research programme. The proposed Council Decision would mandate Member States to seek postponement of this decision.

The Government's view

10.12 In his Explanatory Memorandum of 26 November 2015 the Parliamentary Under-Secretary of State, Department for Transport (Mr Robert Goodwill), says that:

- the UK has long called for reform of the Eurocontrol organisation to reflect changes in the environment in which it operates; and
- the Government has actively contributed to the work that has preceded the proposal on Eurocontrol's future roles, which it supports and is now keen to see agreed.

10.13 The Minister comments that there are, however, some amendments needed to the proposed Council Decision before the Government could support it. He explains that:

- on the item on Eurocontrol's future roles it is arguable whether a Council Decision is needed at all, as the Eurocontrol decision as drafted already recognises areas of EU competence;
- in addition, there is already a process for EU coordination ahead of individual decisions being taken in Eurocontrol;
- the EU, however, does not have contracting status in Eurocontrol at present and as a result its Member States vote individually;
- the Commission is arguing that it is vital that a clear and binding decision is taken on the position Member States should take on a decision as important as deciding on future roles for Eurocontrol;
- the proposed Council Decision makes a number of changes to the draft Eurocontrol Act, aimed at further clarifying where there is EU competence impacting on the roles of Eurocontrol;
- these changes are consistent with the Government's understanding of the situation and are acceptable;
- there are, however, a number of areas where the drafting could be improved:
    - in particular, there is a need to recognise that the membership of Eurocontrol is wider than the EU and some of the language needs to ensure that third country member needs are taken into account too, whilst not impacting on EU competences; and

- the Government will seek to amend some of the text to ensure the needs of third country members are appropriately reflected.

10.14 The Minister says that:

- the Government's overall view is, therefore, that although it feels a Council Decision may not be strictly necessary, it is acceptable as it provides an additional protection to ensure that EU competences are clear in the areas where Eurocontrol is active;
- in practice, however, the proposed Council Decision would have no impact on EU competences in this area or the UK's ability to influence future decisions on how they are exercised.

10.15 Turning to the item on Centralised Services, the Minister says that:

- the Government supports the Commission's view that it is too soon to proceed beyond current feasibility work at this stage;
- it is, however, the Government's understanding that the Permanent Commission will not now be asked to agree any financial decisions on Centralised Services;
- instead it will be asked to approve some work to develop an agreement between Eurocontrol and ANSPs on a framework for common procurement;
- the proposed Council Decision will need to be amended to reflect this; and
- the Government's view is that putting in place the necessary agreements between Eurocontrol and ANSPs is a pre-requisite to being able to agree to proceed with Centralised Services beyond the feasibility stage.

10.16 The Minister tells us that the proposed Council Decision is expected to be decided on at the Employment, Social Policy, Health and Consumer Affairs Council on 7 December, that is, in time for the Permanent Commission meeting on 8–9 December.

Previous Committee Reports

None.

11 EU Special Representative for the Sahel

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Council Decision appointing the EUSR Special Representative for the Sahel
Legal base	Articles 31(2) and 33 TEU; unanimity
Department	Foreign and Commonwealth Office
Document Number	(37201), —

Summary and Committee's conclusions

11.1 The Sahel region is defined in this context as Burkina Faso, Chad, Mali, Mauritania and Niger. The mandate was initiated in 2013, at the time of the French-led intervention in Mali. The current European Union Special Representative (EUSR) Sahel is M. Reveyrand-de Menthon, a French diplomat. Initial priority was given to Mali and to the regional dimensions of the conflict there.

11.2 The current mandate is based on the EU's policy objectives, i.e., to contribute actively to regional and international efforts to achieve lasting peace, security and development in the region. The EUSR's job involves enhancing the quality, intensity and impact of the EU's multi-faceted engagement in the Sahel region, including the *EU Strategy for Security and Development in the Sahel*[57] and the consequential Regional Action Plan, participating in coordinating all relevant instruments for EU actions and liaising with international partners.

11.3 M. Reveyrand-de Menthon has been regarded throughout his mandate as having done a good job. When submitting this latest mandate renewal for scrutiny, the Minister for Europe (Mr David Lidington) explained, however, that he was leaving the position at the end of this current mandate; it was hoped that a successor would be in place by the end of 2015; in the meantime, the Council Decision was required to ensure the legal basis for the position remained open with an agreed budget to maintain an office and staff.

Our assessment

11.4 The extension of the EUSR Sahel and the proposed budget raised no questions. We would therefore normally have cleared this Council Decision from further scrutiny. But two other legal issues arose.

