House of Commons

European Scrutiny Committee

Twenty-second Report of Session 2015–16

Documents considered by the Committee on 3 February 2016, including the following recommendations for debate:

Interinstitutional Agreement on Better Law-Making

HC 342-xxi

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Interinstitutional Agreement on Better Law-Making

Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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/.

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Meeting Summary

The Committee considered the following documents:

Implementation of migration "hotspots" in Greece and Italy:

"Hotspots" are a new concept intended to provide additional resources (supplied by other Member States and EU agencies) at particular locations to help frontline Member States swiftly identify, register and fingerprint new arrivals, coordinate their return or relocation, and assist with the processing of asylum applications. Five hotspots have been identified in Greece but, by mid-December, none were fully operational and construction had not begun in some cases. One hotspot is operational in Italy (on the island of Lampedusa) and five others have been designated. The Commission Communications set out the steps that need to be taken to make them all operational by end-January (in Greece) or February (Italy).

The Immigration Minister (James Brokenshire) says that swift and effective implementation of hotspots is a UK priority and describes the progress made so far as "frustratingly slow". The reasons for the delay are unclear, though in one case it seems that local protests have prevented construction. In a separate Written Ministerial Statement made on 28 January, the Minister announced that the UK would provide further resources to hotspots, with a particular focus on helping "children at risk". The European Scrutiny Committee notes that contribution made so far by the UK seems modest, given the scale of the challenge and the Government's support for hotspots. It invites the Minister to comment on the possibility that hotspots are being asked to do too much. The Committee also asks the Minister to provide further information on the "the important questions" about the operation and resourcing of hotspots which he says "remain unanswered"; to explain what the Government is doing to find the answers and how many resources it intends to make available; and to indicate whether safe places for children at risk who are already within the EU will be provided in the UK.

Not cleared. Drawn to the attention of the Home Affairs Committee

Refugee flows along the Western Balkans route

The Commission report reviews the progress made in implementing commitments agreed last October at a summit of leaders of (EU and non-EU) transit and destination countries along the Western Balkans route — now the principal transit route to Europe. The Commission notes that there has been some improvement in communication and coordination, but that "too many unilateral measures continue to be taken" which have a knock-on effect for the entire region. Reception capacity in some countries falls far short of current or prospective needs and basic humanitarian requirements are not being met across the region. The Immigration Minister (James Brokenshire) explains that the UK did not participate in the October summit but recognises that countries in the Western Balkans "must be part of any comprehensive approach to the current migration crisis" and considers that the emphasis placed on collective responsibility in the Leaders' Statement is "broadly right". Whilst the report is largely descriptive, the European Scrutiny Committee considers that it raises important questions about the capacity of countries in the Western

Balkans to manage the flows of migrants and refugees. The Committee asks the Minister to provide further information on the UK's response to requests for assistance made by countries in the region and by the EU's External Borders Agency (Frontex) and to comment on the introduction of nationality-based screening at the borders of some countries to limit entry to nationals of certain third countries.

Not cleared. Drawn to the attention of the Home Affairs Committee

The proposed EU Data Protection package: General Data Protection Regulation, the Police and Criminal Justice Directive (PCJ Directive) and the negotiation of Safe Harbour 2

This proposed Data Protection package will overhaul the existing EU 1995 Data Protection rules in order to keep pace with technological developments and to strengthen online privacy rights across the EU. These important proposals have been under negotiation since 2012, but they are likely to be finally adopted by Member States very soon, probably at the March JHA Council.

The Government now provides very detailed analysis of the final trilogue texts. The Government claims to have opted out of Article 43a (in the absence of a Title V legal base) which was inserted last minute into the Regulation text and we ask it to clarify its position on this. Article 43a prevents the enforcement of court judgments from non-EEA countries for the transfer of data in the absence of an international agreement or treaty. We rescind our debate recommendation in the light of the detailed analysis provided and the Government's request that we clear these proposals from scrutiny.

The Government also updates us on the negotiations of the second Safe Harbour Decision to authorise the transfer of personal data for commercial purposes from the EU to the US, following the invalidation of the first by the CJEU judgment in *Schrems*. We keep a related Commission Communication under scrutiny and ask the Government for further information on the impacts on businesses and citizens of the use of alternative tools for data transfer to the US and any ensuing enforcement action by national Data Protection Authorities.

Cleared (excepting the Commission Communication); debate recommendation rescinded, but further information requested on all documents.

Drawn to the attention of the following committees: Culture, Media and Sports; Business, Innovation and Skills; Justice and the Joint Committee on Human Rights.

The proposed Directive on the fight against fraud on the EU budget (the PIF Directive)

EU institutions and Member States share responsibility for countering fraud affecting the financial interests of the EU. The PIF Directive aims to enforce these responsibilities by harmonising fraud related criminal offences and sanctions. The Government now provides an update on progress on trilogue negotiations. The inclusion of VAT fraud in the proposal (which the Government is still resisting) remains a sticking point, despite a CJEU decision that it is within the scope of the PIF Convention — the current instrument aimed at addressing fraud on the EU budget. The Government says that it is not participating in the proposal. It might consider a post adoption opt-in to an acceptable text which does not include harmonised sanctions relating to VAT fraud. The Committee had formerly had

concerns that the measure was brought under a legal base which did not allow a UK opt out; the legal base has now be changed. Further clarification is sought from the Government on its position.

Not cleared; drawn to the attention of the Treasury Committee.

"Provisional Final Text" of an Interinstitutional Agreement on Better Law-Making

This document is the latest evolution of a proposal by the Commission for an Interinstitutional Agreement on Better Regulation which formed part of the Commission's May 2015 Package on Better Regulation. It received "political endorsement" by the European Council on 15 December 2015 but remains to be agreed by the European Parliament. It seeks to improve (a) the planning and preparation of legislation (including greater consultation), (b) the co-ordination and transparency of the legislative process, and (c) the quality of legislation including EU subordinated delegated legislation.

The Committee recommended this document for debate in European Committee C with the Better Regulation Package and in doing so:

Deplored the scrutiny handling of this document;

Repeated its view that the commitments it contains must be put into practice rigorously; and

Drew the attention of the House to specific remaining areas of inadequacy.

Recommended for debate in European Committee C with the Better Regulation Package already referred.

Sanctions and restrictive measures

The Committee considered and cleared documents relating to restrictive measures against Belarus, Iran and Zimbabwe.

1 Interinstitutional Agreement on Better Law-Making

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; recommended for debate in European Committee C together with the Better Regulation Package already recommended for debate (decision reported 21 July 2015)
Document details	Proposal for an Interinstitutional Agreement on Better Law-Making
Legal base	Article 238(2) TFEU; QMV
Department	Foreign and Commonwealth Office
Document Numbers	(37471), —

Summary and Committee's conclusions

1.1 The Commission's Better Regulation Package published on 19 May 2015 included a proposal for an Interinstitutional Agreement on Better Regulation. It was generally welcomed by the Government, although the Minister for Europe (Mr David Lidington) indicated that the Government would engage constructively to ensure that new proposals for EU legislation address the needs of small, medium and micro–sized enterprises; that Impact Assessments encourage EU burden reduction efforts (ideally through a burden reducing target); that Member States are given sufficient flexibility in implementation; and that engagement between EU institutions and national parliaments be improved.

1.2 In our scrutiny of this Package we stressed that the EU should only legislate when necessary, and that such legislation be high quality and evidence–based; and that intent and commitment of the package must be translated into practice. To this end we welcomed strengthening of the impact assessment process and supported increased consultation and transparency in the EU legislative process, including clarification of the divide between the two legislative processes for EU subordinate legislation.[1]

1.3 The proposed Interinstitutional Agreement was subject to negotiations leading to the "political endorsement" of a "final provisional" text by the General Affairs Council on 15 December 2015 of a document now entitled "Interinstitutional Agreement on Better Law-Making" was given "political endorsement". This text remains to be considered by the Constitutional Affairs Committee of the European Parliament, with an expectation of a vote at a March plenary session of the European Parliament. A formal vote in the Council is now scheduled for 16 February.

1.4 **We find the dilatory handling of this matter completely unacceptable. We recommended the Better Regulation Package (of which this document forms part) for debate on 21 July 2015. A provisional final text of the Interinstitutional Agreement element of it was available, at the very latest by 15 December 2015 but not deposited with Parliament until 27 January 2016 thereby squeezing the opportunity for us to**

[1] The delegated legislative process prescribed by Article 290 TFEU and the implementing legislative process prescribed by Article 291 TFEU.

consider this matter before the debate now scheduled for 8 February and a formal vote in the Council scheduled for 16 February. This situation has been exacerbated by the fact that the Minister's Explanatory Memorandum of 27 January makes no attempt to identify changes from the original text considered by the Committee and omits any analysis of the policy implications as the Government's view has not been established.

1.5 **We recommend this document for debate with the Better Regulation Package in Committee C. In doing so we outline below the significant changes in the evolution of this Interinstitutional Agreement below.**

1.6 **We draw the attention of the House to the following particular elements of this text:**

- **Much of the Interinstitutional Agreement remains expressed in generalities. We therefore repeat the importance the commitments it contains be put into practice rigorously;**
- **There is no improvement over the earlier text in relation to the role of national parliaments. However we have, in correspondence with the Commission, received an undertaking from the Vice–President that Commission inception impact assessments will be transmitted directly to national parliaments. This will facilitate early, and therefore more effective, scrutiny;**[2]
- **The possibility that impact assessments will only be made public at the end of the legislative process is of concern;**
- **The Interinstitutional Agreement makes little significant improvement to the transparency of the EU legislative process, which is also a matter of concern. This issue is likely to remain in the public domain due to the inquiry currently being undertaken by the EU Ombudsman into the transparency of trilogies;**[3]
- **The objective of the UK and other Member States of having concrete targets for the reduction of the burden of regulation only finds expression in equivocal terms.**[4]

Full details of the documents: Proposal for an Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making: (37471), —.

The evolution of the text of the Interinstitutional Agreement

1.7 The changes to the text which appear to us to be sufficiently significant to draw to the particular attention of the House are the following (references in brackets refer to the "provisional final text"):

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2 Letter of 10 December 2015.

3 A public consultation is currently open.

4 As part of the renegotiation package there is a draft Commission Declaration that it will work with Members States and Stakeholders towards establishing specific targets at EU and National levels for reducing burden on business, particularly in the most onerous areas for companies, in particular small and medium size enterprises. It also undertakes to monitor progress against these targets and report to the European Council annually. There is a Council Declaration in a similar vein.

- There is reinforcement of the need to reduce burdens, including a requirement for the Commission to provide an annual overview (recital (2), paragraphs 7, 34b, and 34c);
- There is reinforcement of the commitment only to legislate where necessary; and reminders that EU legislation should observe the Treaty general principles, such as democratic legitimacy, subsidiarity and proportionality, fundamental rights and legal certainty (recital (2a), paragraph 1a and paragraph 7);
- Justification for EU legislation should include evaluation of the "cost of non-Europe" (recital (3(a) and paragraph 7);
- The consultation on and transparency of legislative planning is reinforced as well as monitoring the legislative programme; in particular by providing a more formal structure for of consideration and monitoring of new Commission's plans and the Commission's Annual Work programme; also by including more detail in those plans and programmes (paragraphs 2a, 3, 4, 4a and 6a);
- The Commission will give more detail of its proposals to withdraw EU legislation and structured consideration to requests for it to withdraw any (paragraphs 5 and 6);
- Impact Assessments must be presented in such a way as to facilitate consideration of the choices made by the Commission, but not unduly delay legislation (paragraphs 7 and 9). The publication of Impact Assessments is only required at the end of the legislative process (paragraph 13);
- The possibility of using an independent panel to consider substantial amendment of a Commission proposal has been removed and replaced by a provision for the Commission to invite other analytical work (paragraph 10b);
- Consultation on proposed legislation is reinforced, for example by removal of the limitation that consultation should reach only established minimum standards, and by extending the requirement to consult to the public as well as stakeholders. However the formal eight week period for consulting stakeholders is removed (paragraphs 8, 14);
- There will be closer planning of and coordination during the legislative process (paragraphs 23c, 24, 26, 26a);
- "The three institutions agree that the provision of information to national parliaments must allow them to exercise fully their prerogatives under the Treaties" (paragraph 27a);
- There is a commitment to "improve communication to the public during the whole legislative cycle and in particular announce jointly the successful outcome of the legislative process in the ordinary legislative process once they have reached agreement" (paragraph 28);
- There is a commitment to care and consultation before a legal base for proposed legislation is changed (paragraph 20);

- There is encouragement for better coordination of evaluation of EU legislation and, "Where appropriate [monitoring, evaluation and reporting requirements in legislation] can include measurable indicators as the basis on which to collect evidence of the effects of legislation on the ground" (paragraphs 18 and 29b);
- The Commission will consult Member State experts in formulating of draft delegated acts and be transparent as to their views (recital (5a), Common Understanding paragraphs 15, 16, 17a,); and
- The European Parliament and the Council shall participate by receiving indicative lists of planned delegated legislation, receive early information and invitation to meetings whilst the Commission is formulating its proposals delegated legislation; and a register will be kept to track the development of such proposals (paragraph 22, 22a; Common Understanding paragraphs 19, 20, 20a).

Previous Committee Reports

None, but see in respect of the Better Regulation Package (36885 and 35888): First Report HC 342-i (2015–16), chapter 1 (21 July 2015); Third Report HC 342-iii (2015–16), chapter 1 (9 September 2015).

2 Global Navigation Satellite System

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny, further information requested
Document details	Proposal for a Council Decision about concluding an agreement with Korea on satellite navigation
Legal base	Articles 172 and 218(6)(a) TFEU; —; QMV
Department	Business, Innovation and Skills
Document Numbers	(37331), 14644/15, COM(15) 582

Summary and Committee's conclusions

2.1 We have considered previously a proposed Council Decision to approve conclusion of an agreement between the EU, Member States and Korea about cooperation in relation to the EU's global navigation satellite system programmes, EGNOS and Galileo. We have kept the proposal under scrutiny because we wished to hear from the Government as to the result of its efforts to have the proposal aligned with earlier Council Decisions, as regards the EU's positions in the agreement's fora, whether any elements of this agreement are matters of shared competence and if so which, and whether and if so how the Government intended to secure transparency in the legal texts as to the exercise of competence, including matters of shared competence.

2.2 The Government now expresses its confidence that the text of the proposed Council Decision will be amended to align it with earlier Council Decisions, so ensuring that the Council would determine the EU's position in the agreement's fora. The Government also gives us an illustration of EU and Member State competences in the EU's global navigation satellite system programmes, but suggests that it is often difficult in practice to be precise about the type of competence that is engaged. It concludes that its "primary objective is to ensure that such agreements are negotiated in a way which protects and promotes the UK's interests, including on the division of competences".

2.3 **We note the Government's confidence that alignment of the proposed Council Decision with earlier Council Decisions, so ensuring that the Council would determine the EU's position in the agreement's fora, will be secured. We understand that a possible precedent is found in Article 3 of Council Decision 2014/228/EU concerning the similar agreement with Ukraine,[5] but that, in the light of a recent Court of Justice judgement, C-28/12,[6] the provision will need to be expressed differently, albeit still achieving the required effect. Accordingly, we should like to hear how the proposed revised text reads.**

2.4 **As the Minister provides no indication how the Government intends to secure transparency in the legal texts as to the exercise of competence, including the exercise of shared competence, we infer that the intention is to compromise that transparency (and also, therefore, the Government's policy that shared competence should, generally, be exercised by Member States) in the interests of reaching an agreement. In order to assess the extent of the compromise we ask the Minister to provide us with the Government's analysis of competence, and whether he intends to lay a minute statement setting out the UK position.**

2.5 **Whilst we await information on both the revised alignment text and the competence issue the document remains under scrutiny.**

Full details of the documents: Proposal for a Council Decision on the conclusion of the Cooperation Agreement on a Civil Global Navigation Satellite System (GNSS) between the European Community and its Member States and the Republic of Korea: (37331), 14644/15, COM(15) 582.

Background

2.6 The EU has a two-phase policy for developing a global navigation satellite system. The first phase is the European Geostationary Navigation Overlay System (EGNOS) programme. The second phase is the Galileo programme, to establish a new satellite navigation constellation with appropriate ground infrastructure.

2.7 In 2006 the European Community signed an agreement with the Republic of Korea about cooperating on satellite navigation.[7] Only recently have all Member States completed

[5] See Council Decision of 25 November 2013.

[6] See C-28/12 — *Commission v Council*.

[7] This was authorised by Council Decision 2006/700/EC.

their ratification procedures, so allowing the Commission to present this proposed Council Decision to authorise conclusion of the cooperation agreement.

2.8 The Government supports conclusion of this agreement. However, when we considered this proposal in December 2015 it told us that, unlike previous Council Decisions concerning similar agreements with other third countries, this proposal does not provide for decisions on EU positions in the agreement's fora, such as the Steering Committee, to be decided by the Council rather than the Commission.

2.9 We had no concerns with the cooperation agreement itself. However, we wished to hear from the Government about the result of its efforts to have the proposal aligned with earlier Council Decisions, as regards the EU's positions in the agreement's fora.

2.10 As this is a mixed agreement entered into by both the EU and the Member States in their own right we considered that the legal text should be transparent as the extent to which the EU and the Member States are respectively exercising competence. Furthermore, we support the Government's policy that, as a general rule, shared competence[8] should be exercised by the Member States. In the light of these considerations we asked:

- whether any elements of this agreement are matters of shared competence and if so which; and
- whether and if so how the Government intended to secure transparency in the legal texts as to the exercise of competence, including matters of shared competence.

2.11 Pending responses from the Government on both the alignment and competence we retained the document under scrutiny.

The Minister's letter of 18 January 2016

2.12 The Minister of State for Universities and Science, Department for Business, Innovation and Skills (Joseph Johnson) tells us first about the Government's progress in aligning the proposal with earlier Council Decisions, as regards the EU's positions in the agreement's fora. He says that:

- the precedent has already been established in other agreements, so the Government does not anticipate much difficulty;
- this agreement was discussed in the Council Working Party on 11 January and the UK raised this matter;
- there was agreement that the text should be amended to align with other cooperation agreements;
- at this stage the Government anticipates that the requisite change will be made to the Council Decision; and
- he will keep us informed as to progress.

8 Shared competence may be exercised either by the EU or by the Member States.

2.13 The Minister, turning to the question of mixed agreements and shared competence, confirms that all matters relating to the EU Global Navigation Satellite System programmes, which are referenced in this agreement, are matters of shared competence. He notes that the programmes are transport initiatives based on Article 172 TFEU. The Minister then comments that in so far as the competence concerned is a transport one which the EU has exercised, it is appropriate for the EU to lead the discussion, but other areas, for example radio frequency allocation, are firmly a matter of Member State competence and it is for Member States to determine the negotiating position.

2.14 The Minister continues that:

- it is, however, it is often very difficult in practice to be precise about the type of competence that is engaged;
- there will often be provisions within an agreement in respect of which both the EU and the Member States have exercised their competence in a way that may be difficult to disentangle;
- consequently, the Government often disagrees with the EU institutions on the nature of competence within an international agreement; and
- the Government's primary objective is to ensure that such agreements are negotiated in a way which protects and promotes the UK's interests, including on the division of competences.

Previous Committee Reports

Fifteenth Report, HC 342-xiv (2015-16), chapter 4 (16 December 2015).

3 Data Protection in the EU

Committee's assessment	Legally and politically important
Committee's decision	(a) and (b): Cleared from scrutiny; (c) Not cleared from scrutiny; further information requested; (rescinding the debate decision reported on 16 December 2015); drawn to the attention of the Joint Committee on Human Rights; the Culture, Media and Sport Committee; the Business, Innovation and Skills Committee and the Justice Committee
Document details	(a) Proposal for a General Data Protection Regulation; (b) Proposal for a Police and Criminal Justice Data Protection Directive; (c) Commission Communication on the *functioning of Safe Harbor*
Legal base	(a) Articles 16(2) and 114(1) TFEU; ordinary legislative procedure; QMV; (b) Article 16(2) TFEU; ordinary

	legislative procedure; QMV; (c) —
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) (35609), 17069/13, COM(13) 847

Summary and Committee's conclusions

3.1 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 (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. Document (c) comprises a review of the original Safe Harbor Decision which used to provide the legal basis for the transfer of personal data of EU citizens for commercial purposes to US companies. Last October, the CJEU in its judgment in Schrems9 invalidated this Decision for breach of the Charter of Fundamental Rights and negotiations on a second, replacement Safe Harbor Decision are ongoing. Parliamentary scrutiny of the Data Protection package has been extensive, as detailed in paragraphs 1.8–1.10 of our Report of 16 December10 and included an Opinion provided by the previous Justice Committee.[11]

3.2 The previous and current Governments supported the General Approach of the Council in respect of both proposals, in order to influence trilogues. In view of the imminent agreement of the proposals in final trilogues on 15 and 17 December and an expected Coreper meeting before Christmas, we decided in our Report of 16 December[12] to recommend these documents for debate in European Committee C, asking the Government to organise the debate as far in advance of expected final adoption at the March JHA Council. We wanted to enable Members to question the Government further about whether and how its "serious reservations" about the General Approach to the proposed Regulation have been addressed in the final text and also about any material, residual concerns about the proposed Directive. We also asked the Government for a further, detailed update in January, which should help determine what final information we might require from her in advance of the debate.

3.3 Having provided a holding update which we reported on 6 January,[13] the Government now writes:

a) to provide further detailed information on trilogue positions and outcomes in respect of both proposals (and upon request, corresponding *Limité* texts;

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

10 Fifteenth Report HC 342-xiv (2015–16), chapter 1 (16 December 2015).

11 The Committee's Opinion on the European Union Data Protection Framework, Third Report of Session 2012–13, HC 572 (1 November 2012).

12 Fifteenth Report HC 342-xiv (2015–16), chapter 1 (16 December 2015).

13 Sixteenth Report HC 342-xv (2015–16), chapter 1 (6 January 2016).

b) to advise us of its purported application of the JHA opt-in in respect of Article 43a of the proposed Regulation text (relating to transfer of data to third countries); and

c) in a separate Ministerial letter, to provide its analysis of the Schrems judgment and its consequences.