11.5 First, we noted that the Minister suggested that Article 28 TEU should be included amongst the legal bases in addition to Articles 31(2) and 33 TEU as used in other such instances; if so, this would result in a requirement for unanimity rather than qualified majority voting (QMV) in the Council. We queried this. The Minister subsequently

[57] EU Strategy for Security and Development in the Sahel.

confirmed that the correct legal bases are Articles 31(2) and 33 TEU, which would allow for QMV.[58]

11.6 Secondly, we were concerned that the proposal was not, as elsewhere, simply to extend the mandate and provide for a budget; instead, the Minister appeared to be content with the notion of the person being appointed as EUSR not having been chosen by the time the Council adopted the Decision — in which case, as the text stood, the Council would adopt a decision approving the appointment of "XXXX" without that person being named. This was unacceptable legally and from the point of view of scrutiny. The job and the job holder were inseparable. We should not have been expected to approve the one and to take the other on trust. We therefore continued to retain the Council Decision under scrutiny until we knew who M. Reveyrand-de Menthon's successor was to be, and why the Minister regarded him or her as an appropriate choice.

11.7 Although clarifying the legal basis, the Minister's first response took us no further forward as far as this other matter was concerned. We therefore continued to retain the Council Decision under scrutiny until he could provide an uncaveated Council Decision, details of who M. Reveyrand-de Menthon's successor was to be, and why he regarded him or her as an appropriate choice.[59]

11.8 **It is now clear from the Minister's further letter that the proposed successor to M. Reveyrand-de Menthon is a very strong candidate — Mr Angel Losada Fernandez, a Spanish career diplomat with over 30 years' experience and the current Spanish Special Representative for the Sahel and Libya, whom the Minister says has been actively involved in the region since 2014, understands the challenges it faces and is well known to the key personalities and regional organisations. We are now therefore willing to clear the draft Council Decision.**

11.9 **But we do so with continuing reservations. The draft Council Decision remains *limité*; i.e., 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, meaning that it "cannot be published, nor can it be reported on in any way which would bring detail contained in the document into the public domain". There appears to be no good reason for this to be so. Moreover, it is not the only such instance; on the contrary, this now seems to be a practice that has been adopted by the European External Action Service (EEAS) without consultation and which serves only to undermine proper, prior parliamentary scrutiny. The Minister and his officials are aware of the other such instances. We ask him to clarify what has been going and why, and what he proposes to do to restore long-established normal working practice.**

11.10 **Secondly, we do not accept the implication in the Minister's letter that, in agreeing to postpone the adoption of the Council Decision until 8 December, the EEAS is doing the Committee some sort of service. That this is "an extraordinary measure" which is "done in recognition that this appointment has come so late", with a delay that "further prolongs the legal uncertainty over the status of the EUSR Sahel's office, which**

58 See the Minister's letter in our Ninth Report: HC 342-viii (2015–16), chapter 5 (18 November 2015).

59 Ninth Report: HC 342-ix (2015–16), chapter 5 (18 November 2015).

has been without a legal mandate since 31 October", is a situation entirely of its (and the Member State representatives in RELEX)[60] making. The answer is simple: put forward draft Council Decisions without unnecessary privacy markings and that contain all the relevant information in the first instance.

Full details of the document: Council Decision appointing the EUSR Special Representative for the Sahel: (37201), —.

Background

11.11 The full background is set out in the first of our previous Reports.[61]

The Minister's letter of 27 November 2015

11.12 The Minister is pleased to inform the Committee that on 25 November the High Representative informed Member States of her preferred candidate:

> "Mr Angel Losada Fernandez, a Spanish career diplomat with over 30 years experience and the current Spanish Special Representative for the Sahel and Libya. I believe Mr Losada is a strong candidate as he has been actively involved in the region since 2014 and so understands the challenges it faces. He is also well known to the key personalities and regional organisations. I have attached Mr Losada's CV for the Committee's information. The new Council Decision with Mr Losada's name inserted, has now been made available by the EEAS. I am providing a copy of the latest draft for your information."

11.13 The Minister then says:

> "The Council Decision now needs to be urgently agreed. However, as you know I take the Government's scrutiny obligations to Parliament very seriously. Therefore, the UK has lobbied for more time and the EEAS has agreed to postpone the adoption of the Council Decision until 8 December. This is an extraordinary measure and is done in recognition that this appointment has come so late. However, the delay further prolongs the legal uncertainty over the status of the EUSR Sahel's office, which has been without a legal mandate since 31 October. Similarly, the newly appointed EUSR Sahel will not be able to commence his duties without an adopted Council Decision, hence it is in Member States' interest to adopt this quickly now that the appointment has been made."

11.14 The Minister concludes by asking the Committee, in the light of the information thus provided, now to clear the draft Council Decision from scrutiny.

Previous Committee Reports

Eighth Report HC 342-viii (2015–16), chapter 2 (4 November 2015) and Ninth Report HC 342-ix (2015–16), chapter 5 (18 November 2015).

---

60 The RELEX working party deals with legal, financial and institutional issues of the Common Foreign and Security Policy.

61 See Eighth Report HC 342-viii (2015–16), chapter 2 (4 November 2015).

12 Integrated Border Management Assistance Mission in Libya (EUBAM Libya)

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Council Decision providing for three-month mandate extension
Legal base	Articles 28, 42(4) and 43(2) TEU; unanimity
Department	Foreign and Commonwealth Office
Document Number	(37321), —

Summary and Committee's conclusions

12.1 EUBAM Libya (the European Union Integrated Border Management Assistance Mission in Libya) was established in May 2013, with a two-year mandate. The aim was to support the Libyan authorities to develop capacity for enhancing the security of their borders in the short term and a broader Integrated Border Management (IBM) strategy in the longer term. The total two-year cost was €56.5 million (£40.1 million).

12.2 Despite the dire security situation, which was far worse than when it was set up in May 2013, the European External Action Service (EEAS) nonetheless proposed in May 2014 a two-year extension, until spring 2017. Instead, the Mission was down-sized in August 2014 and the residue relocated to neighbouring Tunis; and the EEAS began a further Review.

12.3 Last autumn, the Minister for Europe (Mr David Lidington) reported that the Review was to "be released" in December and "formally considered in January", with "a final decision on the future of the mission being taken in February". The options included mission closure (one for which the previous Committee had pressed): but it also included others (including putting it in "sleeper" mode, in which EUBAM Rafah has been for the past seven years).[62] He undertook to write with more details on the future of this mission "once this document has been discussed".

12.4 The previous Committee noted the systemic reluctance to contemplate closing a mission because of subsequent unfavourable developments; the consequential wider implications of the outcome of this review; and the Minister's oft-professed commitment to enhanced scrutiny of CFSP; and said that it would be important that it had an opportunity to consider the likely findings, and that it therefore expected to hear further from him in January, and well before any final decision was taken.[63]

12.5 The draft Council decision that the Committee considered at its first meeting on 21 July extended the EUBAM Libya mandate by a further six months, from 21 May 2015 to 21 November 2015, and the existing "Year 2" budget of €26,200,000 (then £18,605,000) would now cover the extended period.

---

62 EUBAM Rafah.

63 See (35995), —: Twenty-fifth Report HC 219-xxiv (2014–15), chapter 13 (10 December 2014).

12.6 The Minister for Europe recalled that in October 2014, the mission began down-sizing from 57 to a core team of 17, and explained that:

— following Political and Security Committee (PSC)[64] discussions on 14 January 2015 in which Member States indicated support for suspension of EUBAM Libya, the mission was directed to cease planning on all training capacity delivery;

— on 17 February, the PSC decided that the mission should further down-size, from 17 staff to 3, by 31 March 2015; and

— the mission was now "on hold".

12.7 The Minister also explained that the 21 April Foreign Affairs Council considered the future of EUBAM in the context of wider discussions on Libya, and:

— against the background of the options for EUBAM within the ISR, Member States were divided;

— some pushed for closure, while others argued that this would send the wrong message about the extent of the EU's intentions at a time when the EU was looking to support a possible Government of National Unity;

— the Foreign Secretary accepted the finally-agreed compromise option, whereby the mission should continue with a six month mandate, whilst remaining in its current suspended state;

— before the mandate expiry on 21 November 2015, Member States would reconsider the mission's future against the background of developments in the political and security situation; and the EU's wider strategy to address the migration issue in the Mediterranean; and

— this short-term extension would "allow the EU to progress thinking on appropriate action to support Libya and enable us to take a more considered view on the long-term future of EUBAM".

12.8 The Minister also noted:

> "UN-led negotiations to agree a Libyan political settlement are at a crucial point. UN SRSG Leon[65] issued his fourth/final draft of the agreement on 8 June. Only a stable and representative Government of National Accord (GNA) can deal with the political and security challenges that Libya faces, including control of its borders. However, if the process drags on, migration [and terrorist] threats will continue to worsen. The UK and international partners are working to urge both sides to come to an agreement. We, the EU and wider international community are prepared to support a GNA in confronting Libya's challenges."

---

64 The Political and Security Committee.

65 On 14 August 2014, United Nations Secretary-General Ban Ki-moon appointed Bernardino León (one-time EU Special Representative to the Southern Mediterranean) as his Special Representative and Head of the United Nations Support Mission in Libya (UNSMIL).