3.4 **We thank both Ministers and their officials for the helpful information they have provided, including *Limité* texts. We commend, in particular, the exemplary level of detail and analysis provided in the "Thematic Overviews" for both proposals. We observe that scrutiny of these documents has been well-handled by the Ministers' Department since it assumed responsibility for them.**

3.5 **We note the Parliamentary Under-Secretary of State's request for us to lift our scrutiny reserve in advance of the final adoption of the proposals. The information which the Government has provided indicates, with some possible exceptions which we highlight below, that it has largely achieved its negotiation objectives. In so doing, it has also addressed many of the concerns identified by the previous Justice Committee. We therefore consider that a debate would no longer be necessary and rescind our previous debate recommendation. We also clear the two legislative documents (a) and (b) from scrutiny, though in so doing ask the Minister to provide us with the further information requested below.**

3.6 **We have examined the Government's Thematic Analyses against the final *Limité* trilogue texts. As we are not permitted to disclose the content of those texts, we limit ourselves to the following questions to the Parliamentary Under-Secretary of State:**

a) **Is the Government right to be confident that the Right "to be Forgotten" in Article 17 amounts only to a right to erasure?**

b) **The outcome on the lack of quantitative filters for referrals to the European Data Protection Board is disappointing given the potential for administrative delay but the Government suggests that it has instead been able to influence provisions on DPA independence in chapter 6 of the Regulation — can the Minister clarify what concessions were won by the UK in this respect?**

c) **Can the Minister confirm that the objective she outlined in her letter of 12 October on liability of data controllers/processors was achieved in the final trilogue text of the proposed Regulation as this matter is omitted from the relevant Thematic Analysis? The Minister will recall that she said that liability should follow fault, that the joint and several liability for data controllers/processors proposed by the European Parliament was undesirable and the UK would work to ensure that where multiple parties are at fault, compensation may be apportioned between them according to their respective degrees of fault.**

3.7 **We note the unexpected development of the Government asserting the application of the JHA opt-in during trilogues, in the absence of a Title V legal base (a legal position to which we remain opposed). We ask the Parliamentary Under-Secretary of State to:**

a) provide us with a copy of the Written Ministerial Statement in due course;

b) confirm whether, according to the Government's own opt-in policy, it considers that it will not be bound by the JHA content in Article 43a because it considers the proposed Regulation to be "an incidental JHA measure" or whether some other analysis applies; and

c) identify where "UK law currently reflects the position in Article 43a" and whether the Government is intending to take advantage of its supposed opt-out by "taking a different approach" in the imminent future, for example as part of the draft Investigatory Powers Bill?

3.8 **We retain document (c) under scrutiny and ask the Minister of State for Culture and the Digital Economy to keep us updated on negotiations for Safe Harbor 2. Given that there appears to have been no agreement by the end of January deadline set by the Article 29 Working Group, we note the need for the use of alternative transfer tools [14] and the potential for regulatory enforcement action by national Data Protection Authorities. In due course, we would welcome a response from the Minister on the following issues:**

a) how UK businesses and citizens are being affected by such developments post January;

b) what, if any, consequences are there for the protection of the personal data of UK and other EU citizens transferred from the UK to the US and other third countries of the UK's purported opt-out of Article 43a of the proposed Regulation, in the absence of an agreed Safe Harbor 2; and

c) even if Safe Harbor 2 is agreed, he becomes aware of moves to challenge it before the CJEU on the grounds that it does not protect the fundamental rights of EU citizens adequately.

3.9 **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 regard 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 the *Functioning of the Safe Harbor from the Perspective of EU Citizens and Companies Established in the EU*: (35609), 17069/13, COM(13) 847.

[14] 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): COM(2015) 566 final.

The Minister's letter of 25 January 2016 on the Data Protection proposals

3.10 The Parliamentary Under-Secretary of State (Baroness Neville-Rolfe) encloses with her letter a "detailed thematic update"[15] for each of the two legislative proposals which focus on amendments made on areas of main concern to the UK. These set out the positions of the Commission, the European Parliament and the Council in trilogues and the outcomes in the final texts.

3.11 As these analyses are lengthy, we only summarise them below, but provide links to them in the footnotes. Our summaries also footnote corresponding concerns of the previous Justice Committee in the Opinion provided to our predecessors.[16]

3.12 She also explains that final, formal agreement in the Council on the proposals is expected to "be taken in the next few months". She adds: "Since, I believe that this letter and its accompanying analysis sets out the Government's position on the negotiation of these instruments, I should be grateful if the Committee would consider lifting its scrutiny reserve prior to March JHA Council".

3.13 The Minister then tells us about a development during trilogues concerning the UK's JHA opt-in Protocol:

> "During the final trilogue negotiations on the Regulation, the Luxembourg Presidency proposed a last-minute compromise text for Article 43a, on the enforcement of judgments of a non-EEA country which require the transfers of data. The text restricts a Member State from enforcing such a judgment where there is no international agreement or treaty.
>
> "As this article deals with the recognition and enforcement of judgments, in my view, this amendment now includes content that falls under Article 81 (judicial cooperation in civil matters) and Article 82 (judicial cooperation in criminal matters) of the Treaty on the Functioning of the EU, thereby triggering the UK's JHA opt-in. Since no Title V TFEU legal base is cited in the Regulation for these provisions, the Commission and other Member States do not agree that the opt-in is triggered and therefore no recitals have been added to the text reflecting the UK's opt-in decision.
>
> "I have a number of concerns with this provision. In particular, I believe this latest formulation could undermine the significant information-sharing that Member States must naturally engage in with their allies, for instance where we require cooperation (whether voluntary or compelled) from communications service providers whose platforms may be used to route criminals' and terrorists' communications. Although UK law currently reflects the position in Article 43a, I believe it reduces our scope to take a different approach in the future.
>
> "Given these concerns the UK argued strongly for the removal of this provision and we issued papers to the Presidency on alternative wording. However, due to pressure

[15] The thematic update on the proposed Regulation can be accessed here and on the proposed Directive here.

[16] The Committee's Opinion on the European Union Data Protection Framework, Third Report of Session 2012-13, HC 572 (1 November 2012).

from the European Parliament to include it, we were unable to secure its deletion and therefore the Government determined that the UK should not opt in to the parts of Article 43a which trigger the Protocol 21.

"Given this particularly unique situation where JHA content was added into the package only during the final trilogue discussions, I regret that it was not possible to complete the normal scrutiny procedures. I will of course inform both Houses of this opt-in decision via Written Ministerial Statement in due course."

The Thematic Updates

3.14 In summary, the Thematic Update[17] on the proposed Regulation addresses the following issues:

- **Consent (Article 4(8))**: The Commission's original requirement for "explicit consent" to data processing has been changed in the final text to consent which is "freely given, specific, informed and unambiguous" (though "explicit consent" is retained in relation processing of special categories of data). The Council wanted "unambiguous" consent but the Government thinks that, taking account also of Recitals 25 and 34, there is enough clarity.

- **Genetic data (Article 4(10))**: The text follows the position of the Council (and the UK) by narrowing the definition and so excluding matters which the Government consider do not warrant the higher protection to be afforded to genetic data, such as hair colour and height.

- **Health data (Article 4(12)):** The UK was unsuccessful in removing the reference to health care provision, which it considers could bring within the definition unnecessary administrative information such as appointment times.

- **Lawfulness of processing (Article 6(3)):** In order to establish whether processing is necessary for the data controller to comply with a legal obligation, the text now refers to either EU or "Member State" law. The UK preferred the latter reference to be to "national law" so as to make it clearer that UK common law would be included, but the text has reverted to "Member State law". The Government is examining whether this will have an effect on processing based on common law.

- **Greater levels of protection for children (Article 8):** The UK managed to overcome a Presidency preference for harmonised and mandatory parental consent to the processing of data of children of 16 years or under. The final text now says lowering the age to 13 for such consent is matter of Member State discretion.

- **Subject access requests (Article 15):** The final position appears to be that an initial copy of an individual's data is provided free of charge but that they can be charged a reasonable fee based on administrative costs for subsequent copies. This

[17] The thematic update on the proposed Regulation can be accessed here.

represents a compromise as the EP was opposed to fees.[18] The UK wanted a nominal fee to cover administrative costs on any request.

- **Right to be Forgotten (Article 17)**[19]: This appears in the final text although the title "to be forgotten" is in parenthesis which, the Government considers, indicates that it is only a phrase and that the right is actually only one of "erasure" from the data controller in question[20]. Following the Snowden revelations, the EP had been keen for a wider "right to be forgotten" in the mould of the Google Spain judgment (C131-12[21]), which would also have applied to 3rd parties and international organisations. The Government highlights the pre-conditions for the right to arise and how it has to be balanced against freedom of expression.

- **Right to data portability (Article 18):** The Government says it has been successful in ensuring that BIS "midata" project[22] will not be frustrated by the ability of the Commission, as originally proposed, to make specifications about the electronic format in which data should be transferred. The Commission no longer has this power in the final text.

- **Breach notifications (Articles 31 and 32)**: The final text reflects a UK preference for breaches to be notified within 72 hours (not undue delay, as originally proposed and favoured by the EP) and a risk-based approach which:

— excludes notification of breaches to DPAs unlikely to result in a risk to the rights and freedoms of individuals"; and

— only requires notification where the breach is likely to result in a "high risk" to the rights and freedoms of individuals.

- **Mandatory data protection officers (Article 35)**[23]**:** The UK preference for SMEs to be exempt from the requirement to have a Data Protection Officer (DPO) effectively is reflected in the pre-condition in the text for large-scale, systematic processing.

- **Transfer of data to third countries and international organisations (Articles 40-45):** The final text includes the EP's Anti-FISA clause[24] which the UK strongly

18 Our commentary: The previous Justice Committee was equally opposed and urged the then Government to change their negotiating objective to one which accepts that subject access rights should be exercisable free of charge (paragraph 77).

19 Our commentary: The previous Justice Committee considered that right to erase wrong or inappropriately held data was important for citizens but that it would be misleading to refer to this as a "right to be forgotten" and the use of such terminology could create unrealistic expectations, for example in relation to search engines and social media (paragraph 63).

20 Our own explanation: an absolute "right to be forgotten" is more expansive than erasure by a single data controller because it would impose on the controller an obligation to ensure complete removal of data from the internet.

21 C131-12 *Google Spain*, 13 May 2014.

22 This would improve consumer access to their data held by businesses.

23 Our commentary: The previous Justice Committee believed that a requirement to employ a DPO should be based on the type of business and sensitivity of the data that is handled, rather than the number of employees (paragraph 81).

24 Our explanation: the Anti-FISA clause would prevent third countries (such as the United States and other non-EU Member States) from accessing personal data in the EU where required by a non-EU court or administrative authority in the absence of an international treaty or agreement. This clause, favoured by the EP in the wake of the Snowden revelations, is aimed at preventing the U.S. Government and its surveillance bodies (principally the NSA) to obtain data on EU citizens. It takes its name from the US Foreign Intelligence Surveillance Act.

resisted because they considered it to have JHA content (triggering the opt-in in their view). However, events were overtaken by the Schrems judgment (C-362/14), the principle of which the EP wanted to see reflected in the text. The Minister's letter highlights the UK's decision to opt out of Article 43a.

- **Relationship between supervisory authorities and the new European Data Protection Board (Chapters 6 and 7):** On the One-Stop-Shop mechanism,[25] the final text did not reflect the UK's objective of reducing administrative burdens through quantitative thresholds[26] for referrals to the European Data Protection Board (EDPB) of DPA objections to decisions of other DPAs.

- **Fines and sanctions (Articles 78 and 79)**[27]: The UK says it was successful in getting proportionate sanctions for data processing breaches which are staged depending on the circumstances of the case, with DPAs assessing the severity of the breach in question:

— **First stage:** fines up to €10,000,000 (£7,340,000) or 2% of the total worldwide annual turnover of the preceding financial year for failing to meet obligations are either a data controller or processor; and

— **Second stage**: fines of €20,000,000[28] (£14,680,000) or 4% of total annual worldwide turnover for the most serious offences (breaching consent conditions, data subjects' rights or requirements for third country transfers of data). The EP had wanted a non-staged approach with a maximum fine of up to €100,000,000[29] (£73,400,000) or 5% of the total worldwide annual turnover of the preceding financial year.

- **Research (Article 83)**[30]**:** On research, the final text includes proportionate safeguards on how personal data is used in health research and avoids the amendments proposed in the EP text which, the Government considers, would have placed disproportionate burdens on the research community. Processing of data for scientific, historical and statistical research purposes must be based on EU or Member State law and such processing may be exempt from the obligations to grant the data subject the rights of access, rectification, restriction of processing and objection — all key objectives of the UK.

3.15 The Thematic Update on the Police and Criminal Justice Directive[31] includes the following highlights:

- **Domestic processing**[32]: The original Commission proposal sought to include domestic processing of personal data but "within the scope of EU law".[33] This was

25 Our commentary: This mechanism means that businesses only have to deal with one single data protection authority (DPA), as opposed to dealing with 28.

26 For example, a majority of DPAs would be needed to reject a ruling by the lead DPA and in order to instigate a referral to the EDPB.

27 Our commentary: The previous Justice Committee considered that DPA should have more discretion as to the sanctions that they can impose in order to effectively punish the worst behaviour. To avoid divergences between national DPAs, it considered that the EDPB should be entrusted to provide guidelines on sanctions (paragraph 88).

28 Our commentary: using an exchange rate of 1 euro to 0.734 sterling.

29 Our commentary: Using an exchange rate of 1 euro to 0.734 sterling.

30 We raised a question about access to medical records for research purposes in our Report of 28 October 2015.

31 The thematic update on the proposed Regulation can be accessed here.

maintained in the final text but the UK is "clear" that its JHA opt-in arrangements under Protocol 21 ensure that the Directive only applies to the UK where processing is carried out pursuant to an EU police or judicial cooperation measure in which it participates.

- **Data subject definition**: The UK supports the approach in the final text of not defining a "data subject" but instead clarifying that the Directive applies to an "identified natural person" who can be identified by means including "online" and physical, physiological and genetic identifiers.

- **Information to the data subject and the right of access for the data subject**: The final text largely reflects the Council's position. It maintains the ability for Member States to restrict the obligation to provide this information to the data subject in various circumstances. It further specifies the additional information which can be provided to data subjects in specific circumstances, which is to be determined by Member States, including the period for which the personal data will be stored and the legal basis of the processing. It also maintains the ability of law enforcement agencies to refuse to respond to data access requests ('Neither Confirm Nor Deny') when this is necessary in an operational context.

- **Data Protection by design or default**: Again, the final text largely reflects the position of the Council and represents another successful outcome for the UK, according to the Government. Whilst it is important that for data controllers to implement appropriate technical and organisational measures and procedures to make sure that processing is compliant with the Directive, the obligations must reflect practical constraints. These include the likelihood and severity of risk for the rights of data subjects, the nature, scope, context and purposes of the processing, as well as what technology would be available, in addition to the cost of its implementation.

- **Right to erasure**: The final text includes the right for data subjects to directly obtain from the controller the erasure of their personal data where the processing does not comply with the principles of data protection or the conditions for lawful processing. It also reflects the Council's position in including the ability for Member States to restrict the obligation to inform the data subject in writing of any refusal and the reasons for this refusal in various circumstances, which reflects the law enforcement context.

- **Personal data breach and communication**: The final text reflects the Council position in requiring a data controller to inform the DPA of a personal data breach which is likely to result in a risk for the rights and freedoms of the data subject, 'not later than 72 hours after having become aware of it'. The original proposal required notification "not later than 24 hours" after awareness of a breach. It also requires the data controller to inform the data subject 'without undue delay' if the breach is likely to result in a high risk for the rights and freedoms of the data subject. The

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32 The previous Justice Committee said that it needs to be clear beyond doubt that exchange of information between UK law enforcement agencies is not covered by the Directive and that the Government's negotiating stance should seek to ensure that the exemption of the UK from provisions relating to domestic processing is written into the Directive (para 128).

33 For example, between two regional police forces with no cross-border element.

circumstances where this is not required also mirrors the Council position, though the ability of a DPA to require a data controller to do so reflects the EP position, with the additional option that it could also instead decide that it is not required.

- **DPOs:** The final text includes the obligation for a data controller to appoint a Data Protection Officer, but also provides an "acceptable compromise" between the positions of the three institutions according to the Government— that a single DPO may be designated for several competent authorities. The DPO will have to be involved in all issues which relate to the protection of personal data and provided with the means to perform their duties. The text then lists the various tasks that the DPO must fulfil, which includes a general obligation to monitor compliance with the provisions adopted pursuant to the Directive, policies of the controller or processor as well as awareness raising or training. It also requires the DPO to cooperate with the DPA and forward to it the contact details of the DPO.

- **Transfers of personal data to third countries and international organisations**: This largely reflects the Council position, maintaining the three routes by which international transfers could take place: by a Commission adequacy decision; by way of appropriate safeguards; or by derogation from the previous two routes if certain conditions are met. These include that it would need to be necessary in individual cases for the processing purposes set out in the scope in Article 1(1). It further specifies that a category of transfers (and not just a single transfer) could take place in this manner. It also provides for the ability of law enforcement agencies to transfer data directly to private entities in third countries where it was strictly necessary for a purpose set out in Article 1(1)—a key success in the Government's opinion.

- **Logging requirements**: The final text retains the additional logging requirements beyond those in the 2008 Data Protection Framework Decision – requiring that records are kept of the following operations: collection, alteration, consultation, disclosure, combination or erasure. However, it is more reflective of the Council position because:

— the requirements apply only to automated processing systems; and

— existing systems can be exempt from these requirements for up to seven years (on the basis of disproportionate effort) and then for a further three years (in exceptional circumstances and where it would cause serious difficulties for the operation of that system) following the entry into force of the Directive.

Minister's letter of 11 January 2016 on Schrems and Safe Harbor 2

3.16 The Minister of State for Culture and the Digital Economy (Mr Edward Vaizey) explains that he is enclosing with his letter an analysis, provided in a response to a request from the EU Committee in the House of Lords. We summarise that analysis below.

Analysis of Schrems

3.17 On 6 October 2015, the CJEU upheld a complaint by Max Schrems that the Commission Decision on the Safe Harbor agreement, governing data transfers from the EU to the US, was invalid. It ruled that:

- An adequacy decision[34] should not prevent a national supervisory authority from examining a complaint as to whether a transfer complies with EU data protection rules and the Charter of Fundamental Rights (Charter). If their finding calls into question the validity of the Commission decision, a national court should make a reference to the CJEU as it alone has jurisdiction to determine whether the decision is valid;

- The Safe Harbor adequacy decision was invalid because:

— the Commission failed to find that the US ensures a level of protection of fundamental rights equivalent to that guaranteed within the EU (it did not directly state that the US does not ensure such protection);

— the Decision applies only to the US companies and not US public authorities and protections can be overridden on the basis of US national security, public interest or law enforcement;

— there must be clear and precise rules governing the scope and application of a measure and imposing minimum safeguards, so that data subjects have sufficient guarantees enabling their data to be effectively protected against the risk of abuse and against any unlawful access and use of the data; and

— there has to be access for individuals to judicial review and redress where their rights and freedoms are violated.

3.18 The CJEU did not make wider findings about the lawfulness of transferring data to the US using other methods permitted under EU law (i.e. binding corporate rules and unambiguous consent).

3.19 The Minister writes:

> "This judgment has profound implications for British businesses which were previously reliant on Safe Harbor as a framework under which they could lawfully transfer data to the US. These companies now have to find alternative means to comply with EU data protection laws. In particular, I am concerned that SMEs are affected disproportionately, because they have fewer resources to assess whether a data transfer to the US will provide adequate protection, in accordance with the conditions laid out in the judgment."

[34] Our commentary: An "adequacy decision" is a decision adopted by the Commission on the basis of Article 25(6) of Directive 95/46/EC (the current Data Protection Directive), which establishes that a third country ensures an adequate level of protection of personal data by reason of its domestic law or the international commitments it has entered into. The effect of such a decision is that personal data can flow from the 28 EU Member States to that third country, without any further safeguards. The Commission has so far issued seven adequacy decisions recognizing, in addition to the US Department of Commerce's "Safe Harbor" principles: Switzerland, Canada, Argentina, Guernsey, Isle of Man and the transfer of Air Passenger Name Record (PNR) data to the United States' Bureau of Customs and Border Protection as providing adequate protection. Source: Europa.

3.20 The Minister then summarises how document (c), the Commission's Communication on the Schrems judgment, identifies alternative mechanisms for EU-US data transfers, namely:

- Standard Contractual Clauses which can specify obligations of both data exporters and importers, including security measures, notification of subject access requests and the enforcement of data subjects' rights, even those derived from the clauses themselves as a third-party beneficiary; and

- Binding Corporate Rules (BCRs) which can be used to transfer personal data from the EU to affiliate companies outside the EU but in the same corporate group, without needing contractual arrangements between each corporate entity, whilst ensuring that the same high level of protection of personal data is complied with. The Article 29 Working Party[35] has issued guidance on the substantive and procedural requirements for BCRs to comply with EU law.

3.21 The Minister comments:

> "This guidance from the European Commission does not go far enough, because businesses still urgently need clarity on data transfers in the form of a new Safe Harbor agreement. Any alternative tools to transfer data are seen to be expensive and complex, and despite the Commission's assurances that they are legal, these tools could still be challenged in the Court of Justice of the EU.
>
> "We know that Commissioner Jourova has formally stated that the Commission and the US authorities have given themselves the deadline of the end of January 2016 to issue a new adequacy decision that meets the conditions of the Schrems judgment. The Article 29 Working Party has stated that if, by this deadline, no appropriate solution has been found by the Commission and the US authorities, EU data protection authorities are 'committed to take all necessary and appropriate actions, which may include coordinated enforcement actions'.
>
> "Due to the fact that Safe Harbor is a Commission adequacy agreement with a third country, the most that individual Member States can do is to encourage the Commission to conclude the negotiations and achieve a robust Safe Harbor 2.0, which we have been doing. On my visit to Washington last week, I met the US Department of Commerce, the Department of State and the Judiciary Committee of the House, in order to reiterate the importance of the free flow of data with appropriate safeguards. I can report that it was clear in those meetings that the US remains committed to working constructively with the Commission to find a solution as soon as possible."