Our assessment

12.9 We dealt elsewhere with other EU responses to "the political and security challenges that Libya faces, including control of its borders", which in the CSDP context meant the new EU naval operation, EUNAVFOR Med. In our separate Report on this mission and the Commission's proposals for dealing with the illegal immigrants who make it to Europe's shores, we recommended that both be debated on the floor of the House.[66] Among other things, the House would have an early opportunity to question the Government about the prospects for the *sine qua non* for progress in all of these areas, i.e., a Government of National Accord in Libya.

12.10 Looking further ahead, there were clear parallels here with the EU's other border assistance, EUBAM Rafah, whose latest mandate extension we considered elsewhere in our First Report.[67] That mission had now been "in its current suspended state" since 2007, essentially because it had always been decided at each juncture that ending the mission would "send the wrong message about the extent of the EU's intentions". The obvious danger was that EUBAM Libya was now on that same road, with the outcome of the November review essentially pre-determined, i.e., in limbo until a GNA was formed. We therefore asked the Minister to inform the Committee as soon as it returned from the Conference recess, i.e., by 8 October, about the EEAS' and his latest thinking in relation to whatever the situation on the ground and future prospects for a GNA then were.[68]

12.11 The Minister now reports that, on 5 November, the EEAS produced "an options paper"; the PSC, on 13 November, agreed a further three month extension until 21 February 2016, pending the possible formation of a Libya government; and, in the meantime, the mission remains "on hold" in Tunis.

12.12 The Minister explains that:

— the options proposed by the EEAS included "extension and regeneration assuming formation of a Government of National Accord (GNA)", and "closure of EUBAM if there was no prospect of a GNA forming, the situation in Libya further deteriorating, or if the GNA did not consent to the mission";

— the EEAS recommended that the Member States agreed to extend the mission's "on hold" status for a further six months "with a view to regenerate and resume operational engagement as appropriate with the option to adjust the mandate in accordance with Libyan needs and Member State expectations";

— the UK agreed "at official level" to a three month extension (until 21 February 2016) with no regeneration and the proviso that the EEAS look into the full range of options to succeed EUBAM Libya in due course; and

66 See Second Report HC 342-ii (2015–16), chapters 1-3, (21 July 2015).

67 See Council Decision amending Council Decision 2013/354/CFSP on the European Union Police Mission for the Palestinian Territories (EUPOL COPPS): (36913), —, and Council Decision amending Joint Action 2005/889/CFSP on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah): (36927), —: First Report HC 342-i (2015–16), chapter 67 (21 July 2015).

68 First Report HC 342-i (2015–16), chapter 61 (21 July 2015).

— Member States will now reconsider the mission's future against the background of developments in the political and security situation.

— he judges that:

- this short-term extension will allow the EU "to progress comprehensive thinking on appropriate action to support Libya and explore the full range of options (including closure of EUBAM) in line with wider objectives in Libya";
- the CSDP element of future EU support to Libya might include other core activities such as rule of law and policing — not just border management work;
- the planning and implementation of such activities will be more achievable "from a fresh start", rather than by "attempting to bolt things on to the existing mission"; and
- that such an approach is more likely to achieve a solution that "meets the requirements of Libya and is fit for purpose".

12.13 **Given the continuing lack of progress in the search for a political settlement (see "Background" for further details), the immediate way forward makes sense. We therefore now clear the draft Council Decision.**

12.14 **In so doing, we make three observations. First, we again remind the Government that it has still not arranged the floor of the House debate that we recommended over five months ago on the migration crisis, in which this mission is embroiled.**

12.15 **Secondly, as has happened elsewhere and no doubt as result of administrative failings, a simple request for an update at a specific time has been overlooked. We ask the Minister to task the appropriate officials, once again, with devising a mechanism to ensure that such requests do not continue to be overlooked. This is particularly important because we would like the Minister to write to us by 14 January about the then situation in Libya and what the prospects then are for this mission or any successor — especially as the direction of travel is towards something with a much broader mandate.**

12.16 **Thirdly, this is another manifestation of an unwelcome initiative by the EEAS, of putting forward run-of-the-mill draft Council Decisions in the form of *limité* documents, which constrain how the Committee can handle them and thereby undermine effective scrutiny. As noted elsewhere,[69] we have asked the Minister to clarify what has been going on and why, and what he proposes to do to restore long-established normal working practice.**

Full details of the document: Council Decision amending and extending Council Decision 2013/233/CFSP on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya): (37321), —.

[69] Such texts are 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, meaning that it "cannot be published, nor can it be reported on in any way which would bring detail contained in the document into the public domain". Also see (37201), —, on the EUSR to the Sahel, at chapter 11 of this Report.