3.22 He adds that in the meantime the Information Commissioner's Office (ICO) has issued guidance on how to continue transferring data to the US in the absence of an adequacy agreement. It considers that UK law allows companies to rely on their own

[35] Our explanation: The Article 29 Data Protection Working Party, set up under the current 1995 Data Protection Directive, is composed of representatives from national DPAs and the Commission and other institutional representatives. Source: Europa.

adequacy assessment, subject to meeting certain criteria. It may also be publishing further practical guidelines, especially for SMEs using cloud services.

3.23 The Minister concludes by emphasising that he is "encouraging the European Commission to conclude negotiations on Safe Harbor 2.0 and meet their deadline, so that British businesses are given a clear legal framework under which they can transfer data to the US without the fear of breaching EU data protection laws".

Previous Committee Reports

(a), (b) and (c): Sixteenth Report HC 342-xv (2015-16), chapter 1 (6 January 2016); Fifteenth Report HC 342-xiv (2015–16), chapter 1 (16 December 2015); Eleventh Report HC 342-xi (2015–16), chapter 2 (2 December 2015); 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), chapter 14 (30 April 2014); (a) and (b) 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) Thirty-sixth Report HC 83-xxxiii (2013–14), chapter 9 (12 February 2014).

4 Protecting the EU's financial interests

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

Summary and Committee's conclusions

4.1 EU institutions and Member States share responsibility for countering fraud affecting the financial interests of the EU. The proposed Directive commonly known as the PIF[36]

[36] PiF is an acronym taken from the French for protecting financial interests.

Directive, aims to enforce these responsibilities by harmonising fraud related criminal offences and sanctions.

4.2 The original text of the proposal contained provisions on minimum custodial sentences, VAT and extraterritorial jurisdiction to which the Government was opposed. It was also based on Article 325 TFEU but, since the agreement of a General Approach in June 2013 it has been replaced in the Council text by a JHA legal base, Article 83(2) TFEU. Also at that General Approach, the provisions on minimum custodial sentences and VAT were removed from the text (though extraterritorial provisions remained). Scrutiny issues arising from the opt-in are not centrally relevant to the issues considered in this chapter, but given they are referred to in our Conclusions, a summary is provided in the "Background" section to this Report.

4.3 Since the General Approach, our predecessors reported on the first reading position of the European Parliament. This supported the change to a JHA Title V legal base and the removal of provisions relating to minimum terms of imprisonment, but also supported inclusion of VAT fraud provisions, contrary to the then Governments' view that this was a matter of a national competence. The last time the Government updated our predecessors in March 2015, trilogues were continuing but there had been no substantive agreement on a compromise text, nor was one imminent. The Government now tells us that as a recent ruling from the CJEU[37] that VAT is an EU Own Resource which falls within scope of the 1995 PIF Convention which this Directive is intended to replace, this has led to renewed discussions about the inclusion of VAT fraud.

4.4 **We thank the Minister for his letter. On the question of how the CJEU judgment in Taricco is featuring in the proposal's negotiations, we would grateful if the Minister could clarify, when he next updates us:**

a) **Whether the Government accepts that Taricco establishes that combatting VAT fraud affecting the EU budget is, no longer — if it ever was, an exclusively national competence? We do not think this addressed by the Minister stating Taricco "does not oblige Council to accept VAT fraud in the PIF directive" and that its inclusion is "policy choice rather than a legal obligation";**

b) **Why, as a distinct point, the Government is opposed to any degree of prescription or harmonisation in respect of penalties for VAT fraud within the proposal?**

c) **How important is it for the UK to oppose inclusion of such penalties within the PIF proposal, given that it is not participating in the related proposal to establish an EU Public Prosecutor's Office which aims to investigate and prosecute fraud on the EU budget?**

d) **What is the position of other Member States on including VAT fraud and prescribing penalties, particularly given the point the Minister raises about including a tax issue in a non-tax dossier which is only subject to QMV?**

[37] C-105/14: Request for a preliminary ruling under Article 267 TFEU from the Tribunale di Cuneo (Italy), made by decision of 17 January 2014, received at the Court on 5 March 2014, in the criminal proceedings against Ivo Taricco and others.

4.5 **Finally, we note that as we did not receive a response to questions we asked the previous Government in our Report of 4 February concerning the application of the opt-in and the change to a Title V legal base during negotiations, we pursue this with the current Minister:**

a) **When does a change to a legal base become "formal" and how this might apply in the case of the current proposal; and**

b) **Does he consider that a legal base only becomes formal upon the adoption of a measure? In which case, what is the difference between opting in at that stage and a post adoption opt-in?**

4.6 **Pending the Minister's response, we continue to hold the document under scrutiny and draw it and the chapter to the attention of the Treasury Committee.**

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

Background

4.7 The background to the proposal, an outline of its provisions and the Government's view of it, are set out in our Twelfth Report of 2012–13.[38] The history of the scrutiny issues relating to the application of the JHA Protocol to this proposal is long and complicated, but we set out here a short summary of those issues as they are relevant to one of our Conclusions.

4.8 A key scrutiny issue resulting from the General Approach was the previous Government's failure to clarify whether it agreed with the Council Legal Service that the three month opt-in period provided by JHA Protocol 21 was triggered by notifying the EP of the change to the JHA legal base. After some considerable delay, the previous Government finally told our predecessors that they did not agree with the Council Legal Service but instead considered that the opt-in is triggered by the JHA content of the original proposal. However, they would consider reiterating an opt-in decision at the point where the legal base is "formally changed".

4.9 The previous Government also told our predecessors that it did not intend to opt into the proposal prior to adoption but would ensure that we were able to scrutinise any post-adoption opt-in.

Our summary of the *Taricco judgment*

4.10 Criminal proceedings were brought in Italy against Mr Taricco and others who are accused of conspiring between 2005 and 2009 to commit "VAT carousel" fraud,[39] resulting in some several million euros of VAT evasion. Some of the charges against the defendants

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

39 In its simplest form, goods are imported VAT free (i.e. not registered for VAT) but are not sold for home consumption. Instead, they are sold through a series of companies, each liable to VAT, to hide the fraud. When exported, a VAT refund is then claimed by the final company in the chain. Often the first company in the chain disappears without accounting for the VAT.

were already time-barred, whereas other charges will be so tamed before a final judgment can be delivered, due to the complexity of the investigation and the duration of Italian process. The defendants, who are accused of VAT evasion amounting to several million euros might therefore enjoy impunity as a result of the expiry of the limitation period.

4.11 The referring Italian court sought clarification from the CJEU as to whether Italian law, by effectively granting impunity to persons and undertakings who commit criminal offences, has created a new VAT exemption which is not compatible with EU law.

4.12 The CJEU considered that:

- Article 325 TFEU requires Member States to counter illegal activities affecting the EU budget through effective, deterrent and persuasive measures[40] and by taking the same measures to counter fraud affecting EU budget as they do in relation to their own financial interests;

- Article 2(1) of the PIF Convention[41] also requires Member States to take the necessary measures to ensure that such conduct is punishable by effective, proportionate and dissuasive criminal penalties, including, in cases of serious fraud, penalties involving deprivation of liberty;

- The EU's budget is financed, in part, by revenue from the application of a uniform rate to the harmonised VAT assessment bases, with the result that there is a direct link between the collection of that revenue and the financial interests of the EU;[42]

- So the Italian court must determine whether the Italian law allows the effective and dissuasive penalisation of cases of serious fraud affecting the EU budget;

- So Italian law would be contrary to Article 325 TFEU and Article 2(1) of the PIF Convention if:

— the Italian court were to conclude that, in a considerable number of cases, the commission of serious fraud would escape criminal punishment because the rules on limitation periods generally prevent the imposition of final judicial decisions; and

— it provided for longer limitation periods in respect of cases of fraud affecting Italy's financial interests than in respect of those affecting the financial interests of the EU.

4.13 The ECJ noted that, if the national court concludes that Article 325 TFEU is infringed, it must then ensure that EU law is given full effect, disapplying the rules on limitation periods in question, if needs be.

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40 The Government asserts later on in this Report that these measures can be of Member States "own choosing".

41 Since 1995 a convention has been in place which seeks to protect, under criminal law, the financial interests of the EU and its taxpayers. The Convention and its protocols provide a harmonised legal definition of fraud and require their signatories to adopt effective, dissuasive and proportionate penalties for fraud.

42 This is also reflected in the CJEU's reasoning in the *Åkerberg Fransson* case, C-617/10: that there is a direct link between the collection of VAT revenue in compliance with the EU law applicable and the availability to the EU budget of the corresponding VAT resources, since any gap in the collection of the first potentially causes a reduction in the second.

Minister's letter of 19 January 2016

4.14 The Financial Secretary to the Treasury (Mr David Gauke) briefly rehearses the purpose and intended effect of the proposal. He then reminds us of the Government's overall position on the proposal. The Government:

- welcomes efforts to tackle the misuse of EU funds but has not opted into the proposal because of concerns over some provisions, some of which have been addressed;
- is still concerned about the unresolved question of whether VAT fraud should be within the scope of the proposal or not; but
- has been seeking actively to influence the text in line with UK interests with a view to a post-adoption opt-in, should the final text be acceptable.

4.15 He then focuses on the issue of the inclusion of VAT fraud within the proposal. This has slowed negotiations as it remains a "sticking point", with the Commission and European Parliament favouring inclusion but the majority in the Council, including UK, opposing that "for tax sovereignty reasons".

VAT fraud and the Taricco judgment

4.16 However, the Minister informs us that recent discussions have been influenced by the "Taricco" judgment.[43] He says that the Italian court must disapply those national rules on limitation periods "where such rules are found to be incompatible with Treaty obligations to protect EU financial interests by imposing effective and dissuasive criminal sanctions".

4.17 Given the importance of this legal development, we set out the Government's view on it in full. The Minister comments:

> "The Council had previously taken the view that VAT fraud did not fall within scope of the current PIF Convention, as a revenue which is not collected directly for the EU. However, in Taricco, the ECJ has definitively ruled that VAT is an EU Own Resource which falls within scope of the PIF Convention. Given that the new Directive is intended to replace the 1995 Convention, this has led to renewed discussions about the inclusion of VAT fraud. These discussions are unlikely to be concluded quickly.
>
> "The UK position remains unchanged — as Ministers have set out to your committee previously, inclusion of VAT in this Directive would be an instance of a tax measure in a non-tax dossier and would go against the principle that all tax issues should be agreed by unanimity at ECOFIN. Inclusion of VAT in the PIF Directive would prevent any consideration of UK participation. We continue to make our position clear in discussions. Regarding the Taricco ruling, our analysis is that the judgement does not oblige Council to accept VAT fraud in the PIF directive; instead, it requires Member States to ensure 'effective and dissuasive' criminal sanctions are in place in order to protect VAT revenues. This can and is achieved through existing national criminal justice frameworks — indeed, Member States have a strong

[43] See footnote 37.

incentive to protect what is first and foremost a national revenue (all but a very small percentage of VAT receipts are retained by the Exchequer). Inclusion of VAT fraud in PIF would therefore be a policy choice rather than a legal obligation."

Next steps

4.18 The Minister, commits to providing a further update, saying that:

- UK officials regularly attend Working Group meetings;
- However, future progress in trilogues is uncertain whilst all parties discuss the implications of the "Taricco" judgment; and
- A formal update from the Presidency is expected at the JHA Council in March, which might provide more clarity on how to break the VAT "deadlock".

Previous Committee Reports

Thirty-seventh Report HC 219-xxxvi (2014–15), chapter 1 (18 March 2015); Thirty-second Report HC 219-xxxi (2014–15), chapter 10 (4 February 2015); Ninth Report HC 219-ix (2014–15), chapter 14 (3 September 2014); Twenty-second Report HC 83-xx (2013–14), chapter 13 (6 November 2013); Thirteenth Report HC 83-xiii (2013–14), chapter 18 (4 September 2013); Twelfth Report, HC 86-xii (2012–13) chapter 10 (12 September 2012); Also see (34549) 17670/12: Thirty-eighth Report HC 86-xxxvii (2012–13), chapter 9 (26 March 2013).

5 Implementation of migration hotspots in Greece and Italy

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; further information requested; relevant to the debate on the functioning of the Schengen Area and Strengthening checks at the EU's external borders (decision reported on 27 January 2015); drawn to the attention of the Home Affairs Committee
Document details	(a) Commission Communication: *Progress report on the implementation of the hotspots in Greece* (b) Commission Communication: *Progress report on the implementation of the hotspots in Italy*
Legal base	—
Department	Home Office
Document Numbers	(a) (37404), 15399/15 + ADD 1, COM(15) 678 (b) (37405), 15402/15 + ADD 1, COM(15) 679

Summary and Committee's conclusions

5.1 In May 2015, the Commission published *A European Agenda on Migration* which proposed a series of actions to address the migration and refugee crisis in the Mediterranean and a range of longer-term measures to lay the foundations for a "fair, robust and realistic" EU migration policy. One of the immediate measures envisaged was the creation of "hotspots" to provide operational support for frontline Member States experiencing persistently high levels of migration at their external borders. The hotspots bring together staff from different EU agencies — the EU external borders agency (Frontex), the European Asylum Support Office, the EU law enforcement agency (Europol) and EU judicial cooperation agency (Eurojust) — to help screen, register and fingerprint incoming migrants, assist with the processing of asylum claims (including identifying individuals eligible for relocation to other Member States), coordinate the return of illegal migrants, and support investigations to dismantle people smuggling and human trafficking networks.[44]

5.2 Greece and Italy are the first Member States in which hotspots are being implemented. The Commission Communications review the progress made (by mid-December 2015) in establishing and operating the hotspots. They set out the obstacles encountered and the action that needs to be taken to ensure that they are fully functional as early as possible in 2016. The Commission notes that the number of arrivals in Greece remains very high and that "there is still a lot of work to be done".[45] By contrast, there has been a reduction in migration flows through Italy and in the number of recent arrivals who are likely to qualify for relocation. The Commission urges Italy to make the most of this respite in arrivals to ensure that its hotspots operate as efficiently as possible. It also reminds Member States to

[44] See the Commission's fact sheet on hotspots.

[45] See p.3 of document (a).

deploy more experts to Greece and Italy and to increase the number of places made available for relocation for individuals in clear need of international protection. Member States agreed last September to relocate up to 160,000 individuals but, so far, have only pledged a total of 4,237 places. Greece and Italy are both encouraged to improve their rate of returns to prevent congestion in hotspots. The Commission identifies a need for increased detention capacity in Italy and highlights "severe shortcomings" in detention conditions in Greece which require urgent improvement.

5.3 The Minister for Immigration (James Brokenshire) says that "swift and effective implementation of hotspots remains a UK priority" and should contribute to "better management of the EU's external border". He describes progress so far as "frustratingly slow" and notes that "a number of important questions as to how hotspots will operate (including resources) remain unanswered".

5.4 **Much appears to depend on the success of hotspots. If they can be made to work, they should ensure that individuals in need of international protection are able swiftly to access asylum procedures at their first point of entry into the EU, establish an orderly process for relocation to other Member States, and reduce the scale of secondary movements within the Schengen free movement area. The delay in establishing fully functioning hotspots suggests, however, that they are very unlikely to provide a quick fix to the migration and refugee crisis. It is disappointing that the Commission Communications and the Minister's Explanatory Memorandum do not explore in greater depth the factors impeding their creation — in at least one case, local protests appear to have played a part.**

5.5 **The delay may point to more deep-seated difficulties which stem from the multitude of tasks that hotspots are expected to carry out — identifying, registering and fingerprinting all incoming migrants, debriefing migrants and performing an initial security screening, channelling individuals intending to seek international protection into an asylum procedure and organising the return of those who have no recognised protection needs, identifying candidates for relocation, and supporting police investigations into people smuggling and human trafficking networks. We ask the Minister whether too much is being asked in too short a timescale. We also ask him to identify "the important questions" about the operation and resourcing of hotspots which "remain unanswered" and to explain what the Government is doing to find the answers.**

5.6 **The Commission highlights a significant shortfall in the resources requested by Frontex and the European Asylum Support Office to support the work of hotspots and the pledges made by Member States. The contribution made by the UK so far appears modest given the magnitude of the challenge in establishing fully functional hotspots. In his Written Ministerial Statement on the resettlement of unaccompanied refugee children made on 28 January, the Minister stated:**

> **"The UK Government will also commit to providing further resources to the European Asylum Support Office to help in 'hotspots' such as Greece and Italy to help identify and register children at risk on first arrival in the EU. And we will, of course, continue to meet our obligations under the Dublin Regulations.**

> **"The Government is committed to combating child trafficking and understands that unaccompanied children, particularly those in transit, are vulnerable to people traffickers. The Home Secretary has asked the Anti-Slavery Commissioner, Kevin Hyland, to visit the hotspots in Italy and Greece to make an assessment and provide advice on what more can be done to ensure unaccompanied children and others are protected from traffickers.**
>
> **"The UK Government is already providing substantial funding to NGOs such as Unicef and UNHCR to provide shelter, warm clothes, hot food, and medical supplies to support vulnerable people, including children, on the move or stranded in Europe or in the Balkans. In addition, the Department for International Development is creating a new fund of up to £10 million to support the needs of vulnerable refugee and migrant children in Europe. The fund will include targeted support to meet the specific needs of unaccompanied and separated children who face additional risks. The support will include identifying children who are in need, providing safe places for at risk children to stay, data management to help trace children to their families, and services such as counselling and legal advice."**[46]

5.7 **We ask the Minister to explain how much additional resource the Government intends to make available to hotspots, in what timescale, and the proportion that will be dedicated to identifying and registering children at risk. We would also like to hear how the UK's contribution compares to other Member and how quickly he expects the shortfall in the resources requested by Frontex and the EASO to be made up.**

5.8 **We note that one of the purposes of the new DfID fund to support the needs of vulnerable refugee and migrant children in Europe is to provide "safe places for at risk children to stay". We ask the Minister whether safe places in the UK will be provided to children at risk who are already within the EU and whether they will be conditional on satisfying the criteria for family reunification set out in the Dublin III Regulation, or whether the Government will consider a more flexible approach based on the best interests of the child.**[47]

5.9 **Pending the Minister's response, the Communications remain under scrutiny. We consider that they are relevant to the debate on the functioning of the Schengen Area and Strengthening checks at the EU's external borders which we recommended at our meeting on 27 January 2015. We also draw the Communications to the attention of the Home Affairs Committee.**

Full details of the documents: (a) Commission Communication: *Progress report on the implementation of the hotspots in Greece*: (37404), 15399/15 + ADD 1, COM(15) 678; (b) Commission Communication: *Progress report on the implementation of the hotspots in Italy*: (37405), 15402/15 + ADD 1, COM(15) 679.

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46 See the Written Ministerial Statement, Hansard, HCWS 497, 28 January 2016.

47 The Dublin III Regulation establishes criteria for determining the Member State responsible for examining an application for international protection. In the case of unaccompanied minors (children under 18), family reunification is the principal factor in determining the relevant Member State.

Background

5.10 In its Communication, *A European Agenda on Migration*, published last May, the Commission made clear that hotspots were intended to "help deal with the immediate challenge faced by Member States in the frontline of migrant arrivals".[48] In September, the Commission published a further Communication reviewing the measures taken since May to manage the refugee crisis and identifying a range of actions to be given priority in the coming months. These included the deployment of Migration Management Support Teams in hotspots to support the authorities of the host Member State. According to the Commission:

> "The Support Teams will have an instant impact on the most critical point in the chain — where the most affected Member States are finding the sheer number of arrivals too great to manage effectively. Staff deployed by EU agencies and other EU Member States will help identify, screen and register migrants on entry to the EU. This is the first step to a secure future for those in need, and an early opportunity to identify those who should be returned to their home countries. The network of EU Agencies involved will also boost cooperation against migrant smuggling, identifying suspects and helping new investigations. The Support Teams can only work in partnership with national authorities. Only national authorities can set up (with the support of EU funding) and manage well-functioning reception infrastructures, provide the direction and the link with key players such as local authorities, social services, law enforcement and the managers of reception facilities. Frontex, the European Asylum Support Office (EASO), Europol and Eurojust can provide the policy expertise, facilitate direct communication between Member States, and play a specific role in coordinating return operations. Italy and Greece now need, as a priority, to finalise and start to implement their roadmaps for relocation and for the Support Teams working in hotspot areas, and ensure adequate reception infrastructure."[49]

5.11 In October, the Commission published a further Communication calling for all hotspots to be operational by the end of 2015. The Commission noted that the work of the Migration Management Support Teams relied heavily on the support of Member States, adding:

> "Frontex and EASO have both launched calls for contributions to request human resources and technical equipment from Member States. In both cases, these calls constitute unprecedented numbers when compared to requests made by the Agencies in the past, reflecting the exceptional nature of the challenges currently faced by the most affected Member States: it is essential that other Member States respond positively, concretely and quickly to these calls.
>
> "Frontex's latest call requested 775 additional border guards, screeners, de-briefers, and interpreters — all indispensable tasks for the effective management of the external borders of the European Union. The call was split into 670 officers —

[48] See p.6 of the Commission Communication, *A European Agenda on Migration*.

[49] See p.5 of the Commission Communication, *Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration*.

mainly for direct support to the 'hotspot' approach in Italy and Greece, covering estimated needs to the end of January 2016 — and 105 guest officers to be deployed at various external land borders of the European Union.

"EASO's latest call for over 370 experts is intended to cover the needs in Italy and Greece until the third quarter of 2017. These experts would support the asylum management authorities of the two Member States in the registration process, information tasks related to relocation and the detection of possible fraudulent documents.

"The need for personnel and equipment was explicitly recognised at the informal meeting of EU Heads of State or Government in September — with a deadline of November to meet these needs.

"However, so far, the commitments made by Member States fall far short of the real needs. As of 8 October, only six Member States have responded to the call for contributions for EASO with 81 experts, out of the 374 needed. So far six Member States have responded to the call from Frontex with 48 border officials. Member States should rapidly submit their contributions to meet the Agencies' needs assessment."[50]

5.12 We noted, in December, that the Government was considering how it might contribute to the hotspots in Greece and to the Greek Government's request for assistance under the EU Civil Protection Mechanism. We asked the Minister to inform us once the Government had decided on the nature and extent of the UK's contribution. Further details on all of the Commission Communications are contained in the Reports listed at the end of this chapter.

The Commission Communications

5.13 The Communications provide an overview of the progress made in the following areas:

- establishing functioning hotspots in Greece and Italy;
- implementing commitments for the relocation to other Member States of up to 160,000 individuals in clear need of international protection;
- increasing the number of illegal migrants who are returned to their countries of origin;
- improving border management; and
- creating adequate reception capacity — principally accommodation — for asylum seekers in frontline Member States.

[50] See pp.3-4 of the Commission Communication, *Managing the refugee crisis: State of play of the Implementation of Priority Actions under the European Agenda on Migration*. The Annexes to the Communication include maps showing the location of the hotspots in Greece and Italy.

Establishing hotspots

5.14 By mid-December 2015 only one, not yet fully functioning hotspot had been established in Greece, on the island of Lesvos. Others are to be established in Leros, Kos, Chios and Samos — all islands in the Aegean close to the Turkish coast. The Commission describes the action that needs to be taken to ensure that the remaining hotspots are operational as soon as possible:

- Complete construction works by mid-January at the latest (progress in Kos has been delayed by "local protest" and a suitable location has not yet been identified in Samos);
- Complete a needs assessment for each island to optimise the organisation and operation of each hotspot, as well the overall coordination of all the actors involved;
- Ensure that there are adequate human resources to run the hotspots, including Member State experts, team leaders and security personnel;
- Procure additional fingerprinting machines to ensure that Greece has the capacity to meet its obligations under the Eurodac Regulation;[51]
- Update IT systems to ensure that migrants are checked against relevant national, EU and international databases, notably the Schengen Information System and Interpol's Stolen and Lost Travel Documents database;
- Ensure that there is adequate provision of cultural mediators and interpreters in each hotspot; and
- Strengthen the presence of Europol to help combat people smuggling and document fraud and carry out financial investigations.

5.15 Six hotspot areas have been designated in Italy but only one, on the island of Lampedusa, is operational. Two others, in Pozzallo and Porto Empedocle/Villa Sikania (Sicily), are near completion but those planned for Taranto (located on the heel of the Italian mainland), Trapani and Augusta (Sicily) require major works and are unlikely to be functional before "early 2016". The Commission highlights the need for immediate action in the following areas:

- Complete refurbishment works so that all hotspots are ready by end February 2016;
- Ensure that all migrants are fingerprinted (where necessary, allowing for the use of force and detention);
- Increase the presence of Europol in hotspots to tackle migrant smuggling and improve mechanisms for the exchange of information between Europol and Italian police and judicial authorities;

[51] The Eurodac Regulation establishes a centralised database containing the fingerprints of individuals who have applied for asylum in one or more Member States, as well as individuals who have been apprehended in connection with an irregular crossing of an EU external border.

- Update IT systems to ensure that migrants are checked against relevant national, EU and international databases; and
- Improve systems for transferring individuals from hotspots to the Italian mainland.

Relocation

5.16 The Communications set out the limited progress made in implementing commitments agreed last September to relocate up to 160,000 individuals in clear need of international protection from Greece and Italy to other Member States. As far as Greece is concerned, a total of 82 asylum-seekers had been (or were due to be) relocated by mid-December 2015.[52] The Commission notes that "there are more relocation candidates than places for relocation".[53] This contrasts with Italy where 169 asylum-seekers had been (or were due to be) relocated within the same timescale, but further transfers are hampered by "a lack of potential candidates" as many of those arriving in Italy are unlikely to qualify for relocation.[54] The Commission urges Greece and Italy to improve the provision of information on relocation in hotspot locations. It says that Member States should "substantially increase" the number of individuals they are willing to relocate — by mid-January, a total of only 4,237 places had been made available — and "reduce substantially" the time taken to respond to relocation requests made by Greece and Italy.[55] Greece should increase substantially its capacity to register and process asylum claims, whilst Italy should develop "a dedicated workflow" for the transfer of unaccompanied minors as part of the relocation scheme.

Returns

5.17 Greece still lacks "a structured and comprehensive return strategy" for illegal third country nationals. 16,131 forced returns were carried out during 2015, mainly to Albania, but the number of voluntary returns has fallen significantly as a result of "acute funding constraints".[56] Implementation of returns to Pakistan under an EU/Pakistan Readmission Agreement remains patchy. Given Greece's limited capacity to carry out forced returns, the Commission considers that there are sufficient detention places in the short-term, but highlights "severe shortcomings" in detention conditions and calls for urgent improvements. It says that Greece should "step up forced and voluntary returns" and focus its return activities on nationalities most likely to be present in hotspots (citing Pakistanis, Afghans, Iranians and Bangladeshis) rather than nationals of its close neighbours (Albania and the former Yugoslav Republic of Macedonia — "fYRoM"). The Commission suggests that joint return flights coordinated by Frontex should make regular stopovers in Greece and says it will strengthen engagement with third countries, especially Turkey, to facilitate readmission and returns.

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52 The data are contained in the Annex (ADD 1) to document (a).

53 See p.8 of document (a).

54 See p.6 of document (b) and the accompanying Annex (ADD 1).

55 See p.9 of document (a). See also the summary of relocation pledges made by Member States up until 25 January 2016.

56 See p.10 of document (a) and the data contained in the Annex (ADD 1).

5.18 During 2015, Italy carried out 14,113 forced returns and intends to post liaison officers from several African countries in Italian hotspots to support the screening process and ensure swift returns. As Italy estimates that around a half of recent arrivals are not in need of international protection, the Commission suggests that Italy should increase its detention capacity and strengthen dialogue with the main countries of origin of illegal migrants so that forced returns can be carried out more efficiently. It also urges Italy to reinstate its Assisted Voluntary Return programme (it expired in July 2015) and identifies possible sources of EU funding.

Improving border management

5.19 The Commission notes that Greece has accepted Frontex assistance to register migrants at its norther border with fYRoM and has requested a Rapid Border Intervention Team to help manage migratory flows in the Aegean. The intervention will enhance the operational capabilities of Operation Poseidon which covers the same area. The Commission urges Member States to make the necessary staff and equipment available — so far, pledges made to support Frontex operations fall far short of requirements.[57]

5.20 Operation Triton continues its search and rescue activities in the Central Mediterranean and is credited with helping to save 56,613 lives. The Commission suggests that the Italian authorities should develop contingency plans to manage the risk of increased arrivals at Italy's border with Slovenia. It also urges Member States to continue to make assets available for Operation Triton and for the EU's naval mission, Operation Sophia, which is intended to disrupt the business model of people smuggling and human trafficking networks.

Reception capacity

5.21 The Commission notes that EU funding has been secured for a rental scheme which will increase reception capacity on the Greek mainland by 20,000 places and by 7,000 in hotspots. Following Greece's request to activate the EU's Civil Protection Mechanism, Member States have been asked to provide "in-kind assistance" to improve reception conditions. The Commission highlights a need to improve the reception of vulnerable groups, particularly unaccompanied minors, and to find "more structural solutions" for the provision of food and other basic requirements in reception facilities.[58]

5.22 Whilst Italy's asylum backlog has reduced in recent months, the Commission highlights the risk of fragmentation in the quality of decision making as well as differences in the quality of reception conditions available across the country and encourages the Italian authorities to continue their efforts to reform asylum procedures and reception systems.

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57 Further details are contained in the Annex (ADD 1) to document (a) which indicate that the pledges made so far by Member States to support Frontex operations cover only 31% of the needs identified in Greece and Italy.

58 See p.13 of document (a).

The Minister's Explanatory Memorandum of 11 January 2016

5.23 The Minister explains that hotspots are intended to enable the swift identification, registration and fingerprinting of migrants arriving in Greece and Italy. He continues:

> "Those who are prima facie in need of international protection (based on nationality criteria in the relocation measures) will be routed into a relocation procedure, while those with no protection needs will be returned. Those who do not meet the nationality requirements but who have protection needs are expected to claim asylum in the normal way in Greece or Italy. Hotspots will also identify particularly vulnerable migrants to ensure that they quickly obtain access to the support they require."[59]

5.24 Although the UK does not participate in EU relocation measures, the Government "supports the principle of hotspots" and considers their swift and effective implementation to be a priority, adding:

> "In our view the hotspots should contribute to better management of the EU's external border with more focus being given to the rapid return of those without a legitimate asylum claim. We believe it is important that hotspots do not focus exclusively on facilitating relocation but fulfil this wider border security objective."[60]

5.25 The Minister describes the progress made so far in establishing hotspots as "frustratingly slow" and agrees with the Commission's assessment that "more needs to be done in both Greece and Italy":

> "Implemented correctly, the Government is of the view that hotspots could make a real difference in helping to manage the unprecedented flows the EU is currently experiencing. It is disappointing to note that there is only one hotspot operational in Italy and not one yet fully functioning in Greece. In order for hotspots to be fully effective it is important that all migrants arriving in Greece and Italy are screened and registered. Where no grounds for seeking international protection are found migrants should be returned swiftly. Significant progress is still required for this to be the case."[61]

5.26 The Minister considers that "a number of important questions as to how hotspots will operate (including resources) remain unanswered". He describes the contribution made by the UK:

> "So far we have provided two asylum experts and an interpreter to support operations in Lesvos. We have also offered an expert to support the Dublin Unit in Athens and an expert to support Italian operations in Rome. The UK will continue to work closely with the European Asylum Support Office (EASO) to provide resource as required and will also continue to press for greater speed and ambition in setting up hotspots."[62]

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59 See para 2 of the Minister's Explanatory Memorandum.

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

61 See para 19 of the Minister's Explanatory Memorandum.

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

5.27 The Minister explains that the cost of deploying national experts to the EASO is reimbursed from the EU budget:

> "This means there is normally no direct financial loss to the UK for providing support to an EASO mission. However, there is an indirect cost to the business in hours lost as a result of deploying our staff members to EASO support missions."[63]

5.28 Finally, the Minister indicates that the UK is exploring other ways to support Greece and relevant EU agencies in increasing their capacity and capability, "using UK experience in setting up complex systems quickly and efficiently."[64]

Previous Committee Reports

None, but the following Reports on the Commission Communication, *A European Agenda on Migration* and related Communications are relevant: Second Report HC 342-ii (2015-16), chapter 1 (21 July 2015), Fifth Report HC 342-v (2015-16), chapter 32 (14 October 2015); Seventh Report HC 342-vii (2015-16), chapter 4 (28 October 2015), Ninth Report HC 342-ix (2015-16), chapter 8 (18 November 2015) and Fifteenth Report HC 342-xiv (2015-16), chapter 8 (16 December 2015).

Annex: Summary of key information

Progress made by mid-December 2015	Greece	Italy
Hotspots	Five envisaged on the islands of Lesvos, Leros, Kos, Chios and Samos Only one (in Lesvos) is currently operational All should be operational by end January	Six areas have been designated as hotspots: Lampedusa, Pozzallo, Porto Empedocle/Villa Sikania, Taranto, Trapani and Augusta Only one (in Lampedusa) is operational All should be operational by end February
Relocation	Member States have so far only pledged to make available 4,237 places out a possible total of 160,000 By mid-December, 82 individuals in need of international protection had been (or were due to be) relocated to other Member States The candidates for relocation (Syrians, Iraqis and Eritreans) out-number the places available	Member States have so far only pledged to make available 4,237 places out a possible total of 160,000 By mid-December, 169 individuals in need of international protection had been (or were due to be) relocated to other Member States There is a lack of potential candidates for relocation as many recent arrivals are not from countries whose nationals

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

64 See para 21 of the Minister's Explanatory Memorandum.

		are eligible for relocation
Returns	Greece lacks a "structured and comprehensive return strategy" It should step up forced and voluntary returns, with particular emphasis on nationalities represented in its hotspots There are "severe shortcomings" in detention conditions Joint return flights coordinated by Frontex should make regular stopovers in Greece	Italy should increase its detention capacity so that it is able to carry out more returns Italy should reinstate its Assisted Voluntary Return programme, supported by EU funding
Border management	Frontex is providing assistance with the registration of migrants at Greece's border with fYRoM A Rapid Border Intervention Team has been brought in to help manage migratory flows in the Aegean Pledges made by Member States to support Frontex operations fall far short of current requirements	Italy should develop contingency plans to manage the risk of increased arrivals at its border with Slovenia Member States should continue to make assets available to Operations Triton (search and rescue in the Central Mediterranean) and Sophia (disrupting the business model of people smuggling and human trafficking networks)
Reception capacity	Greece has received funding to increase reception capacity by 20,000 places on the Greek mainland and 7,000 places in hotspots Greece has activated the EU's Civil Protection Mechanism and requested "in-kind assistance" to improve reception conditions The reception of vulnerable groups (especially unaccompanied minors) should be improved "Structural solutions" are needed to meet basic needs (including food) in reception facilities	Continued reforms to Italy's asylum procedures and reception conditions are needed to avoid fragmentation in the quality of decision making and reception conditions throughout the country

6 Refugee flows along the Western Balkans route

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; drawn to the attention of the Home Affairs Committee
Document details	Commission report on the *follow-up to the Leaders' meeting on refugee flows along the Western Balkans route*
Legal base	—
Department	Home Office
Document Numbers	(37410), 15423/15 + ADD 1, COM(15) 676

Summary and Committee's conclusions

6.1 During 2015, the Western Balkans became a major transit route for refugees seeking protection in Austria, Germany, Sweden and other EU countries. Most travelled across the Mediterranean from Turkey to Greece to begin their journey northwards, but some crossed land borders from Turkey to Bulgaria.[65] In response to the spike in migratory flows from the summer onwards, the Commission invited the leaders of the most affected transit and destination countries along the Western Balkans route — Albania, Austria, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia ("fYRoM Macedonia"), Germany, Greece, Hungary, Romania, Serbia and Slovenia — and the UN Refugee Agency (UNHCR) to a special meeting last October which agreed a Statement advocating "a determined, collective cross-border approach in a European spirit, based on solidarity, responsibility and pragmatic cooperation between national, regional and local authorities".[66]

6.2 The Leaders' Statement underlined the need for authorities to talk to each other, work together and avoid unilateral action (such as sudden border closures) which could trigger a chain reaction. It set out a number of commitments to manage migration flows more effectively along the length of the Western Balkans route, in compliance with international refugee law and EU laws on asylum and returns. The commitments are intended to serve a dual purpose: ensuring humane treatment of refugees "to avoid a humanitarian tragedy in Europe" whilst swiftly returning to their countries of origin migrants who have no recognised need for international protection.

6.3 The Commission report reviews the progress made in implementing the commitments contained in the Leader's Statement. It was prepared ahead of the December European Council to inform discussions on the refugee and migration crisis. The Commission draws no conclusions, but a table summarising the commitments which have been delivered and those which remain outstanding (by mid-December 2015) is reproduced in the Annex to this chapter.

6.4 The Immigration Minister (James Brokenshire) notes that the UK (along with most other EU Member States) did not take part in the October meeting, has not endorsed the

[65] See the latest Mediterranean Update produced by the International Organisation for Migration which includes a map of the Western Balkans route.

[66] See the Leaders' Statement of 25 October 2015.

Leaders' Statement and will not take part in its implementation. He nevertheless recognises that countries in the Western Balkans "must be part of any comprehensive approach to the current migration crisis" and considers that the emphasis placed on collective responsibility in the Leaders' Statement is "broadly right".

6.5 **We thank the Minister for his comprehensive and informative Explanatory Memorandum. The Commission report demonstrates that implementation of the commitments made last October by the leaders of the most affected transit and destination countries along the Western Balkans route is, at best, patchy. Reception capacity in some countries falls far short of current or prospective needs and basic humanitarian requirements are not being met. Before clearing the report from scrutiny, we ask the Minister to update us on the assistance provided by the UK to Serbia, Slovenia, Croatia and Greece under the EU Civil Protection Mechanism. We also ask the Minister for further information on the UK's response to requests for expertise and equipment made by the EU's External Borders Agency, Frontex.**

6.6 **We note that "the Government expects all countries concerned to ensure stricter nationality verification mechanisms and security checks" to improve the detection of forged identity documents and prevent individuals falsifying their nationality to improve the likelihood of a successful asylum claim. We ask for his view on the introduction by some countries in the Western Balkans of nationality-based screening at their borders to limit entry to nationals of third countries who meet a high threshold for qualifying for asylum (a recognition rate exceeding 75% across the EU as a whole).**

6.7 **Pending the Minister's reply, the Commission report remains under scrutiny.**

Full details of the documents: Commission report on the *follow-up to the Leaders' meeting on refugee flows along the Western Balkans route*: (37410), 15423/15, COM(15) 676.

Background

6.8 The Commission estimates that more than 650,000 individuals crossed from Turkey to Greece in 2015, continuing their journey through the Western Balkans to Central and Northern Europe. The "unpredictable and unprecedented" scale of the movements revealed "a striking lack of capacity, cooperation and solidarity, as well as basic communication between the countries along the route" which the Commission says required "a specific operational and political solution at European level".[67] The Leaders' Statement agreed last October establishes a framework for more effective cooperation to manage the flows of migrants and refugees, encompassing commitments in eight areas:

- Establishing a permanent mechanism for the exchange of information and cooperation;
- Limiting secondary movements;
- Supporting refugees and providing shelter and rest;

[67] See p.2 of the Commission report.

- Managing migration flows together;
- Border management;
- Tackling people smuggling and human trafficking;
- Providing information on the rights and obligations of refugees and migrants; and
- Monitoring.

The Commission report

6.9 The Commission reviews the progress made in implementing a series of actions underpinning the Leaders' Statement.[68]

Permanent exchange of information and cooperation

6.10 Contact points reporting directly to Leaders have been appointed and exchange information on a daily and weekly basis, focussing on movement trends, needs assessments, reception capacity and border control measures. Direct contacts between some of the participating countries have intensified, but the Commission notes that "too many unilateral measures continue to be taken" which have a knock-on effect for the entire region. These include the introduction of nationality-based entry criteria at the borders of Croatia, Serbia and fYRoM and the construction of a fence at the border between Greece and fYRoM. The Commission observes:

> "Irrespective of the rationale of each individual step, the uncoordinated nature of these steps has created uncertainty and instability in the region."[69]

6.11 Austria, Bulgaria, Croatia, fYRoM, Greece, Hungary, Romania, Serbia and Slovenia have carried out an initial assessment of needs covering accommodation and reception, food and basis services, registration, the processing of asylum applications, returns and border management. These were followed by on-the-spot missions in November and December involving the Commission, UNHCR, the International Organisation for Migration, the European Investment Bank and the European Bank for Reconstruction and Development which will inform medium and long-term needs assessments.

Limiting secondary movements

6.12 The Leaders' Statement made clear that "a policy of waving through refugees without informing a neighbouring country is not acceptable" and that the movement of refugees or migrants to the border of another country should be discouraged. The Commission notes that communication and cooperation between border authorities has improved but also highlights "a lack of political will to create reception capacity for stays of more than 24 hours in a number countries along the route", reinforcing the perception that they are simply countries of transit. The Commission suggests that there is "limited interest in

[68] For a more detailed analysis of the impact of the migration and refugee crisis in the Western Balkans, see the Briefing produced by the European Parliament Research Service in January 2016.

[69] See p.3 of the Commission report.

decelerating the flows" whilst recognising also that "refugees and migrants are often very determined to move on to their intended destination countries, rather than staying in the countries along the route".[70]

Supporting refugees and providing shelter and rest

6.13 The Leaders' Statement included commitments to increase the capacity to provide temporary shelter, rest, food, health, water and sanitation to all in need. It envisaged:

- additional reception capacity of 50,000 places throughout the region;
- a further 30,000 places in Greece by the end of 2015; and
- the use of rent subsidies and host family programmes to create at least 20,000 more places in Greece.

6.14 Whilst indicating that "important steps have been taken" and "significant efforts" made in some countries to increase reception capacity and improve its quality (particularly to adapt to winter conditions), the Commission makes clear that "further efforts are urgently needed" to meet the capacity targets agreed by Leaders and the humanitarian needs of refugees. It sets out the EU funding made available to increase reception capacity in the region, but highlights a continuing shortfall in Greece and a "lack of political will" to increase reception capacity (Croatia) or to provide longer-term reception facilities (Croatia and fYRoM). The Commission observes:

> "Short-term places (up to 24 hours) can help immediate needs, but reflect a 'transit' philosophy which is not in line with a full commitment to contribute to slowing the flow of migrants and refugees."[71]

6.15 A number of countries — Albania, Bulgaria, Romania and Hungary — have not increased reception capacity since last October on the grounds that it meets current and prospective migratory flows. The Commission suggests that utilising EU funding to build up reception capacity for the future would be "a prudent contingency".[72]

6.16 The EU has provided nearly €22 million (£16.88 million) in humanitarian aid to the Western Balkans during 2015 and further assistance has been provided to Serbia, Slovenia, Croatia and Greece under the EU Civil Protection Mechanism. The Commission reports, however, that "the majority of requests for assistance have not been met and significant needs remain" and calls for "a broader and swifter response", adding:

> "For example, of 1,548 sanitary and accommodation containers requested by the four countries over the course of nearly three months, only 15 have been provided so far. Only nominal offers [have been made] in some other key areas, such as beds and winter clothing."[73]

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70 See p.4 of the Commission report.

71 See p.6 of the Commission report.

72 See p.6 of the Commission report.

73 See p.6 of the Commission report.

6.17 The Commission describes the efforts it has made to coordinate the contributions made by international financial institutions and to embed support for migrants in their medium and long-term strategies.

Managing migration flows together

6.18 The Leaders' Statement placed particular emphasis on registering and fingerprinting new arrivals, exchanging information on migratory flows, and returning those not in need of international protection "in full respect of their dignity and human rights". The Commission notes that the principle "no registration, no rights " is intended to ensure that all irregular migrants, regardless of their status, are properly registered and made aware of their rights and duties, but adds:

> "However, in practice this [has] led to a de facto nationality-based approach of refusing entry to all those who are not of certain nationalities (Syrian or Iraqi). So far, it is unclear whether all those who have been refused entry effectively did not express a wish to apply for asylum."[74]

6.19 Since October, Frontex has provided daily situational reports on the Western Balkans route providing information on border crossings, number of registrations, vulnerable groups and the main nationalities. The European Asylum Support Office has produced weekly overviews on asylum trends. Despite significant EU funding, the Commission notes that the number of returns is not increasing. It highlights the importance of securing cooperation on readmission from third country partners, notably Turkey, Afghanistan, Bangladesh and Pakistan.