Background

12.17 The full background is set out in our predecessors' earlier Reports, as cited below.

The draft Council Decision

12.18 This draft Council Decision extends the mandate of EUBAM Libya by a further three months until 21 February 2016. The existing budget will now cover the period 22 May 2014 to 21 February 2016.

12.19 In his Explanatory Memorandum of 26 November 2015, the Minister for Europe recalls the background outlined above and goes on to explain that, at the PSC on 13 November, Member States considered the future of EUBAM in the context of wider discussions on Libya.

12.20 He continues as follows:

> "The UK agreed at official level to a compromise recommendation of a three month extension (until 21 February 2016) with no regeneration — with the proviso that the EEAS look into the full range of options to succeed EUBAM Libya in due course.
>
> "In advance of the forthcoming expiry of the mandate on 21 February 2016, Member States will reconsider the mission's future against the background of developments in the political and security situation. The UK Government judges that this short-term extension will allow the EU to progress comprehensive thinking on appropriate action to support Libya and explore the full range of options (including closure of EUBAM) in line with wider objectives in Libya. We judge that the CSDP element of future EU support to Libya might include other core activities such as rule of law and policing — not just border management work. We believe that the planning and implementation of such activities will be more achievable from a fresh start, rather than attempting to bolt things on to the existing mission. We judge that such an approach is more likely to achieve a solution that meets the requirements of Libya and is fit for purpose."

12.21 The Minister notes that, the mandate having expired on 21 November, there is now a gap in the legal basis of the mission; but there is a one-month grace period; and it is therefore important a decision be reached in the week beginning 14 December "to avoid bringing the Mission down".

12.22 Turning to *Recent Developments*, the Minister says that, although former UN SRSG Leon announced details of a final political deal on 8 October, Libyan parties have not yet come to agreement, and says:

> "The new UN SRSG, Martin Kobler,[70] took up his post on 18 November and is working to bring the parties together. Only a stable and representative Government of National Accord (GNA) can deal with the political and security challenges that Libya faces, including control of its borders. However, if the process drags on, migration and terrorist threats will continue to worsen. The UK and international

[70] An experienced German diplomat, who has led the UN mission in the Democratic Republic of Congo.

partners are working to urge both sides to come to an agreement, together with UN SRSG Kobler. We, the EU and wider international community are prepared to support a GNA in confronting Libya's challenges."

12.23 On 26 November, EU High Representative for Foreign Affairs and Security Policy Federica Mogherini issued the following statement:

"Courage and leadership are always required when it comes to tough choices, but tough choices are what is needed when it comes to the future of a country and of its people. The UN SRSG Martin Kobler is actively seeking a speedy conclusion of the Libyan political dialogue and we expect that all sides in Libya will show courage and will agree on a Government of National Accord.

"Should the talks continue to stall, Libya will face the further spread of insecurity and instability, an increased threat from terrorist groups, a worsening economic and financial situation and a growing humanitarian crisis.

"The EU stands ready to help the new Government of National Accord with a substantial 100 million euro aid package to support the delivering of the services the Libyan population urgently needs. We support the UN SRSG in his efforts to garner the necessary support around the Government of National Accord so it can begin the difficult work of restoring stability and preserving the unity of the country."[71]

Previous Committee Reports

None, but see (36822), —: First Report HC 342-i (2015–16), chapter 61 (21 July 2015); also see (35995), —: Twenty-fifth Report HC 219-xxiv (2014–15), chapter 13 (10 December 2014), Fifteenth Report HC 219-xv (2014–15), chapter 10 (22 October 2014) and Fiftieth Report HC 83–xlv (2013–14), chapter 14 (14 May 2014); also see (34875), —: Third Report HC 83–iii (2013–14), chapter 25 (21May 2013) and First Report HC 83–i (2013–14), chapter 10 (8 May 2013).

[71] See Statement of the HR/VP Federica Mogherini in support of a political agreement in Libya.

13 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) and (b) Two proposed Decisions to authorise payments from the European Globalisation Adjustment Fund, to Finland and Ireland
Legal base	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) (37274), 13966/15 + ADD 1, COM(15) 553 (b) (37275), 13968/15, COM(15) 555

Summary and Committee's conclusions

13.1 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.

13.2 The Government has previously recalled to us, 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 Commission's first biennial report on the EGF 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. However, it never supports any proposal for use of the EGF, although QMV means that none is ever denied. We noted that our predecessor Committee also opposed the use and renewal of the EGF and endorsed that opposition.

13.3 We now have before us two further applications, from Finland and Ireland for EGF assistance. Again the Government reminds us of its continued opposition to the existence and use of the EGF.

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

13.5 **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 further examples of the use made by other Member States of an EU financial instrument of apparently 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 Finland — EGF/2015/005 FI/Computer Programming) DE/Adam Opel): (37274), 13966/15 + ADD 1, COM(15) 553; (b) Proposal for a Decision on the mobilisation of the European Globalisation Adjustment Fund (application from Ireland — EGF/2015/006 IE/PWA International): (37275), 13968/15, COM(15) 555.

Background

13.6 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.

13.7 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.)

13.8 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, 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. 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.[72]

The documents

13.9 These proposed Decisions are to approve applications from Finland and Ireland for contributions from the EGF.

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

13.10 Case EGF/2015/005 FI/Computing from Finland, document (a), relates to 1,603 redundant workers, following restructuring in 69 enterprises in the computer programming sector, who will benefit from support with a proposed EGF contribution of €2,623,200 (£1,884,000) — 60% of the total budget. The Commission accepts the Finnish authorities' justification for the application, that is:

- due to changes in world trade patterns due to globalisation, volume of business in the ICT sector has declined in Europe as businesses and services are moved to China, India, Taiwan and other non-European destinations;
- these effects were felt severely in Finland, where in 2014 alone personnel in the Finnish ICT sector were reduced by 3%;
- in particular the decisions of Nokia and Microsoft to offshore, close down production and stop development work in Finland, have impacted on Finnish software companies; and
- these issues have led to 69 enterprises laying off workers in 2014 and 2015, with 75% of redundancies occurring in the regions of Helsinki-Uusimaa and Pohjois-ja Ita-Suomi.

13.11 Case EGF/2015/006 IE/PWA International from Ireland, document (b), relates to 108 redundant workers in the aviation maintenance and repair sector, who will benefit from support with a proposed EGF contribution of €442,293 (£317,655) — 60% of the total budget. The Commission accepts the Irish authorities' justification for the application, that is:

- maintenance and repair aviation enterprises in Europe have suffered due to increased competition and business in non-European countries;
- over the past ten years, Asia- and US-based customers have accounted for 90% of PWAI's business, while European clients have accounted for only 10%;
- future world aircraft fleet is likely to be dominated by single aisle/narrow-body aircraft, where growth is predicted to emanate from Asia;
- PWAI has been affected in recent years by the absence of a clause in the EU-Korea Free Trade Agreement which would exempt repaired goods from customs duties on re-entry (the US agreement includes such a clause);
- the trend towards locating activity near centres of global aviation expansion has adversely affected Europe and in particular Ireland; and
- the redundancies at PWAI are having an adverse impact on the economy and labour markets of parts of Dublin and the Eastern region, with a particular risk of long-term unemployment for older male workers who have been laid off.

13.12 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

13.13 In his Explanatory Memorandum of 26 November 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.

14 2015 EU Justice Scoreboard

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny; further information requested; drawn to the attention of the Justice Committee and Business, Innovation and Skills Committee
Document details	Commission Communication on the *2015 EU Justice Scoreboard*
Legal base	—
Department	Ministry of Justice
Document Numbers	(36746), 7139/15 + ADD 1, COM(15) 116

Summary and Committee's conclusions

14.1 This is the third 2015 Justice Scoreboard. The Commission produces the Scoreboard to assist Member States to achieve more effective justice by setting out data on the quality, independence and efficiency of national justice systems. It reproduces justice-related data largely sourced from the Council of Europe's European Commission for the Efficiency of

Justice (CEPEJ), as well as Eurostat, the World Bank, the World Economic Forum, and the European Judicial network. Additional data has also been obtained through data collection exercises from Member States and field studies.

14.2 The data published in the Scoreboard includes, among other things, information on the length of proceedings, clearance rate and number of pending cases in the areas of competition law, consumer law, EU trademarks and public procurement; the average time taken to resolve administrative cases; the availability of monitoring and evaluations systems; the availability of information and communication technology (ICT) in justice systems; government spending on the courts; and perceptions of the judicial independence.

14.3 The Commission sets out to focus on civil, commercial and administrative cases, but some of the data also apply to both criminal and civil justice. The 2015 Justice Scoreboard also contains new indicators in the areas of intellectual property rights, the promotion of alternative dispute resolution, the use of ICT for small claims proceedings, courts' communication policies, composition and powers of the Council for the Judiciary and the gender balance of judges.

14.4 As in previous years, the Commission links the European Semester[73] with improvement in the quality, independence and efficiency of judicial systems as a new priority action. The 2014 Scoreboard led to 12 proposed country-specific recommendations in the areas of Justice[74] (none addressed to the UK) and justice reforms formed part of Economic Adjustment Programmes in Greece, Portugal and Cyprus. European Structural and Investment Funds have also been applied to improve the administration of justice. The Commission also therefore considers the Scoreboard to be a tool for growth and reform.