Border management

6.20 The Leaders' Statement set out a series of steps to be taken to "manage and regain control of our borders" and improve coordination. The Commission reports that the EU-Turkey Joint Action Plan (in force since end-November) establishes a framework for close cooperation to "bring order into migratory flows and help to stem irregular migration".[75] Frontex is in the process of strengthening its presence at the border between Bulgaria and Turkey and has deployed additional resources at Greece's external borders in the Aegean Sea. Greece has recently agreed a new operational plan with Frontex at its external border with fYR Macedonia — described by the Commission as "a source of tension" following the construction of border fencing and the introduction of restrictions on entry based on nationality. The Commission notes that little progress has been made in bilateral border-related confidence-building measures, although there has been some improvement in contacts between border administrations.

6.21 Progress elsewhere along the Western Balkans route is described as patchy and uneven, partly as a result of Member States' slow response to Frontex requests for additional expertise and equipment. The Commission suggests that Frontex could play a useful role at border crossing points between Croatia and Serbia, providing support for registration and monitoring crossings. It also notes that Slovenia's request for additional

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74 See p.7 of the Commission report.

75 See p.8 of the Commission report.

police officers to prevent any disturbance to public order has only been partially met by deployments from other Member States.

6.22 International and EU law allows States to refuse entry to third country nationals who do not indicate that they are in need of international protection, but the Commission report notes that this may result in "a build-up of people stranded at borders, the possible encouragement of smuggling and a diversion of flows elsewhere" (most likely in this context to be towards Bosnia and Herzegovina and Montenegro). To mitigate these risks, Frontex has increased its presence at Greece's border with fYR Macedonia and the Commission calls for return operations to be stepped up for those without a recognised protection need. UNHCR is assisting with the transfer of individuals from Greece's northern border to major cities where their claims for asylum can be assessed.

Tackling smuggling and trafficking

6.23 The Leaders' Statement included a commitment to enhance police and judicial cooperation to combat people smuggling and human trafficking, drawing on the expertise provided by Europol, Frontex and Interpol. The Commission reports that Europol and Frontex have signed a memorandum of understanding to allow the exchange of personal data and a European Migrant Smuggling Centre will be operational within Europol by March 2016. Europol has supported several large-scale operations against migrant smuggling in the Western Balkans, including one involving UK law enforcement authorities which resulted in the dismantling of an organised crime group and the arrest of 23 suspects.

Information on the rights and obligations of refugees and migrants

6.24 The objective of this commitment is to "discourage perilous journeys and recourse to smugglers" and to make refugees and migrants aware of their rights and obligations, with particular emphasis on the consequences of refusing to be registered and fingerprinted or to seek protection where they first arrived. The Commission has set up a Task Force on Communication which will start to disseminate information along the Western Balkans route in mid-January.

Monitoring

6.25 The Commission confirms that weekly videoconference meetings to monitor implementation of the commitments have taken place under the supervision of the Commission President, Jean-Claude Juncker, and that "there has been a very good level of participation by all countries of the region".[76]

The Minister's Explanatory Memorandum of 11 January 2016

6.26 The Minister notes that the UK (along with most other EU Member States) was not invited to the October meeting, has not endorsed the Leaders' Statement and will not take part in its implementation. As such, the Statement will have no direct policy implications

[76] See p.10 of the Commission report.

for the UK. He recognises, however, that countries of the Western Balkans "must be part of any comprehensive approach to the current migration crisis" and considers that the emphasis placed on collective responsibility in the Leaders' Statement is "broadly right". He notes:

> "The unprecedented flow of refugees and migrants along the Western Balkan route revealed that national governments cannot tackle a crisis of this magnitude on their own. The crisis triggered unilateral actions and reignited political disputes between some countries along the route. The UK Government believes that the 17-point Action Plan [contained in the Leaders' Statement] and the implementation of collective action is vital for an effective and well-coordinated response to the migration and refugee crisis on the Western Balkan route."[77]

6.27 The Minister explains why it is in the UK's interests to engage with developments in the Western Balkans and why action at regional level must be consistent with the EU's broader strategy:

> "The volatile character of the migration crisis in the Eastern Mediterranean and the Western Balkans obliges the Government to continue to engage with our European partners and with transit and source countries on the Western Balkans route in order to find a sustainable solution and to mitigate against impacts on the UK and our EU partners from that route.
>
> "The Government recognises that the countries most affected by migration flows along the Western Balkans route are entitled to develop and implement an action plan relevant to their individual circumstances. However, it is important that any such approach is consistent with collective actions and priorities previously agreed at the High Level Conference in Luxembourg (the 'Joint Declaration')[78] as well as with the EU-Turkey Action Plan. Implementing countries, the EU and the other actors concerned must also remain alert to the impact on the rest of the EU Member States from their actions on the Western Balkans route. On that basis, the Government welcomes the Commission's acknowledgement of the importance of aligning the 'Leaders' Statement' with the Joint Declaration of 8 October and the December European Council Conclusions, which call on the EU institutions and individual Member States to implement the Joint Declaration. We consider such alignment vital if the EU is to forge an effective, coordinated and collective response to the migration crisis in source, transit and destination countries."[79]

6.28 Turning to the commitments contained in the Leaders' Statement, the Minister comments:

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

78 The EU High Level Conference on the Eastern Mediterranean and Western Balkans route in Luxembourg of 8 October, which was attended by the Home Secretary, and the Joint Declaration issued by that Conference, set out the priorities for collective action in response to the migration crisis. These priorities include: development and other support to Jordan, Lebanon and Turkey; humanitarian assistance and capacity building on migration management in affected transit countries (i.e. Western Balkans and Turkey); stronger cooperation to fight human trafficking and smuggling; and addressing the root causes of forced displacement, including through engagement with countries of origin.

79 See paras 19-20 of the Minister's Explanatory Memorandum.

"The Government welcomes improved communication and practical cooperation between countries along the Western Balkans route and supports closer working relationships to effectively tackle the migration crisis. Particular attention should be given to information sharing with relevant EU agencies, Europol in particular, in the wake of the terrorist attacks in Paris. The Government agrees that further efforts are required to ensure effective screening, processing, fingerprinting and debriefing of migrants along the entire route. The Government also expects all countries concerned to ensure stricter nationality verification mechanisms and security checks, and to improve their capacity to detect forged and fraudulent Identity Documents (IDs) which some migrants use to facilitate illegal entry or to enhance their asylum claims in the EU. The Government's position is that EU Member States and regional partners must be much firmer with migrants who do not genuinely require international protection, who pose a security risk or who are non-compliant with registration and asylum procedures.

"The Government agrees with the Commission on the need to ensure the swift return of migrants who do not qualify for international protection and it supports further efforts to ensure better implementation of readmission agreements with source countries. Since the beginning of this crisis it has been the Government's position that returns need to be a core aspect of the 'hotspot' approach at the external border and that the Commission should also intensify efforts to strengthen return mechanisms in non-EU countries; this should include identifying ways of assisting regional authorities to re-document and remove migrants with no right to remain on their territory. The Government believes that the lack of effective return mechanisms in the Western Balkans remains a pull factor and a further disincentive for migrants to participate in the emerging 'hotspots' in Greece; this should be addressed.

"The Government notes with concern the reported lack of political will among some countries in the Western Balkans (as well as in the EU) to honour their commitments and/or pursue unilateral policies which risk opening up alternative land routes, creating human bottlenecks and exacerbating the humanitarian crisis in the region. The Government considers that effective migration cooperation should be strongly embedded in the EU Enlargement Process. That process provides effective tools to encourage progress and closer partnership on managing migratory pressures, including combating organised criminality and enhancing border management, through practical and financial assistance programmes, with a clear sense of conditionality in relation to progress toward EU accession. The tools provided by the Enlargement Process can also further strengthen cooperation with regional partners in the fight against terrorism. Equally, EU Member States should seek to manage the crisis by example and try to avoid unilateral measures which may undermine wider stability and public order in the Western Balkans. The Government supports further efforts aimed at building close cooperation between the countries concerned and the Commission in managing all aspects of the migration crisis with full regard for the human rights of migrants on their territory. It is critical that progress is reviewed regularly in order to ensure that the commitments made translate into collective action.

"The Government recognises the significant challenges faced by countries along the Western Balkans route and emphasises the need for international efforts to tackle the

root causes of migration as well as addressing the current situation. For migration flows to abate on the Western Balkans route, it is essential that the EU also ensures that genuine progress is made on 'hotspots' in Greece as well as on the EU-Turkey Action Plan. International efforts in Greece, Turkey and other countries further upstream are required in order to reduce flows across the Western Balkans and through the Schengen area.

"The Government will continue to play a role in implementing and supporting collective actions aimed at addressing the flows on the Western Balkans route, making use of our bilateral relations and the EU Enlargement process to ensure that all partners in the region meet their responsibilities in the face of the continuing migratory pressures across Europe and further upstream."[80]

6.29 The Minister explains that EU funding to non-EU countries along the Western Balkans route is provided mainly from the Instrument for Pre-accession Assistance (IPA) and the EU Civil Protection Mechanism, adding:

"The Government has been clear in negotiations on the IPA budget that it must respect the overall MFF [Multiannual Financial Framework] ceilings agreed by the European Council.

"EU Member States affected by migration flows on the Eastern Mediterranean and Western Balkans route may use EU financial support under the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF) to assist with their response. We are opted in to the AMIF fund and pay our contributions, as do other Member States. The Government supports the objectives of AMIF, namely to promote improved asylum systems, the safe return of illegal migrants and the effective integration of non-EU nationals. We are not opted in to the ISF. The UK makes an overall contribution to the EU budget; it does not contribute on the basis of specific programmes or activities. We are retrospectively reimbursed for those funding programmes in which we do not participate."[81]

6.30 The Minister notes that he led a debate in the House of Commons in December in which he outlined the Government's position on the EU's response to the migration and refugee crisis.[82] The debate highlighted:

"the Government's commitment to continued practical cooperation with European partners and with third countries to implement sustainable and comprehensive solutions, focused on both shorter and longer term actions to break the business model of people smugglers and traffickers, actions to break the link between rescue and permanent settlement in the EU, and joint efforts to strengthen external borders and address the root causes of migrants' journeys and not solely the consequences."[83]

80 See paras 21-5 of the Minister's Explanatory Memorandum.

81 See paras 28-9 of the Minister's Explanatory Memorandum.

82 The debate followed a recommendation made by the Committee in July 2015 that the Commission Communication, *A European Agenda on Migration* and related documents should be debated on the floor of the House.

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

Previous Committee Reports

None.

Annex: Summary of implementation of the Leaders' Statement

Action plan		Status
Permanent exchange of information	1. Nominating contact points within 24 hours	✓All participating countries, institutions and agencies nominated contact points ✓Increased bilateral contacts X Insufficient prior notification about changes in national policies X Unilateral measures including de facto nationality-based entry conditions and fence constructions
	2. Joint needs assessments within 24 hours	✓Initial assessment and subsequent on-the-spot missions carried out by the Commission X Await final needs assessment from Greece
Limiting Secondary Movements	3. Discouraging the unannounced movements of refugees or migrants	✓Increased cooperation and communication between border authorities X Lack of political will to create reception capacity for stays of more than 24 hours
Supporting refugees and providing shelter and rest	4. Increasing support to refugees, including through the Civil Protection Mechanism	✓EU funding supported all countries along the route ✓Croatia and Greece activated Civil Protection Mechanism X Majority of requests for assistance for ongoing Civil Protection Mechanism operations have not been met
	5. Increase in reception capacity in Greece to a total of 50,000 places by the end of the year	X Reception capacity short of target
	6. Increase of reception capacities by 50,000 places along the Western Balkans route	X Reception capacity short of target
	7. Working with International Financial Institutions	✓Network set up to coordinate work X Need to develop medium- and long-term responses
Managing the migration flows together	8. Ensuring a full capacity to register arrivals	X Hotspots in Italy and Greece not fully operational
	9. Exchanging information on the size of flows	✓Frontex daily reporting
	10. Working with EU Agencies to swiftly put in place this	✓Frontex daily reporting

	exchange of information	
	11. Stepping up action on return	✓ EU support on return X Need to step up return operations
	12. Stepping up cooperation on readmission	✓High-level dialogues with third countries X Obstacles to effective readmission
Border Management	13. Increase efforts to manage borders	✓Activation of EU-Turkey Joint Action Plan ✓Frontex operations under way on most key borders, including at sea (Poseidon) and at Bulgaria/Turkey and Greece/former Yugoslav Republic of Macedonia borders ✓Formal request by Greece for the deployment of a Rapid Border Intervention Team ✓Strengthening the Frontex Western Balkans Risk Analysis Network X Insufficient border-related confidence-building measures between Greece and the former Yugoslav Republic of Macedonia X Guest police officers in Slovenia short of target X Still obstacles in provision of Frontex assistance to Croatia and Serbia
	14. Reconfirming the principle of refusing entry to third country nationals who do not confirm a wish to apply for international protection	X Need for action to mitigate potential build-up of people stranded at the border
Tackling smuggling and trafficking	15. Stepping up actions against migrant smuggling and trafficking of human beings	✓Memorandum of understanding to allow the exchange of personal data between Europol and Frontex ✓Establishment of the European Migrant Smuggling Centre by Europol ✓Support to large-scale operations
Information on the rights and obligations of refugees and migrants	16. Using all available communication tools to inform refugees and migrants	✓Task Force on Communication X Launch of first communication operations
Monitoring	17. Monitoring the implementation of these commitments on a weekly basis	✓Weekly video conferences with a very good level of participation

The Annex reproduces the Table annexed to the Commission report (ADD 1).

7 European Structural and Investment Funds

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Commission Communication: *Investing in jobs and growth — maximising the contribution of European Structural and Investment Funds*
Legal base	—
Department	Business, Innovation and Skills
Document Numbers	(37398), 15362/15 + ADDs 1-3, COM(15) 639

Summary and Committee's conclusions

7.1 The European Structural and Investment Funds (ESIFs)[84] are the EU's main investment tool, with a budget of €454 billion (£320 billion) for 2014–20.

7.2 In its Communication, the Commission reported on Member States' plans to spend the funds, and it highlighted key issues. Areas highlighted in which continued efforts are needed include: a focus on results; use of financial instruments; and making full use of the synergies between the ESIFs and other EU funding sources.

7.3 The Committee held the document under scrutiny at its meeting of 13 January 2016 and asked the Government for more detail on its position, including the negotiation of Council Conclusions.

7.4 The Minister for Small Business, Industry and Enterprise (Anna Soubry) sets out the allocation of the Funds in the UK and notes that the Government has already taken on board some of the Commission's conclusions when designing the funding programmes. She concludes by explaining the state of play with the Council Conclusions and the Government's approach. The Government will want to highlight the need for continued better spending and securing value for money, including focusing on the results to be delivered. It will also press for recognition that structural and cohesion funds are more important for some Member States than for others.

7.5 **The Minister has responded comprehensively to our previous Report, including our request for detail on the likely content of the Council Conclusions and the intended UK approach. We welcome the Government's intention to emphasise the need for continued better spending and value for money. We clear the document from scrutiny and ask that a copy of the Council Conclusions be sent to us once adopted.**

Full details of the documents: Communication from the Commission: *Investing in jobs and growth — maximising the contribution of European Structural and Investment Funds*: (37398), 15362/15 + ADDs 1–3, COM(15) 639.

[84] European Regional Development Fund (ERDF), European Social Fund (ESF), Cohesion Fund (CF), European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF).

Background

7.6 Our Eighteenth Report, agreed on 13 January, provides detail on the European Structural Investment Funds, the Commission's report and the Government's position as set out in the Minister's Explanatory Memorandum of 5 January.

7.7 In that Report,[85] we made the following requests for further information from the Minister:

- that she clarify the UK's total ESIF allocation for the period 2014–20;
- that she set out the Government's views on the conclusions drawn by the Commission and how, if at all, the UK will respond; and
- that she give an indication of the issues likely to be covered in the draft Conclusions and the position that the Government is taking in the negotiations.

7.8 In the meantime, we retained the Communication under scrutiny.

The Minister's letter of 25 January 2016[86]

7.9 The Committee asked for details of the UK's total ESIF allocation for 2014–20. The Minister responds as follows:

> "The United Kingdom receives just under €16.2bn (£11.9bn). Of this, €5.8bn (£4.3bn) is from the European Regional Development Fund (ERDF), €4.9bn (£3.6bn) from the European Social Fund (ESF), €5.2bn (£3.8bn) from the European Agricultural Fund for Rural Development (EAFRD) and €243m (£178m) from the European Maritime and Fisheries Fund (EMFF). The UK gets also €206m (£151m) from the Youth Employment Initiative (YEI), an additional EU budget aimed at those regions which had youth unemployment rates higher than 25% in 2012. The table below shows how these funds, expressed in euros, are distributed among the different parts of the United Kingdom."

	ERDF (€)	ESF (€)	EAFRD (€)	EMFF (€)	YEI (€)
England	3,628,260,303	3,308,907,036	3,460,217,049	The EMFF is implemented through one programme at UK level	159,788,424
Scotland	476,788,331	417,839,673	841,458,131		46,309,700
Wales	1,406,822,703	1,005,652,552	650,969,355		N/A
Northern Ireland	308,029,636	205,353,090	227,415,081		N/A
Gibraltar	5,683,314	4,841,342	N/A		N/A
TOTAL	**5,825,584,287**	**4,942,593,693**	**5,180,059,616**	**243,139,437**	**206,098,124**

[85] Eighteenth Report HC 342-xviii (2015–16), chapter 4 (13 January 2016).

[86] Letter from Anna Soubry to Sir William Cash, 25 January 2016.

7.10 On the second point raised by the Committee, the Government believes that the programmes developed across the UK already take account of many of the conclusions drawn by the Commission. The Minister writes:

> "A higher percentage of the funds should be delivered through innovative financial instruments than in the 2007-2013 period, as the Commission notes in the annex on the UK. In England, Local Enterprise Partnerships were asked to consider synergies with Horizon 2020 when developing their local European Structural and Investment Funds strategies which were used as the basis for operational programmes. In both England and Wales, the managing authorities for ERDF have said they will use flat rates within the Horizon 2020 Regulation to make things simpler for beneficiaries. The UK is also part of a Community of Practice with the Commission and a number of other Member States, looking at how Horizon 2020 projects that achieve the standard for funding but are not awarded grant for whatever reason might benefit from a streamlined application process for ESI Funds because of the work already done for Horizon 2020.
>
> "As regards the European Fund for Strategic Investments (EFSI), so far seven projects from the UK have been considered for funding. These include offshore windfarms, the rollout of smart meters and construction of a teaching hospital where there is little scope for ESI Funds to be used alongside. There may be greater synergies with ESI Funds however in projects to set up energy efficiency funds.
>
> "The Commission is producing guidance, consulting with the UK and other Member States, about how best to combine EFSI with ESI Funds at project and financial instrument level and within specific investment platforms. This will help guide future decisions on how ESI Funds are used in the UK alongside EFSI."

7.11 Finally, the Minister explains that the Netherlands Presidency recently circulated a first draft of the Conclusions. She explains:

> "[The draft Conclusions] are short and cover links with the European Semester, in particular the country-specific recommendations, and the need for further analysis on issues such as territorial development, co-financing rates and ex ante conditionalities in the ongoing implementation of European Structural and Investment Funds for the 2014-2020 period."

7.12 In terms of the Government's position, she says:

> "In the negotiations, the UK will want to highlight the need for continued better spending and securing value for money, including focusing on the results to be delivered, and for recognition that structural and cohesion funds are more important for some Member States (such as those with lower levels of economic development) than for others."

Previous Committee Reports

Eighteenth Report HC 342-xvii (2015–16) chapter 4 (13 January 2016).

8 Timeshare Directive

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	Commission Report on the *evaluation of Directive 2008/122/EC of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts*
Legal base	—
Department	Business, Innovation and Skills
Document Numbers	(37456), 5252/16, COM(15) 644

Summary and Committee's conclusions

8.1 The EU has legislated on timeshare holidays — which are especially popular among UK consumers — since 1994. While the original Directive succeeded in stamping out some of the worst excesses of the timeshare market, loopholes were exploited by unscrupulous traders.

8.2 To address the outstanding issues, the Commission proposed a new Directive, which was adopted in 2008. This extended cover to include long term holiday products, exchange, resale and shorter term agreements than were previously covered.

8.3 The Commission's report reviews the application of the Directive, concluding that no further legislation is required at the moment, but that better enforcement of current legislation, including criminal law and other consumer protection legislation, is necessary. Awareness-raising among consumers is necessary, including in the UK.

8.4 The Minister for Skills (Nick Boles) observes that there are no direct policy implications arising from the report. He considers the report to be helpful in confirming that, in respect of matters not covered by the Directive, other legislation may apply and provide solutions.

8.5 **We consider this document to be of political importance because timeshare products are particularly popular among UK consumers**.

8.6 **We note two points, on which we would welcome the further views of the Government. First, the Commission emphasises the importance of awareness-raising. While work in the UK is recognised as good practice, UK consumers are still some of the most frequent victims of fraudulent traders. Information on any further steps planned by the UK to raise awareness among UK consumers of the issues raised would be helpful. Second, enforcement — of this Directive and of other related legislation — is key. While the Commission is content with enforcement in the UK, most of the timeshare holidays taken by UK consumers are outside the UK. Most of the complaints registered were against traders based in Spain. We ask therefore that the Minister tell us what mechanisms are in place for UK authorities to work with enforcement authorities elsewhere, particularly Spanish authorities, with a view to improving enforcement. This includes criminal law co-operation.**

Full details of the documents: Commission Report on the *evaluation of Directive 2008/122/EC of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts*: (37456), 5252/16, COM(15) 644.