14.5 The Lord Chancellor and Secretary of State for Justice (Michael Gove) now writes to apologise for an eight month delay in the submission of his Explanatory Memorandum and to provide the Government's view on the document. The background to this delayed scrutiny and previous scrutiny of Justice Scoreboards is set out in paragraph 14.9 below. This includes the previous Government's view of Commission's competence in this area.

14.6 **We note the Minister's apology for what we consider to have been an egregious delay in the submission of his Explanatory Memorandum. This should have been deposited at the beginning of the new Parliament in May 2015. The Minister should be in no doubt that should there be any future delays in the submission of Explanatory Memoranda from his department, we will consider asking him to account for his failure to observe his scrutiny obligations in evidence before us.**

14.7 **We clear the document from scrutiny. However, we ask the Minister to clarify whether it is the current Government's policy:**

i) **that the Commission has competence to produce the Scoreboard; and**

[73] This is the EU framework for the reporting and surveillance of the Member States' economic and employment policy carried out under Article 121 of the TFEU.

[74] Addressed to Bulgaria, Croatia, Ireland, Italy, Latvia, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Spain.

ii) **to cooperate fully in the submission of national data to the Commission for the compilation of future Scoreboards? We note, in this respect, that the 2015 Scoreboard shows substantial gaps in data supplied by the UK and that the UK ranks the lowest in contributing data relating to the efficiency and quality of data (see Section 4 of the Addendum to the Communication).**

14.8 **We draw the document and this Report to the attention of the Justice Committee and Business, Innovation and Skills Committee.**

Full details of the documents: Commission Communication on the *2015 EU Justice Scoreboard*: (36746), 7139/15 + ADD 1, COM(15) 116.

Background

14.9 The Government deposited the current document on 17 March. This meant that deposit of the EM fell due during the dissolution. A dissolution EM was deposited.[75] However, this was not followed by the deposit of a full Ministerial EM on the opening of the new Parliament. The matter of this delay has been pursued on numerous occasions at officials' level with both the Ministry of Justice and the Cabinet Office (European and Global Issues Secretariat). As the Minister's letter now indicates, Committee staff understood that the delay concerned difficulties over forming policy on the document.

14.10 The previous Government disputed the Commission's competence to assess Member States' justice systems in its 2014 EU Justice Scoreboard which was based on similar sources of data. Broadly in keeping with its position on the current document, the Commission justified the production of the Scoreboard on the premise that when Member States courts apply EU law they become, in effect "Union courts" and that the effectiveness of national justice systems was crucial for mutual trust and economic growth. The previous Government said that the data was not limited to that on the implementation of EU law or to cross-border cases. It considered that given the variety of Member States' justice systems and constitutional traditions, sharing of best practice and dialogue were more appropriate ways of securing mutual trust. However, the preceding Committee concluded in its Report on the 2014 Scoreboard:

> "We do not contest the Commission's competence to produce this non-legislative document to the same extent as the Government, given that the main objective of the Scoreboard—efficient national civil and commercial justice systems operating within the EU—is necessary to facilitate trade and growth. However, we do acknowledge that the Commission may be on thinner ground when producing data which relates to the entire justice system but that would depend on the degree to which it is meaningful or helpful to separate out overarching data."[76]

[75] This is an informal summary of the content of the document, but in the absence of a newly-formed Government, there is no Ministerial view provided on the policy, financial or legal implications of the document and the EM is not signed by a Minister.

[76] Forty-seventh Report HC 83-xlii (2013–14), chapter 25 (30 April 2014).

The Minister's letter of 20 November 2015

14.11 The Minister apologises for the delay in the production of his Explanatory Memorandum saying it was due to a "need for proper consideration of the UK's previous approach to the Scoreboard". He adds that he is "now satisfied, that for the time being, the UK should continue with that approach for the foreseeable future".

14.12 He considers that we are "aware" that such a delay is a "rare occurrence" for his department and that he hopes that it will not be repeated.

The Government's view

14.13 The Minister in his Explanatory Memorandum of 23 November comments that:

- the Commission justifies the production of the Scoreboard at EU-level on the grounds that when Member State courts apply EU law they become "Union courts" and must provide effective judicial protection to individuals and businesses alike and that effective justice systems are important for growth, protecting human rights and the functioning of the single market;
- the document "appears to be the Commission's way of supporting Member States in reforming their justice systems to be more effective";
- the Government believes, particularly given the UK's "first-hand experience" as world centre for commercial and civil litigation, that "effective and independent justice systems are important in providing an encouraging environment for investment and growth" and can act as enablers for the "broader economy"; and
- the Government also supports the overall aim of encouraging Member States to reform their justice systems where this will support growth and recovery.