Background

8.7 The 2008 Timeshare Directive modernised the provisions of existing legislation in order to deal with the emergence of new products in the travel market. It covers a broader range of holiday-related services characterised by long-term commitments or significant financial risks for consumers, namely:

- timeshare contracts of more than one year (rather than three years as was previously the case);
- contracts for long-term holiday products, such as discount holiday clubs, which offer discounts on travel and accommodation in different resorts for a fixed period of time;
- exchange contracts under which two timeshare consumers may exchange the right to use of accommodation; and
- resale contracts under which a trader assists a timeshare owner to resell his timeshare rights or long-term holiday product.

8.8 With reference to such contracts, the Timeshare Directive lays down a number of consumer rights. These include strict rules on pre-contractual and contractual information that the trader has to provide to the consumer, the right for the consumer to withdraw from the contract within 14 calendar days, and a ban on advance payments during the withdrawal period.

8.9 The UK has a particular interest in the issue. Around half of all timeshare related complaints registered by the European Consumer Centre database between 2007 and 2013 were made by UK consumers. The overwhelming majority of complaints (over 75%) were lodged against traders based in Spain.

Commission report

8.10 Based on an observed decrease in the number of complaints, the Commission concludes that the Directive has had a positive impact. It has identified no need to modify either the scope of the provisions of the Directive.

8.11 It nevertheless highlights areas for attention:

- shortcomings in the enforcement of the right of withdrawal;
- the ban on advance payments;
- compliance by long-term holiday products traders, particularly with the provisions on pre-contractual information;

- awareness-raising; and
- enforcement.

8.12 In terms of awareness-raising, the Commission notes that a special task force, "Action Fraud" was set up in the UK in order to inform consumers about holiday-related scams and to identify and investigate frauds. The UK's Competition and Markets Authority has been running campaigns at airports to warn consumers of the risks associated with purchasing timeshares abroad and possible holiday-related scams. Despite these actions, observes the Commission, UK consumers are still some of the most frequent victims of fraudulent traders.

8.13 On the issue of enforcement, the Commission concludes:

> "Where a conduct points towards criminal law, law enforcement authorities should be quickly informed with a view to launching criminal investigations. The cross-border dimension of fraudulent practices could be addressed more effectively by better use of the measures on criminal law cooperation, established between the law enforcement authorities of the Member States. Existing EU instruments for cooperation in criminal matters already provide a comprehensive legal framework for this purpose."

8.14 It is suggested that long-term holiday products could be the focus of strengthened enforcement activities. Available information suggests that there has been a sharp increase in the number of problems experienced by consumers in relation to long-term holiday products, from 11.9% pre-Directive to 57.2% post-Directive. The majority of complaints linked to the Timeshare Directive were lodged against holiday club companies.

8.15 Consumer detriment has been identified associated with new holiday service products, such as short-term discount holiday clubs (membership of less than one year) and leisure credit schemes which, says the Commission, "often seem designed to circumvent the Directive". The Commission notes that such products fall, in principle, under the scope of the Consumer Rights Directive. Other relevant Directives include the Unfair Contract Terms Directive and the Unfair Commercial Practices Directive.

The Minister's Explanatory Memorandum of 28 January 2016

8.16 The Minister explains that the report presents no direct policy implications for the UK. Its recommendations, particularly those in respect of promoting more effective enforcement activity, are in line with overall Government objectives of ensuring that enforcement of consumer protection legislation is proportionate and properly targeted.

8.17 He further observes that the report has not identified any failings in respect of enforcement in the UK specifically and that it highlights some of the UK's activities as providing good examples of how to highlight to consumers the dangers of unfair and fraudulent practices in this sector.

8.18 The Minister goes on to explain that, in 2015, the Consumer Protection Partnership identified the holiday products sector (i.e. the timeshare and long-term holiday products sector as opposed to the general holiday market) as a priority for further investigation. He

adds that one of the members, the Chartered Trading Standards Institute, has set up a working group to consider enforcement and other options which might improve matters for consumers who are subject to scams and deceptive practices. This report, says the Minister, will help to inform that work.

8.19 The Minister concludes in the following terms:

> "In general the report reflects the UK experience of this market and of the application of the Directive since its implementation into UK law by the 2010 Regulations.[87]
>
> "There is perhaps a mismatch in expectation as regards the increase in complaints about other long-term holiday products. Our understanding was that the misleading and fraudulent models which prompted extending the regime in 2008 had all but disappeared shortly after the Directive came into effect. We believe, therefore, that it is likely that these levels of complaints relate to other models which have been developed with a view to circumventing the Directive or where it has not been clear that those models are covered by the Directive or other consumer protection legislation. In respect of the latter, the views expressed by the Commission in the Report tend to confirm that they are covered by the Directive and/or other legislation and we would expect the relevant enforcement authorities across the EU to take note and act accordingly.
>
> "In some respects the Report is helpful in confirming that the Commission agrees with the Government's view and that of the Competition and Markets Authority that in respect of matters not covered by the Directive, such as the difficulty some timeshare owners experience in attempting to exit their contracts, other regulations likely apply and may provide solutions, especially in respect of unfair contract terms."

Previous Committee Reports

None.

[87] The Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

9 Restrictive measures against Belarus

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; further information requested
Document details	(a) Council Decision; (b) Council Implementing Regulation; (c) Council Regulation regarding restrictive measures against Belarus
Legal base	(a) Article 29 TEU; unanimity (b) Article 215 TFEU; QMV (c) Article 8a(1) of Council Regulation (EC) 765/2006; QMV
Department	Foreign and Commonwealth Office
Document Numbers	(a) (37240), —; (b) (37241), —; (c) (37242), —

Summary and Committee's conclusions

9.1 EU sanctions were first imposed on Belarus in 2004 because the European Union was concerned by the disappearance of four political activists in 1999 and 2000. Then, in 2006, following the fraudulent presidential election and the subsequent crackdown on protesters, the EU imposed an asset freeze and travel restrictions on 41 individuals, including President Lukashenko, as well as embargoes on arms and related material, and equipment which could be used for internal repression. Following a period of suspension, sanctions were re-imposed in January 2011 following the Presidential election of 19 December 2010.

9.2 In January 2012, the listing criteria were expanded to target those responsible for serious human rights abuses (not directly linked to presidential elections) and those who benefit from or support the Lukashenko regime.

9.3 At that time, the Minister for Europe (Mr David Lidington) explained that, in the light of the release of political prisoners by the Belarusian Government on 22 August 2015, on 1 October, the EU's Political and Security Committee (PSC)[88] agreed not to finalise any decisions until after the presidential elections, and reached preliminary agreement that there could be a suspension of the majority of the restrictive measures dependent on the conduct of the presidential election.[2]

9.4 Thus, following the peaceful conduct of the election, on 29 October 2015, the Council adopted this Council Decision, Council Implementing Regulation and Council Regulation amending the restrictive measures in respect of Belarus. The Minister noted in particular that:

- the Council had prolonged these measures for four months, until 29 February 2016, and at the same time suspended them for 170 persons and for three entities;
- four persons involved in unresolved disappearances in Belarus remained subject to restrictive measures;

[88] The committee of senior officials from Member State delegations who, under article 25 TEU, monitor the international situation in areas covered by the CFSP and, under the general responsibility of the Council, exercise political control and strategic direction of policy issues and crisis management operations.

- the information provided in support of the listings of 78 individuals had been updated; and

- following the EU General Court's annulment of the listing of LLC Triple, four subsidiary entities whose listing was dependent on the parent company have been de-listed (LLC Triple Metal Trade, JV LLC Triple-Techno, MSSFC Logoysk and Triple-Agro ACC).[89]

9.5 All in all, the Minister said, renewing the restrictive measures "sen[t] an important message" to the Government of Belarus that "the EU maintain[ed] a close watch on respect for human rights, rule of law and democratic principles in Belarus"; while, at the same time, suspending the travel ban and asset freeze for all listings with the exception of four persons "aim[ed]to recognise the positive step the Government took by releasing the political prisoners". Member States had also agreed that the suspension of restrictive measures was "to be coupled with the implementation of additional concrete measures to deepen the EU's policy of critical engagement with Belarus".

Our assessment

9.6 The release of the political prisoners was clearly seen as a major breakthrough to which the EU needed to respond positively; and further positive impetus was given by the peaceful way in which the election had been carried out, with no repeat of the violence or imprisonments that marked the 2010 elections and led to the reintroduction of sanctions (see EU statements below). On the other hand, it was equally clear that there was still a long way to go, not just in the electoral process — where there were to be parliamentary elections in 2016 — but more widely; as the Minister noted, there had been no other changes in the human rights situation on the ground or in the respect for democratic principles. The period between October 2015 and February 2016 would thus be crucial, and the final OSCE ODIHR (Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights) election report due at the end of November and any other developments within Belarus were to be taken into account before deciding the next move. The EU was also due to bring forth as-yet-unspecified "additional concrete measures to deepen the EU's policy of critical engagement with Belarus" (see our previous Report for further details).

9.7 It was now nearly ten years since the EU embarked on this process, of using "critical engagement" and "smarter sanctions", including imposition/suspension/re-imposition, in its long-standing tussle with President Lukashenko and his closest allies, in line with the fundamental bases of its European Neighbourhood Policy and in support of those who seek, at great personal cost, to create a proper, law-based democratic process. However, given that, under President Lukashenko, Belarus had turned its face evermore eastwards, towards Russia, it was debatable as to how successful this had been. Even with the release of the political prisoners, the Minister had nothing to say about whether the regime had responded to one of the EU's key caveats at the time — that the authorities of Belarus should also remove all restrictions on the enjoyment of full civil and political rights of those released.

[89] See Ninth Report HC 342-ix (2015–16), chapter 24 (18 November 2015) for details.

9.8 We cleared the documents, and, in the circumstances and on this occasion, did not take issue with Minister having agreed to their adoption prior to scrutiny.

9.9 However, we asked him to write to us no later than 14 January 2016, explaining what additional concrete measures had been taken "to deepen the EU's policy of critical engagement with Belarus" and outlining what his thinking then was about the review process, in the light of the final OSCE ODIHR election report and developments within Belarus since the elections.

9.10 We also asked him to confirm, as was implied in his Explanatory Memorandum, that the Council was not appealing against decisions T-275 and 276/12 of the General Court. If there was to be no appeal, we further asked him to indicate what lessons should be learnt from this latest episode of EU restrictive measures falling foul of the General Court and the steps taken to implement them.[90]

9.11 On 18 December 2015 the Minister responded —14 months late — to an earlier request from our predecessors about the effectiveness of suspending the travel ban on the Belarus foreign minister, arguing that this aligned with the UK's strategy of promoting human rights and democracy in Belarus by engaging with the regime when practical and encouraging greater integration between Belarus and the EU, and that facilitating Mr Makei's attendance at Eastern Partnership summits in Vilnius in November 2013 and Riga in May 2015 "helps foster a more cooperative partnership between the EU and Belarus".

9.12 The Minister's second letter, dated 14 January 2016, but not received immediately, looks back to the beginning of 2015, at which point, he says, the Council "agreed a list of measures for the EU to use to deepen critical engagement with Belarus". But this document is classified as *"EU Restricted"*: so all he can say is that they "included increased cooperation, particularly technical information sharing, removing quotas imposed on Belarusian goods and the negotiation of a new EU-Belarus visa facilitation agreement". The measures were "designed to be used progressively should relations with Belarus improve, and in particular should the human rights situation in Belarus improve". The Council also agreed "that further measures, such as the suspension and even removal of sanctions, could be introduced once further improvements were seen".

9.13 The Minister then amplifies what he said last October about that month's PSC meeting, i.e., that it also agreed the resumption — at the instigation of Belarus — of a Belarus/EU human rights dialogue. He confirms that the measures taken on 29 October 2015 by the Council were in recognition of the release of the political prisoners on 22 August 2015 and the peaceful conduct of the 11 October Presidential elections, and "aimed at supporting constructive steps without losing sight of continued human rights violations in Belarus". Going forward, "the EU will continue to monitor events on the ground and, if appropriate, pursue further measures to deepen engagement", and "also considering additional ways in which Belarus can increase its engagement with the Eastern Partnership, and has offered technical assistance should Belarus wish to accede to the WTO".

9.14 More immediately, the Minister says that the final OSCE ODIHR election report is not now expected until "the second half of January", and, along with the assessment of the

90 *Ibid.*

EU Heads of Mission in Minsk regarding the situation on the ground in Belarus, will be relied on "in part" when, in February, the PSC will next discuss the future of the EU restrictive measures. In that regard, the Minister comments thus:

> "The PSC will rely in part on the assessment of the EU Heads of Mission in Minsk regarding the situation on the ground in Belarus and on the final OSCE ODIHR election report, which is now expected in the second half of January. The PSC will need to act quickly to assess how the results affect decisions about the restrictive measures. Whilst I cannot comment on internal EU discussions, I can assure you that the UK will continue to work to ensure the EU maintains a strong focus on human rights whilst signalling its commitment to improving relations with Belarus."

9.15 **It is not just the slapdash way in which his officials have handled our and our predecessors' requests that is (again) disappointing. We had not asked the Minister to "comment on internal EU discussions", but to tell us what he thinks about what is going on in Belarus and what he thinks the EU should be doing about it. Instead, we have no information, let alone comment, on the human rights situation, e.g., on the use of the death penalty and the behaviour of the judicial authorities in general, or whether the political prisoners released last August now enjoy the full civil and political rights for which the EU High Representative and the Enlargement Commissioner called.**

9.16 **Nor is it possible to discern from the little the Minister has to say as to whether the EU has used any of its "measures" to "deepen critical engagement with Belarus"; or, therefore, when and why, and with what positive benefit.**

9.17 **Moreover, the Minister implies that there is every likelihood of the Committee being again presented with a further *fait accompli* when the measures are next considered at the end of this month. We are sure that the Minister will wish to avoid this happening, and therefore ask that he writes to us no later than 18 February with his assessment of how matters then lie, and what his expectations are about what will then be an important impending decision.**

9.18 **We would also like him, in that update:**

- **to clarify what has been happening on the "human rights" front;**
- **to know which of the "engagement-deepening" measures agreed a year ago by the Council has been implemented in the meantime, and what the circumstances were;**
- **and to illustrate, beyond generalities, ways in which this now decade-long process has changed and is changing governance in Belarus for the better.**

9.19 **So far as the legal aspects of this process are concerned, we note the Minister's commitment "to continue to advocate that EU sanctions be legally robust". To date, the overall record of the EU Council in sustaining restrictive measures from legal challenge is a matter of continuing concern. We trust that he will actively seek improvement in the future.**

Full details of the documents: (a) Council Decision (CFSP) 2015/1957 of 29 October 2015 amending Decision 2012/642/CFSP concerning restrictive measures against

Belarus: (37240), —; (b) Council Implementing Regulation (EU) 2015/1949 of 29 October 2015 implementing Article 8a (1) of Regulation (EC) No. 765/2006 concerning restrictive measures in respect of Belarus: (37241), —; (c) Council Regulation (EU) 2015/1948 of 29 October 2015 amending Regulation (EC) No. 765/2006 concerning restrictive measures in respect of Belarus: (37242), —.

Background

9.20 In October 2013, 18 individuals and entities were removed from the annex and three new names added. In June 2014, a further eight individuals were removed with one added.[91]

9.21 Based on the October 2014, the draft Council Decision and Council Implementing Regulation that our predecessors considered on 29 October 2014 sought to:

— remove 24 individuals and seven entities from the list of those subject to restrictive measures ("the annex"); and

— update the information provided in support of the listings for a number of individuals.

9.22 At that time, the Minister for Europe (Mr David Lidington) said:

— the government continued to support the EU policy of critical engagement with Belarus, including the use of restrictive measures;

— some political prisoners were released earlier in 2014 but only one was released early and without conditions; other political prisoners remain incarcerated; Belarus also continued to carry out the death penalty (two executions in that year) without any warning and either the body or personal effects being released to next of kin;

— sanctions measures should be "dynamic and responsive to the situation on the ground"; over the last 12 months, he had encouraged EU partners to conduct a thorough review of the evidence underlying all the individuals and entities listed under the measures, many of whom were likely to have moved on from the roles for which they were originally listed when the measures were re-imposed in 2011;

— this latest round of delistings followed on from the steps taken in October 2013 and June 2014 to remove from the annex any individuals who no longer fitted the designating criteria;

— at the current time, it was not necessary to recommend that any new individuals be added to the measures; however this position was under constant review;

— for the time being, suspension of the travel ban on Foreign Minister Makei allowed for an improved dialogue between him and EU leaders; and

— in order to ensure that the sanctions measures responded to developments in Belarus, Member States had agreed to reconsider the restrictive measures imposed on Foreign Minister Makei in three months' time.

[91] See EU relations with Belarus for the EEAS's summary of the EU's overall relations with Belarus.

Our predecessors' assessment

9.23 As no questions arose at this juncture, the documents were cleared from scrutiny.

9.24 However, when the travel ban on Foreign Minister Makei was lifted, the argument was that this would lead to more effective dialogue with the Lukashenko regime. So, the Minister was asked to write in three months' time:

— explaining what decision had been taken regarding suspension of the travel ban, and why;

— outlining what he believed has been achieved thus far by this suspension; and

— confirming that all those on the current list had been updated in accordance with his "dynamic and responsive" approach, and in particular that the details of all those originally listed when the measures were re-imposed in 2011 had been updated if they had moved on from their roles at that time (with details of how their present roles rendered them properly "listable").[92]

9.25 The Minister did not respond until seven months later, in his Explanatory Memorandum of 2 June 2015,[93] when he submitted for scrutiny further amendments concerning 13 individuals (who had resigned from their positions/were found not to have links to the regime/had information provided in support of the listings updated). The Minister explained that these amendments needed to be implemented forthwith to ensure that the information held in the annex remained as legally robust as possible; but this did not reflect any change in EU policy towards Belarus at this time. The Government continued to press its "smarter sanctions" policies across all EU sanctions regimes to ensure listings were continually monitored, and lifted or amended as and when appropriate; further updates would be considered ahead of the next annual review in October 2015, in particular where new information on a listing has been submitted.

9.26 Concerning Foreign Minister Vladimir Makei, the Minister said only that the consensus was to retain his listing of since he continued to hold a position of influence within the Government of Belarus, but also to maintain the suspension of his travel ban to allow him to discharge his duties.

9.27 On 22 August 2015, the EU High Representative/Vice President (Federica Mogherini) and Commissioner for European Neighbourhood Policy and Enlargement Negotiations (Johannes Hahn) issued the following statement on the release of political prisoners in Belarus:

> "The release of Mykalai Statkevich, Mykalai Dziadok, Ihar Alinevich, Jury Rubstov, Euheny Vaskovich and Arytom Prakapenka, is a long-sought step forward. They are now free.
>
> "Former presidential candidate Mykalai Statkevich stands out in particular as an example of the tireless work and commitment of many for a democratic Belarus.

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92 See (36431), —; (36432), —: Sixteenth Report HC 219-xvi (2014–15), chapter 11 (29 October 2014).

93 See (36907), —; (36908), —: First Report HC 342-i (2015–16), chapter 82 (21 July 2015).

"We now expect the authorities of Belarus to remove all restrictions on the enjoyment of full civil and political rights of the released.

"Today's releases represent important progress in the efforts towards the improvement of relations between the EU and Belarus."[94]

Following the presidential election, the EU High Representative and the Enlargement Commissioner issued the following further statement:

"The European Union has followed closely the presidential elections of 11 October 2015 in the Republic of Belarus, including the pre-electoral phase and the campaigning period.

"It is important that the election day was held in a peaceful environment.

"We take note of the preliminary findings and conclusions of the OSCE/ODIHR International Election Observation Mission on the Presidential elections in Belarus. According to the Mission, Belarus still has considerable way to go towards fulfilling its OSCE commitments for democratic elections. Work needs to be done to improve the electoral framework, particularly on balanced electoral administration and Election Day procedures.

"We will study carefully the final OSCE/ODIHR report and its recommendations.

"Ahead of the parliamentary elections of 2016, these recommendations should be implemented by the national authorities. We are ready to assist Belarus in its efforts to bring its election process in line with OSCE commitments and other international standards for democratic elections."[95]

The Minister's letter of 18 December 2015

9.28 Regarding the previous Committee's 29 October 2014 question about the effectiveness of the suspension of the EU travel ban on Foreign Makei, the Minister says that the 14-month delay in responding was "due to an oversight", for which he apologises, and that he has "asked officials in the relevant team to review processes and systems to avoid this happening again".

9.29 With regard to the substance of our predecessors' questions, the Minister responds thus:

What decision has been taken regarding suspension of the travel ban on Foreign Minister Makei and why?

"The travel ban on Foreign Minister Makei has been suspended since June 2013 in an effort to allow for increased dialogue between Makei and EU leaders. The suspension of restrictive measures against Makei aligns with the UK's strategy to promote

94 See Statement.

95 See Statement.

human rights and democracy in Belarus by engaging with the regime when practical and encouraging greater integration between Belarus and the EU."

What has been achieved thus far by this suspension?

"Permitting Makei to travel within the EU has allowed for meetings in EU countries on matters of international interest, including discussions on border security with Lithuania and Latvia. For example, Makei attended Eastern Partnership (EaP) summits in Vilnius in November 2013 and in Riga in May 2015. Drawing Belarus into these regional discussions helps foster a more cooperative partnership between the EU and Belarus."

Has the list been updated in accordance with the UK's 'dynamic and responsive' approach and have the details of those originally listed been updated to reflect their current roles and justification for listing?

"We have continued to promote sanctions measures that are dynamic and responsive to the situation on the ground. As a result, in July 2015 another 28 individuals and 3 entities were removed from the list when it was determined they no longer met the criteria in Council Decision 2012/642/CFSP concerning restrictive measures against Belarus. During the annual review process leading up to the 30 October decision to extend the restrictive measures, the Council agreed that those individuals listed continued to meet the criteria, with the exception of one person whose listing was annulled by an EU General Court judgment of 6 October. At the same time, the European External Action Service updated the listings as necessary to reflect the current roles and justifications for listing of those individuals and entities still subject to restrictive measures."

9.30 The Minister concludes by taking the "opportunity to acknowledge the request contained in your report of 18 November for another update no later than 14 January 2016", and undertakes to "write again to respond to your specific questions and update you on our review process in light of the soon to be released final election report from the OSCE Office of Democratic Institutions and Human Rights (ODIHR) and developments in Belarus since the presidential election".

The Minister's letter of 14 January 2016

9.31 The Minister follows this timeline up to a point: the right date, but not sent to us until 26 January, due to a further oversight, this time on the part of his Private Office.

9.32 On the substance of the Committee's request, the Minister says:

"Unfortunately not all of the questions contained in the report can be fully answered at this time because the ODIHR election report has not yet been made available, but I set out below our current thinking including areas where we are awaiting further information.

What concrete measures have been taken to deepen the EU's policy of critical engagement with Belarus?

"In January 2015 the Council agreed a list of measures for the EU to use to deepen critical engagement with Belarus. As this document is classified as "EU Restricted", I am unable to share it with the Committee. These included increased cooperation, particularly technical information sharing, removing quotas imposed on Belarusian goods and the negotiation of a new EU-Belarus visa facilitation agreement. The measures were designed to be used progressively should relations with Belarus improve, and in particular should the human rights situation in Belarus improve. The Council agreed that further measures, such as the suspension and even removal of sanctions, could be introduced once further improvements were seen.

"On 1 October 2015, the EU Political and Security Committee (PSC) agreed that the resumption — at the instigation of Belarus — of a human rights dialogue between Belarus and the EU, as well as the release of all remaining political prisoners on 22 August 2015, signalled an improvement in the country's human rights situation. In light of these actions and given the peaceful conduct of the 11 October Presidential elections, the asset freeze and travel ban were suspended, with the exception of four individuals who were linked to unresolved disappearances.

"All the measures undertaken to date have been aimed at supporting constructive steps without losing sight of continued human rights violations in Belarus. Going forward, the EU will continue to monitor events on the ground and, if appropriate, pursue further measures to deepen engagement. The EU is also considering additional ways in which Belarus can increase its engagement with the Eastern Partnership, and has offered technical assistance should Belarus wish to accede to the WTO.

Review of restrictive measures in light of the final OSCE Office for Democratic Institutions and Human Rights (ODIHR) election report and developments within Belarus since the elections

"As agreed in October 2015, the PSC will discuss in February the future of the EU restrictive measures. The PSC will rely in part on the assessment of the EU Heads of Mission in Minsk regarding the situation on the ground in Belarus and on the final OSCE ODIHR election report, which is now expected in the second half of January. The PSC will need to act quickly to assess how the results affect decisions about the restrictive measures. Whilst I cannot comment on internal EU discussions, I can assure you that the UK will continue to work to ensure the EU maintains a strong focus on human rights whilst signalling its commitment to improving relations with Belarus.

Council decision to not appeal EU General Court decisions T-275/12 and 276/12 and lessons learnt from this episode

"With regard to the EU General Court decisions in Cases T-275/12 (*Football Club 'Dynamo-Minsk' ZAO v. Council of the European Union*) and 276/12 (*Chyzh & Others v. Council of the European Union*) of 6 October 2015, the Council elected not

to appeal, nor to re-list, any of the applicants and to accept the General Court's decision. The Council made submissions to the Court that the decision to list this individual and entities under the Belarus restrictive measures was substantiated by the manner in which successful business people and entities operate within the Belarusian political context, particularly in respect of maintaining relationships with the regime's leadership. Much of the basis for the original listing decision relied upon this assessment.

"In its decisions the Court gave little weight to that context. Whilst it was not refuted that Mr. Chyzh is a successful businessman in Belarus, the Court insisted upon concrete evidence in support of the Council's position that, inter alia, Mr. Chyzh financially supports the Lukashenko regime and that the entity Triple LLC had obtained public awards and concessions other than by its own merit. We will remain alive to the possibility that the Court could expect this weight of evidence in future cases of a similar nature. As part of our constant drive to ensure that sanctions achieve the best possible foreign policy outcomes for the least amount of political and legal risk, we will continue to advocate that EU sanctions be legally robust."

Previous Committee Reports

Ninth Report HC 342-ix (2015–6), chapter 24 (18 November 2015); also see (36431), —; (36432), —: Sixteenth Report HC 219-xvi (2014–15), chapter 11 (29 October 2014).

10 Restrictive measures against Iran in connection with its nuclear programme and the Joint Comprehensive Plan of Action (JCPOA)

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	(a) and (b) Council Decisions concerning restrictive measures against Iran (c) Council Regulation concerning restrictive measures against Iran (d) Council Decision concerning restrictive measures against Iran
Legal base	(a) and (b) Article 29 TEU, unanimity; (c) Article 215 TFEU, QMV; (d) Article 29 TEU, unanimity
Department	Foreign and Commonwealth Office
Document Numbers	(a) (37457), —; (b) (37458), —; (c) (37459), —; (d) (37461), —

Summary and Committee's conclusions

10.1 On 14 July 2015, the E3+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States), supported by the EU High Representative for

Foreign Affairs and Security Policy (HR; Federica Mogherini), reached an agreement with Iran — the Joint Comprehensive Plan of Action (JCPOA).[96]

10.2 Our Report of 9 September 2015 contains the background on earlier stages of the negotiations, full information on the JCPOA, and reaction to it. We noted that: there had been time for further consideration of the JCPOA and its possible repercussions; the time was ripe for the House to have a further opportunity to debate these matters; a debate should take place immediately after the House returned from the "conference" recess; and it should be held on the floor of the House.[97]

10.3 The JCPOA also required the Council to amend the existing Decision (2010/413/CFSP) and Regulation ((EU) 267/2012) on, or before, "Adoption Day" on 18 October 2015. Thus a further Council Decision, Council Regulation and Council Implementing Regulation were adopted on 18 October, which introduced the necessary derogations to the existing restrictive measures to allow Iran to meet its obligations under the JCPOA (see "Background" for further details).

10.4 The debate was finally held on 24 November 2015. The House resolved, among other things, that these various amendments to EU legislation to meet the obligations set out in the JCPOA contributed to ensuring that Iran's nuclear programme would be exclusively peaceful.[98]

The Council Decisions and Council Regulation of 14 January 2016

10.5 The Council Decisions and Regulation (documents (a)-(c)) extended the suspension of certain EU sanctions measures against Iran, as initially agreed in the earlier 24 November 2013 Joint Plan of Action with Iran (which paved the way to the JCPOA), to 28 January 2016. In his Explanatory Memorandum of 25 January 2016, the Minister for Europe explains that this extension allowed for the additional period necessary to reach "Implementation Day", when the phased sanctions relief as described in the JCPOA came into effect.

The Council Decision of 16 January 2016

10.6 In his further Explanatory Memorandum of 26 January 2016, the Minister for Europe recalls that the Council decided to terminate the implementation of all EU nuclear-related economic and financial sanctions on Iran on 18 October 2015, with the termination of these sanctions taking place at the same time as the International Atomic Energy Agency (IAEA) verified that Iran had taken the agreed steps on its nuclear programme, as agreed as part of the JCPOA; and says:

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96 See Joint Statement by the HR and Iran's foreign minister, which includes the full text of the Joint Comprehensive Plan of Action and its five annexes: Annex I Nuclear related commitments; Annex II Sanctions related commitments; Annex II Attachments; Annex III Civil nuclear cooperation; Annex IV Joint Commission; and Annex V Implementation Plan.

97 See (36973), —; (36974), —; (36975), —; (36981), —; (37030), —; (37032), —; (37031), —; (37033), —: Third Report HC 342-iii (2015-16), chapter 5 (9 September 2015).

98 See debate of 24 November 2015 on Iran Nuclear Issues, cols. 1306-1327.

- on 16 January 2016, the Director-General of the IAEA presented a report to the IAEA Board of Governors and the UN Security Council confirming that Iran had taken the necessary steps specified in the JCPOA; and

- this Council Decision accordingly confirms the application date of Council Decision (CFSP) 2015/1863 as 16 January 2016 (i.e., "Implementation Day").

10.7 The Minister notes that, as well as permitting the flow of certain goods and services, implementation of the JCPOA also imposes strict limits and inspections on Iran's nuclear programme and gives the IAEA unprecedented access to verify Iran's adherence to these restrictions. More broadly, he says, the E3+3 anticipate that the full implementation of the agreement will positively contribute to regional peace and security, with Iran affirming that under no circumstances will they ever seek, develop or acquire any nuclear weapons.

10.8 **No questions arise, other than those that are beyond the Committee's remit. We leave interested Members to pursue them via the many means at their disposal.**

10.9 **In the meantime, we now clear these documents from scrutiny, and in the circumstances and on this occasion, do not take issue the scrutiny overrides involved.**

Full details of the documents: (a) Council Decision (CFSP) 2016/35 of 14 January 2016 amending Decision 2010/413/CFSP concerning restrictive measures against Iran: (37457), —; (b) Council Decision (CFSP) 2016/36 of 14 January 2016 amending Decision 2010/413/CFSP concerning restrictive measures against Iran: (37458), —; (c) Council Regulation (EU) 2016/31 of 14 January 2016 amending Regulation (EU) No. 267/2012 concerning restrictive measures against Iran: (37459), —; (d) Council Decision (CFSP) 2016/37 of 16 January 2016 amending Decision 2010/413/CFSP concerning restrictive measures against Iran: (37461),—.

Background

10.10 As our predecessors' previous Reports illustrate in detail,[99] the EU has been engaged since December 2006 in a "dual track" strategy — with both engagement and restrictive measures — regarding Iran's nuclear activities, not simply implementing in the EU, but also strengthening in that context, successive UN Security Council Resolutions (UNSCRs).

10.11 In broad terms, UNSCR 1929 of 9 June 2010:

— reaffirmed that Iran shall cooperate fully with the IAEA;

— banned new Iranian nuclear facilities and banned Iranian nuclear investment in third countries;

— banned exports of several major categories of arms, and further restricted Iran's ballistic missile programme;

[99] See those cited at the end of this chapter of our Report.

— froze the assets of 40 entities, including one bank subsidiary, several Islamic Revolutionary Guard Corps companies, and three Islamic Republic of Iran Shipping Lines subsidiaries, which had been involved in multiple sanctions violations cases;

— froze the assets of, and banned travel by, one senior nuclear scientist;

— implemented a regime for inspecting suspected illicit cargoes and authorising their seizure and disposal;

— placed restrictions on financial services, including insurance and reinsurance, where there was suspicion of a proliferation link;

— banned existing and new correspondent banking relationships where there were proliferation concerns;

— established a Panel of Experts to advise and assist on sanctions implementation; and

— reaffirmed the dual track strategy (of pressure and diplomacy).

Council Decision 2010/413/CFSP

10.12 As well as implementing the measures contained in UNSCR 1929, the EU imposed additional EU sanctions in the following areas:

— the *energy sector*, including the prohibition of investment, technical assistance and transfers of technologies, equipment and service;

— the *financial sector*, including additional asset freezes against banks and restrictions on banking and insurance;

— *trade*, including a broad ranging ban on dual use goods and trade insurance;

— the Iranian *transport sector* in particular the Islamic Republic of Iran Shipping Line (IRISL) and its subsidiaries and air cargo; and

— new *visa bans* and *asset freezes*, especially on the Islamic Revolutionary Guard Corps (IRGC).

10.13 Council Decision 2010/413/CFSP was adopted by the 26 July 2010 Foreign Affairs Council, together with a Regulation (Council Regulation (EU) 961/2010) extending the list of entities and individuals subject to an assets freeze.

10.14 A further package of EU sanctions was adopted by the 15 October 2012 Foreign Affairs Council. The Council Regulation required to implement the October package was adopted on 21 December 2012. It includes:

- **Finance:** a financial cut-off, prohibiting all but specifically licensed trade with a notification system for humanitarian payments up to €100,000 and other payments (€40,000); a full listing of the Central Bank of Iran except to permit channels for the provision of liquidity and repayment of debts; a full ban on the public provision of export credit guarantees (adding short term to the already prohibited medium and long term);

- **Energy sector:** a gas embargo: a further ban on exporting equipment for the Iranian Energy Sector; a ban on construction of oil tankers;
- **Trade:** bans on exporting graphite and metals that can be used in Iran's nuclear programme; naval equipment for ship building and maintenance; software for integrating industrial processes;
- **Transport:** bans on the flagging and classification of Iranian oil tankers and cargo vessels; and on the leasing/chartering of vessels for the transport or storage of Iranian oil; and
- **New Designations:** the Council Decision and Council Implementing Regulation imposed an asset freeze on further Iranian companies and updated the entries for three already listed entities.[100]

10.15 On 14 July 2015, the E3+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States), supported by the EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini), reached an agreement with Iran — the Joint Comprehensive Plan of Action (JCPOA). In a Joint Statement in Vienna, EU High Representative Mogherini and Iranian Foreign Minister Zarif said:

— the JCPOA will ensure that Iran's nuclear programme will be exclusively peaceful, and mark a fundamental shift in their approach to this issue;

— they anticipate that full implementation will positively contribute to regional and international peace and security;

— under no circumstances will Iran ever seek, develop or acquire any nuclear weapons;

— the JCPOA includes Iran's own long-term plan with agreed limitations on Iran's nuclear program, and will produce the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran's nuclear programme, including steps on access in areas of trade, technology, finance, and energy;

— the JCPOA is a balanced deal that respects the interests of all sides, and is also complex, detailed and technical;

— the JCPOA is "not only a deal but a good deal. And a good deal for all sides — and the wider international community";

— the JCPOA "opens new possibilities and a way forward to end a crisis that has lasted for more than 10 years"; and

— they were "committed to make sure this JCPOA is fully implemented, counting also on the contribution of the International Atomic Energy Agency".[101]

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100 For the full background, see the European External Action Service (EEAS) Fact sheet on the European Union and Iran.

101 See Joint Statement, which includes the full text of the Joint Comprehensive Plan of Action and its five annexes: Annex I Nuclear related commitments; Annex II Sanctions related commitments; Annex II Attachments; Annex III Civil nuclear cooperation; Annex IV Joint Commission; and Annex V Implementation Plan.

10.16 On 20 July 2015, the United Nations Security Council voted unanimously to adopt Security Council Resolution (UNSCR) 2231 (2015), endorsing the JCPOA. In a statement issued on that day, the UNSC said:

> "The Council, through the 104-page text, including annexes that detailed the sanctions-related provisions and listings, requested the International Atomic Energy Agency to undertake verification and monitoring of Iran's compliance. It reaffirmed that Iran should cooperate fully with the Agency to resolve all outstanding issues. Upon receipt of a positive report from the Agency, the Council would terminate sanctions set out in resolutions adopted between 2006 and 2015.
>
> "Furthermore, the Council decided that the resolution's provisions should, pending confirmation of implementation, expire 10 years after its adoption, and with that, it would remove the Iranian nuclear issue from its agenda. At the same time, the text outlined the process for automatically reinstating the sanctions in the event of non-compliance."[102]

10.17 Council Decision (CFSP) 2015/1336 of 31 July 2015 and Council Regulation (EU) 2015/1327 of 31 July 2015 transposed the UNSCR into EU law. They were considered by the Committee on 3 September.[103]

Council Decision (CFSP) 2015/1863 of 18 October 2015

10.18 The JCPOA also required the Council to amend the existing Decision (2010/413/CFSP) and Regulation ((EU) 267/2012) on, or before, "Adoption Day" on 18 October 2015. Thus a further Council Decision, Council Regulation and Council Implementing Regulation were adopted on 18 October, which introduced the necessary derogations to the existing restrictive measures to allow Iran to meet its obligations under the JCPOA.[104]

10.19 The Minister for Europe explained that the amendments implemented sanctions relief by terminating the implementation of nuclear-related economic and financial sanctions, in accordance with the JCPOA. However, this sanctions relief would take effect only when the International Atomic Energy Agency (IAEA) had verified that Iran has completed the agreed steps on its nuclear programme. Thus, looking ahead, the Minister said:

> "Although the amending legislation was required to be in place when the deal comes into force on 'Adoption Day', the sanctions relief will not be triggered until 'Implementation Day'. This will occur only when the IAEA verifies that Iran has completed the agreed actions on its nuclear programme. We expect 'Implementation Day' to occur in early 2016, but until the IAEA verifies that Iran has completed the agreed activities the exact date will not be clear."

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102 See UN Statement for full details.

103 See (36973), —; (36974), —; (36975), —; (36981), —; (37030), —; (37032), —; (37031), —; (37033), —: Third Report HC 342-iii (2015–16), chapter 5 (9 September 2015).

104 See Council Decision (CFSP) 2015/1863 of 18 October 2015.

The Council Decisions and Council Regulation of 14 January 2016

10.20 These Council Decisions and Council Regulation extended the JPOA sanctions relief and the asset freeze derogation to 28 January 2016.

10.21 In his Explanatory Memorandum of 25 January 2016, the Minister for Europe explains that this extension allowed for the additional period necessary to reach "Implementation Day" when the phased sanctions relief as described in the JCPOA came into effect. 'Implementation Day' was reached on 16 January 2016.

The Minister's letter of 25 January 2016

10.22 The Minister explains that, following completion of the E3+3 Iran nuclear negotiations and the agreement of the JCPOA in July 2015, the sanctions relief agreed under the JPOA and the asset freeze derogation were extended until 14 January 2016 to allow time for Iran to complete the agreed actions on its nuclear programme, and for these actions to be verified by the International Atomic Energy Agency (IAEA).

10.23 He then says:

> "In early January, it became clear that a further extension would be necessary to allow for a small amount of additional time to allow the IAEA to verify that Iran had completed the actions on its nuclear programme agreed under the JCPOA. Following confirmation from the IAEA, the phased sanctions relief agreed under the JCPOA came into effect on 'Implementation Day';16 January 2016."

Council Decision (CFSP) 2016/37 of 16 January 2016

10.24 The Minister notes that the agreement of the JCPOA was the culmination of more than a decade of negotiations, with "Implementation Day" being finally reached on 16 January 2016, resulting in "the subsequent termination of all provisions of the EU Regulation, as subsequently amended, implementing all nuclear-related economic and financial sanctions, including related designations, as described in the JCPOA and its Annexes".[105]

The Government's view

10.25 The Minister says that the E3+3 (China, France, Germany, the Russian Federation, the United Kingdom and the United States):

> "anticipate that the full implementation of the agreement will positively contribute to regional peace and security, with Iran affirming that under no circumstances will they ever seek, develop or acquire any nuclear weapons;
>
> "The implementation of the JCPOA permits the flow of certain goods and services, whilst also imposing strict limits and inspections on Iran's nuclear programme. The

[105] See Council Decision (CFSP) 2016/37 of 16 January 2016.

> IAEA will also have unprecedented access to verify Iran's adherence to these restrictions;
>
> "The JCPOA, if fully implemented, will eventually entail the comprehensive lifting of all UN Security Council sanctions, as well as multilateral and national sanctions related to Iran's nuclear programme."

The Minister's letter of 26 January 2016

10.26 The Minister says that, the Committee's interest in documents relating to the EU sanctions regime against Iran and the fact that he takes "the responsibility to keep your Committee informed on these issues extremely seriously" notwithstanding:

> "Unfortunately, due to the importance of ensuring that EU sanctions relief occurred at the same time as the IAEA verification of Iran's compliance with the JCPOA and the short timescales involved, I regret that the use of a ministerial override of Parliamentary scrutiny was unavoidable on this occasion."

Previous Committee Reports

None, but see (36973), —; (36974), —; (36975), —; (36981), —; (37030), —; (37032), —; (37031), —; (37033), —: Third Report HC 342-iii (2015–16), chapter 5 (9 September 2015); also see (37366),—; (37367),—: Eighteenth Report HC 342-xvii (2015-16), chapter 11 (13 January 2016); also see (36568), —: Twenty-eighth Report HC 219-xxvii (2014–15), chapter 6 (7 January 2015); and (36529), —: Twenty-fifth Report HC 219-xxiv (2014–15), chapter 15 (10 December 2014); and (36237), —: Ninth Report HC 219-ix (2014–15), **chapter 41** (3 September 2014); also see (35964), — and (35965), —: Forty-seventh Report HC 86-xlii (2012–13), **chapter 11** (30 April 2014) and (35712) 18163/13: Thirty-first Report HC 83-xxviii (2013–14), **chapter 15** (22 January 2014), and the earlier Reports referred to therein.

11 Restrictive measures against the Mugabe regime in Zimbabwe

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	(a) Council decision and (b) Council Regulation on EU restrictive measures against the Mugabe regime
Legal base	(a) Article 29 TEU; unanimity (b) Article 215 TFEU; QMV
Department	Foreign and Commonwealth Office
Document Numbers	(a) (37473), —; (b) (37474), —

Summary and Committee's conclusions

11.1 Ever since 2002, the EU has imposed a variety of "targeted" measures against the Mugabe regime in Zimbabwe. The Council introduced them because of serious violations of human rights and of freedom of expression, association and peaceful assembly, and in response to attempts by the Zimbabwe government to prevent free and fair elections, notably by refusing access for international election observers and the media. They have been renewed annually, and gradually modified.

11.2 Since the formation in 2009 of an inclusive power-sharing Government and an external regional process led by South Africa, the EU has sought to perform a delicate balancing act of keeping up the pressure but rewarding progress. Following a referendum in March 2013 in which changes to the Constitution limiting some of the President's powers were overwhelmingly approved, EU Member States:

- allowed to lapse the "Appropriate Measures" permitted under Article 96 of the Cotonou Agreement when an African, Caribbean and Pacific country is guilty of egregious breaches of its Article 8 "good governance" commitments;[106] and
- agreed to ease the restrictive measures by suspending the listings of 81 individuals (six of whom have since died) and eight entities.

11.3 Thus, by the time that the EU restrictive measures in question were renewed in February 2014, only two individuals and one entity — Robert and Grace Mugabe, and the parastatal "Zimbabwe Defence Industries"[107] remained "actively subject" to these measures (i.e. continuation of the asset freeze and travel ban).

The draft Council Decision and Council Regulation

11.4 These documents:

- maintain the embargo on arms and items that may be used for internal repression, as well as related services, against Zimbabwe;
- maintain the travel ban and asset freeze against Robert and Grace Mugabe;
- maintain the asset freeze against ZDI;
- retain suspended asset freezes and travel bans against five senior government security sector figures; and
- lift suspended measures against the remaining 78 individuals and eight entities.