14.14 The Minister then considers some UK rankings in the Scoreboard, caveating his analysis with the words "where UK data is represented in the 2015 Scoreboard":

- Government expenditure on "law courts" as a percentage of GDP was highest in the EU (together with Belgium and Slovenia) in 2011 and 2012 (based on Eurostat data);
- In 2014, the UK was fourth in the EU for length of time taken to resolve insolvency cases with an average of one year;
- In 2013 the UK was quickest at resolving judicial review cases against decisions of national competition authorities (taking an average of 100 days and based on data from the European Competition Network);
- Over 60% of judges in England and Wales and 20% in Scotland participate in continuous training in EU law or the law of another Member State (based on European Commission data);
- UK judicial independence ranks at fourth highest, after Finland, Denmark and Ireland (based on World Economic Forum data);

- The proportion of female judges in the Supreme Court was under 10% — the lowest in the EU and the Minister comments that judicial diversity is clearly important and that the Government is working with key parties, such as the Judicial Appointments Commission, to improve diversity in the higher courts — the picture is more positive in the Magistrates and Tribunals; and
- A study prepared for the Commission shows that all seven ICT small claims services were relatively easy to access online, but the Government keeps this area "constantly under review" because of its relevance to the Government's agenda on the Digital Single Market.

14.15 The Minister adds that although there are no financial implications directly arising from the document, the collection of data by the Commission from a number of sources "involves an increased dedication of resource to collecting and preparing the data" but that these costs have not been quantified by the Commission.

Previous Committee Reports

None, but see Forty-seventh Report HC 83-xlii (2013–14), chapter 25 (30 April 2014).

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

Department for Business, Innovation and Skills

(37095) — —	European Court of Auditors' Special Report No. 10/2015: *Efforts to address problems with public procurement in EU cohesion expenditure should be intensified (pursuant to Article 287(4), second subparagraph, TFEU).*
(36952) 10245/15 + ADD 1 COM(15) 301	Commission Report on the *evaluation of Regulation (EC) No. 1606/2002 of 19 July 2002 on the Application of International Accounting Standards.*

Department for Education

(37245) — —	European Court of Auditors' Report on the *annual accounts of the European Institute for Gender Equality for the financial year 2014 together with the Institute's reply.*

Department for Environment, Food and Rural Affairs

(37278) 14074/15 + ADD 1 COM(15) 563	Commission Report on *Member States' efforts during 2013 to achieve a sustainable balance between fishing capacity and fishing opportunities.*

Department for Transport

(21943) 14595/00 COM(00) 802	Commission Communication on a *second set of Community measures on maritime safety following the sinking of the oil tanker Erika — (a) Proposal for a Directive establishing a Community monitoring, control and information system for maritime traffic; (b) Proposal for a Regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures; (c) Proposal for a Regulation establishing a European Maritime Safety Agency.*
(23625) 10477/02 —	Amended proposal for a Regulation on the establishment of a fund for the compensation of oil pollution damage in European waters and related measures.

HM Treasury

(37336) — —	*General Budget of the European Union 2014: Transfers of Appropriations First, Second, Third And Fourth Quarterly Reports of Transfers of Appropriations within the General Budget for the Financial Year 2014; and First Quarterly Report of Transfers of Appropriations within the General Budget for the Financial Year 2015.*

Home Office

(37280) 14117/15 C(15) 7455	Commission Report *assessing the situation of non-reciprocity with certain third countries in the area of visa policy*.
(37210) 13258/15 + ADDs 1–2 COM(15) 507	Commission Report concerning the *implementation and the results of the Pericles programme for the protection of the euro against counterfeiting in 2014*.

Formal minutes

Wednesday 2 December 2015

Members present:

Sir William Cash, in the Chair

Richard Drax	Craig Mackinlay
Damian Green	Graham Stringer
Kelvin Hopkins	Mr Andrew Turner
Stephen Kinnock	

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 15 read and agreed to.

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

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

****

[Adjourned till Thursday 3 December at 10.15 am.

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*)
Kate Hoey MP (*Labour, Vauxhall*)
Kelvin Hopkins MP (*Labour, Luton North*)
Calum Kerr MP (*Scottish National Party, Berwickshire, Roxburgh and Selkirk*)
Stephen Kinnock MP (*Labour, Aberavon*)
Craig Mackinlay 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*)

The following member was also member of the Committee during the parliament:
Nia Griffith MP (*Labour, Llanelli*)