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106 In essence, development assistance had been suspended other than for humanitarian purposes and to support appropriate NGOs.

107 ZDI is a Zimbabwe Defence Forces-owned military industrial complex that manufactures small arms ammunition in 7.62x39 mm and 7.62x51 mm calibres and has a mortar shell filling plant that produces 60 mm, 81 mm and 120 mm mortars, 155 mm artillery shells, rocket launchers and hand grenades. According the a news report of March 2015, ZDI said it would be better to be shut down due to poor economic conditions and halted production lines; and its general manager (Retired) Colonel Tshinga Dube is said to have told Zimbabwe's Sunday News that ZDI was "in dire straits because of a tight liquidity crisis precipitated by Western sanctions which have prohibited its US and European Union (EU) customers from doing business with it since 2002", in addition to "high local production and costs for small arms ammunition - its remaining principal product - when compared to mass producers like China" and a "huge salary bill". See Zimbabwe Defence Industries should be shut down - manager.

11.5 The Minister for Europe (Mr David Lidington) refers to the Government's manifesto commitment "to stand up for the rule of law and human rights in Zimbabwe", and says that "targeted and legally sound sanctions are an important tool in pursuit of its human rights objectives in Zimbabwe", along with "other levers to influence the human rights situation, including our development programme". He recalls the Foreign Secretary's October 2015 assessment, viz:

> "Since the 2013 elections, our assessment of the political situation in Zimbabwe remains broadly the same, with 2015 signalling some positive developments. Within the Zimbabwe African National Union administration there are signs of reformist policies beginning to emerge, especially on the economy. The human rights situation has remained relatively stable and reported violations continue to fall. However, the situation continues to be fragile and we remain concerned about human rights abuses, especially during election periods."

11.6 Based on the above, efforts have been focussed on "a more targeted list of those individuals most closely linked to the security forces", whose retention on the suspended list "makes it easier to reactivate the restrictive measures should it be necessary" (see "Background" for details).

11.7 **The "Background" section sets out, there were failures in giving the Committee timely information on the renewal of these measures. This year, the documents have been deposited while the issue is under discussion rather than after the decision has been made. The CSDP process can be fast moving, and timely deposit of document can be a challenge - a challenge which must be met consistently. We are regularly reminded of just how fast-moving the CSDP process is — which makes it all the more important that the FCO rises consistently to the challenge. We therefore continue to look to the Minister and his scrutiny team ensure all his policy teams reach the necessary performance level, all the time.**

11.8 **In the meantime, we are reporting these developments to the House because of the degree of interest in EU policy, over the years, in Zimbabwe, and now clear the draft Council Decision and Council Regulation from scrutiny.**

Full details of the documents: (a) Council Decision amending Decision 2011/101/CFSP concerning restrictive measures against Zimbabwe: (37473), —; (b) Joint Proposal for a Council Regulation amending Council Regulation (EC) No. 314/2004 concerning certain restrictive measures in respect of Zimbabwe: (37474), —.

Background

11.9 In December 2014, the then Parliamentary Under-Secretary of State at the Department for International Development (Lynne Featherstone, now Baroness Featherstone) explained why Member States had allowed the "Appropriate Measures" permitted under Article 96 of the Cotonou agreement to lapse. The then Minister noted that this decision was separate to that on the restrictive measures, which remained in force until February 2015 and would also require unanimity of EU Member States to renew. The then Committee noted that the then Minister had copied her letter not only widely within the Government but also to the Chair of the relevant APPG, and were accordingly content

for interested Members to pursue any questions that they wished via the many means at their disposal.

11.10 The then Committee went on to note that, whatever decision the Council came to over restrictions that now applied directly only to the President and his wife was likely to be controversial. They pointed out that there seemed no reason why, as had happened on previous occasions, matters should go "down to the wire", since there appeared to be nothing in the interim that was likely to change minds one way or the other; and therefore asked the Minister for Europe to write to it no later than 8 January 2015, updating the Committee on the review process and providing his assessment of the political situation in Zimbabwe and his views on the right way forward.[108]

11.11 The Minister did not write until 5 March 2015, when he told the Committee that, via a Council Decision and Council Implementing Regulation adopted on 19 February 2015, the asset freeze and travel ban was to continue in suspended form in respect of 84 individuals and eight entities, with the measures remaining in full effect against Robert Mugabe, Grace Mugabe and ZDI only. The Minister's approach to the negotiations leading up to this determination was approach to these discussions had, he said, been guided by two key principles:

— "that the package of Measures must remain legally robust, and that measures should be lifted where they are found to no longer satisfy the legal criteria of the sanctions regime (ensuring that the sanctions are lawful and are retained as a sustainable and effective foreign policy tool in the long run); and

— "that the Measures should promote democratic reform and respect for Human Rights in Zimbabwe, but remain flexible and respond to circumstances on the ground, taking account of factors such as the economic, humanitarian and human rights situation."

11.12 In terms of timing, the Minister said that Member States had had to await a report from EU Heads of Mission in Harare, which was finalised only on 10 January 2015 because of the need to take account of ZANU-PF's (five yearly) Party Congress in December 2014 "and the significant political upheaval that followed". Member States held a wide range of views; any extension required unanimous agreement, and without this the measures would have lapsed on 20 February; the UK "worked hard to secure the best outcome for continuation of sanctions listings, including lobbying at the highest level"; despite UK pressure, many Member States were unable to confirm their respective positions until late January. On 4 February, the EU's Political and Security Committee agreed to a full 12-month rollover.[109] Obtaining draft Council documents "in a timelier manner" was not possible. While, given the timescales involved, an override was both necessary and regrettably unavoidable, the Minister acknowledged that "the FCO should have sent you an Explanatory Memorandum earlier" and apologised "for the fact that this was not done".

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108 Twenty-fifth Report HC 219-xxiv (2014-15) chapter 12 (10 December 2014).

109 The Political and Security Committee (PSC) meets at the ambassadorial level as a preparatory body for the Council of the EU. Its main functions are keeping track of the international situation, and helping to define policies within the Common Foreign and Security Policy (CFSP) including the CSDP. It prepares a coherent EU response to a crisis and exercises its political control and strategic direction. The PSC is chaired by a representative of the EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini).

The previous Committee's assessment

11.13 While our predecessors could see why the Minister might have delayed writing to the Committee on 8 January, they could see no reason why he could not have written once the EU Heads of Mission report had been received, in line with its plainly-stated request. No doubt he would also have had to say what then lay ahead, in terms of the range of Member State views and the 20 February deadline. But the key decision was renewal or expiry: and that was taken on 4 February by the PSC, and there was no reason why the Minister could not have written immediately thereafter.

11.14 Moreover, the draft Council Decision was circulated to Member States on 12 February. Given how straightforward the eventual outcome was in drafting terms, it was extraordinary that it had taken so long for the European External Action Service (EEAS) to produce it — which, once again, demonstrated the hollowness of whatever assurances the Minister might have received in response to his representations in December 2014 to the then-new High Representative (Federica Mogherini, who heads the EEAS) about the importance of early publication of documents to allow adequate time for parliamentary scrutiny. Even so, the Minister could have brought the Committee up to date and alerted it in time for its meeting on 18 February 2015; instead, the Decision was officially adopted by written procedure on 19 February, whereas the Committee did not learn about this until it received his Explanatory Memorandum until 5 March 2015.

11.15 The Committee reminded the Minister that it can operate only on the basis of Explanatory Memoranda and, thereafter, letters from Ministers in response to questions raised, or observations or requests made, by the Committee. In other circumstances, the Minister would have been asked to provide a more detailed explanation as to why these opportunities were not taken to keep the Committee informed. But the House was shortly to be dissolved, prior to the May 2015 general election. On this occasion, therefore, the Committee looked to the future.

11.16 The Committee asked the Minister to initiate a "lessons learned" review in his Department, the purpose of which would be to ensure that the requirements of the "upstream" scrutiny was embedded in all parts of the FCO whose business was touched by the CSDP and ESDP process. The Committee pointed out, that it was entirely understanding of overrides that arose out of genuine operational requirements (e.g., the regime operating in the context of the Ukraine crisis). But this was not the case here. Its requirements were simple: that, when a Council Decision was presented to the Committee for scrutiny, on restrictive measures or a mission, it contained no surprises; i.e., that it had been preceded by correspondence that prepared the ground and enabled the Committee, if appropriate, to respond along the way. In some instances, this happened; in others, such as this, tricks were missed. FCO departments with perhaps more "churn" than others, because of desk officers' peripatetic responsibilities, must nonetheless ensure that the scrutiny process was truly embedded, and not prone to job holders moving on and replacements having to learn "on the job", as the need arose.

11.17 The then Committee therefore asked the Minister to do what he could to ensure that a system was devised whereby this essentially simple process — of keeping Committee requests under review, and writing as and when requested, or because it was in other ways timely to do so — was embedded in FCO policy departments who handled CSDP/ESDP

business, and became part of the overall scrutiny process to which he had so often professed himself committed.

11.18 In the meantime, the then Committee cleared the documents.[110]

The draft Council Decision and Council Regulation

11.19 See paragraph 11.4 above.

The Government's view

11.20 In his Explanatory Memorandum of 27 January 2016, the Minister for Europe says

> "Aside from the arms embargo, the only active sanctions in place are those against Robert and Grace Mugabe and Zimbabwe Defence Industries. We believe the listings remain entirely justified. The other listings are suspended, following decisions in 2013 and 2014, and therefore have no practical effect.
>
> "The Government has a manifesto commitment to stand up for the rule of law and human rights in Zimbabwe. We take this commitment seriously, including listing Zimbabwe as a country of concern in our 2014 Annual Human Rights Report (the 2015 report has not yet been published). The Government maintains that targeted and legally sound sanctions are an important tool in pursuit of its human rights objectives in Zimbabwe. Additionally, we continue to use a range of other levers to influence the human rights situation, including our development programme.
>
> "Restrictive measures need to take account of the changing political context. In October 2015, the Foreign Secretary gave the following assessment in response to a Parliamentary Question: 'Since the 2013 elections, our assessment of the political situation in Zimbabwe remains broadly the same, with 2015 signalling some positive developments. Within the Zimbabwe African National Union administration there are signs of reformist policies beginning to emerge, especially on the economy. The human rights situation has remained relatively stable and reported violations continue to fall. However, the situation continues to be fragile and we remain concerned about human rights abuses, especially during election periods.
>
> "Ahead of the 2018 elections, it is critical that electoral reforms are implemented, and that the international community supports the people of Zimbabwe in exercising their democratic right to build a free, peaceful and prosperous future.
>
> "Based on the above, we have focussed our efforts on a more targeted list of those individuals most closely linked to the security forces: Augustine Chihuri (Police Commissioner-General), Constantine Chiwenga (Commander of the Zimbabwe Defence Forces), Happyton Mabhuya Bonyongwe (Director-General of the Central Intelligence Organisation), Perence Samson Chikerema Shiri (Air Marshall) and Phillip Valerio Sibanda (Commander of the Zimbabwe National Army). Retaining

[110] (36694), — and (36695), —: Thirty-sixth Report HC 219-xxxv (2014–15) chapter 19 (11 March 2015).

these individuals on the suspended list makes it easier to reactivate the restrictive measures should it be necessary."

Previous Committee Reports

None, but see (36694), — and (36695), —: Thirty-sixth Report HC 219-xxxv (2014–15) chapter 19 (11 March 2015) and (35761), — and (35762), —: Twenty-fifth Report HC 219-xxiv (2014–15) chapter 12 (10 December 2014) and Thirty-fourth Report HC 83-xxxi (2013–14), chapter 15 (5 February 2014); also see (35344), — and (35345), —: Seventeenth Report HC 83-xvi (2013–14), chapter 23 (9 October 2013); (35129), —: Ninth Report HC 83–ix (2013–14), chapter 21 (10 July 2013); (34846), — and (34847), —: Third Report HC 83-iii (2013–14), chapter 23 (21 May 2013); Fortieth Report HC 86-xxxix (2012–13), chapter 8 (24 April 2013); (33645), 5820/12 and (33679), —: Fifty-sixth Report HC 428–li (2010–12), chapter 12 (22 February 2012).

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

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Foreign Affairs Committee
Document details	Council Decision amending and extending EUBAM Libya mandate for a further six months
Legal base	Articles 28, 42(4) and 43(2) TEU; unanimity
Department	Foreign and Commonwealth Office
Document Numbers	(37475), —

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 total two-year cost was €56.5 million (£40.1 million). The mission has three key tasks:

- to support Libyan authorities, through training and mentoring, in strengthening the border services in accordance with international standards and best practices;
- to advise the Libyan authorities on the development of a Libyan national Integrated Border Management (IBM) strategy; and
- to support the Libyan authorities in strengthening their institutional operational capabilities.

12.2 The subsequent deterioration in the security situation within Libya led to the mission being relocated to Tunis in July 2014. In October 2014 the mission began down-sizing

from 57 to a core team of 17. Following discussions in the Political and Security Committee (PSC)[111] on 14 January 2015 in which Member States indicated support for suspension of EUBAM, 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 to three staff by 31 March 2015. EUBAM's mandate was originally due to expire on 21 May 2015. On 21 April 2015, the PSC endorsed the findings of the European External Action Service (EEAS) Interim Strategic Review and decided to maintain EUBAM Libya "on hold" until 21 November 2015, pending political developments in Libya; which was then extended until 21 February 2016, and the EEAS was tasked to look into the full range of options to succeed EUBAM Libya (see "Background" for further details).

The draft Council Decision

12.3 The current mandate will expire on 21 February 2016. This draft Council Decision extends the Mission mandate until 21 August 2016. This will cost €4.5 million (£3.45 million); no new funds are involved.

12.4 The Minister for Europe (Mr David Lidington) says that, based on the EEAS' recommendation:

- at the PSC on 19 January 2016, the UK agreed to support and extension and a revision of EUBAM's mandate, "to provide a civilian planning capacity with a view towards evolving into a capacity building and assistance mission, as opposed to rolling over a frozen mission, as has previously happened";
- this six-month extension "will allow the EU to engage with the Libyan authorities and UN Support Mission in Libya/other international assistance missions, in order to inform EU planning and progress comprehensive thinking on appropriate action to support Libya;
- the "CSDP element" of future EU support to Libya could include "other core activities such as rule of law and policing, customs and migration", in addition to border security work;
- maintaining EUBAM Libya "is also a way of demonstrating support to a Government of National Audit (GNA), once established";
- the "recent progress" towards establishing a Government of National Accord "further reduced the appetite to close EUBAM now"; and
- he judges that this proposal "offers sufficient scope for a comprehensive redesign of CSDP support to Libya".

12.5 The Minister says that he has "previously been clear that the UK's preference has been for EUBAM to be closed and replaced by a new mission tailored more closely to a new

[111] The Political and Security Committee (PSC) meets at the ambassadorial level as a preparatory body for the Council of the EU. Its main functions are keeping track of the international situation, and helping to define policies within the Common Foreign and Security Policy (CFSP) including the CSDP. It prepares a coherent EU response to a crisis and exercises its political control and strategic direction. The PSC is chaired by a representative of the EU High Representative for Foreign Affairs and Security Policy (HR; Federica Mogherini).

Libyan Government's needs". But "key concerns have centred around the negative signals that closing EUBAM would send to the Libyans at this sensitive stage of the government formation process", and consequently "strong support from many EU Member States for adapting EUBAM Libya"; therefore "we felt that it was not the right time to be pushing for EUBAM's closure". The difference between this and previous extensions is "that it is being extended firstly to provide a civilian planning capacity, and secondly, to potentially develop into a capacity building and assistance mission".

12.6 With all this in mind:

> "We made clear our expectations to see a real change to EUBAM Libya as it was not originally designed to be a planning mission, stressing the need for the EU to work in close co-ordination with the UN Support Mission in Libya and other stakeholders, and asked that the PSC be kept updated regularly on the Mission's work. This has been reflected in the revised Council Decision and operational text for the Mission. We judge that this compromise offers enough scope for the comprehensive design of CSDP support to Libya" (see "Background" for full details).

12.7 In the meantime, there are newspaper reports that British troops "have been earmarked to join an Italian-led 6000-man force to train the Libyans", and that the French defence minister, Jean-Yves Le Drian, has warned that the ISIS terror network was expanding in Libya with "the risk that Isis fighters could make the crossing, mixing with refugees". There is also said to be a "growing consensus between Washington, London and Paris that some military action is needed before Isis becomes a permanent feature in Libya."[112]

12.8 **Not only the future of this mission, but of the EU's CSDP endeavours more widely (e.g., the anti-people smuggling naval Operation Sophia), depends on the formation of an effective Government of National Accord. As of now, this still hangs in the balance.**

12.9 **We now clear the document. As the "Background" below demonstrates, the Committee has interrogated the Government at length over the continuation of this mission, given the precedent of one such other mission that has been "on hold" since 2007. The Minister's explanation of the outcome thus far is reasonable; so, too, his further, but only slight, delay in responding to our request for an update by mid-January. We would like him to provide a further summary of the then political situation in Libya and prospects for EUBAM Libya by Thursday 30 June (i.e., for there to be sufficient time for us to deal with any questions that may by then arise in good time before a further Council Decision is presented for scrutiny, during the summer recess).**

12.10 **We draw these developments to the attention of the Foreign Affairs Committee, particularly in view of their work on the UK's involvement in Libya.**

Full details of the documents: Council Decision amending and extending Council Decision 2013/233/CFSP on the European Union Integrated Border Management Mission in Libya (EUBAM Libya): (37475), —.

[112] See *The Times* of 1 February 2016.

Background

12.11 Despite the dire security situation, which was then far worse than in May 2013 when EUBAM Libya was set up, in May 2014 the European External Action Service (EEAS) proposed a two-year extension, until spring 2017. Libya then became ever more deeply fractured when two rival governments were formed in the summer of 2014, with one operating from the capital, Tripoli, and the other from the eastern city of Tobruk. The Mission was down-sized in August 2014 and the residue relocated to neighbouring Tunis; and the EEAS began a further Review.[113]

The previous Committee's assessment

12.12 In autumn 2014, the Minister for Europe (Mr David Lidington) reported that the Review was to be "formally considered" in January 2015, 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).[114] He undertook to write with more details on the future of this mission "once this document has been discussed".

12.13 Our predecessors 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.[115]

Subsequent developments

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

12.15 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 PSC 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 three, by 31 March 2015; and

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

114 The European Union Border Assistance Mission at the Rafah Crossing Point – code name EUBAM Rafah — was launched on 24 November 2005, to monitor the operations of the border crossing point between the Gaza Strip and Egypt, after Israel and the Palestinian Authority concluded an Agreement on Movement and Access on 15 November 2005. The Rafah Crossing Point was last opened with the presence of EUBAM monitors on 9 June 2007. Since then, the mission has remained on standby, awaiting a political solution.

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

— the mission was now "on hold".

12.16 The Minister also explained that the 21 April 2015 Foreign Affairs Council considered the future of EUBAM in the context of wider discussions on Libya, and:

— Member States were divided over the options for EUBAM put forward by the EEAS;

— 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".

12.17 The Minister also noted UN-led negotiations to agree a Libyan political settlement were at a crucial point. The Special Representative of the UN Secretary General (SRSG), Bernardino León,[116] had issued his fourth/final draft of the agreement on 8 June. Only a stable and representative Government of National Accord (GNA) would be able to deal with the political and security challenges that Libya faced, including control of its borders; if the process dragged on, migration and terrorist threats would continue to worsen; the UK and international partners were working to urge both sides to come to an agreement and making clear the UK's, the EU's and the wider international community's preparedness to support a GNA in confronting Libya's challenges.

Our assessment

12.18 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.[117] That mission had been in a similar "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

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

[117] 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).

2015, about the EEAS' and his latest thinking in relation to whatever the situation on the ground, and thus what the future prospects for a GNA then were.[118]

12.19 The draft Council Decision that we considered on 2 December 2015 extended EUBAM Libya's mandate by a further three months until 21 February 2016 (with the existing budget now covering the period 22 May 2014 to 21 February 2016).

12.20 In his Explanatory Memorandum of 26 November 2015, the Minister for Europe reported that, the EEAS having produced "an options paper" on 5 November, 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 remained "on hold" in Tunis.

12.21 The Minister explained 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 extending 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 looked into the full range of options to succeed EUBAM Libya in due course;

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

— he judged that:

- this short-term extension would 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 would be more achievable "from a fresh start", rather than by "attempting to bolt things on to the existing mission"; and
- that such an approach was more likely to achieve a solution that "meets the requirements of Libya and is fit for purpose".

[118] First Report HC 342-i (2015-16), chapter 61 (21 July 2015).

Our further assessment

12.22 Given the continuing lack of progress at that time in the search for a political settlement, the immediate way forward made sense. We therefore cleared the draft Council Decision.

12.23 In so doing, we noted that, as had happened elsewhere and no doubt as result of administrative failings, simple requests for an update at a specific time had been overlooked. We asked the Minister to task the appropriate officials, once again, with devising a mechanism to ensure that such requests did not continue to be overlooked.

12.24 We regarded this as particularly important because we asked the Minister to write to us by 14 January 2016 about the then situation in Libya and the prospects then for this mission or any successor — especially as the direction of travel was towards something with a much broader mandate.[119]

The draft Council Decision

12.25 This draft Council Decision extends the mandate of EUBAM Libya until 21 August 2016, with an indicative budget of €4.5 million (£3.45 million) to cover the period from 22 February to 21 August 2016.

12.26 In his Explanatory Memorandum of 27 January 2016, the Minister for Europe says:

> "The EEAS proposed three options, including closing EUBAM Libya and either reinforcing the EU Delegation with civilian experts, or developing civilian expertise to mirror the EU Planning Cell, integrating both into a planning and liaison capacity in Tunis. The third option involved assigning additional tasks to EUBAM and using it as a mechanism to bring in additional civilian expertise to inform strategy for possible future EU engagement.
>
> "The EEAS recommended that the Member States extend EUBAM Libya with a revised mandate to provide civilian planning expertise to inform future EU engagement, with a view to the mission possibly evolving into a civilian capacity building and assistance mission, should the political and security conditions permit.
>
> "At PSC on 19 January 2016, Member States considered the future of EUBAM in the context of wider discussions on Libya. The UK agreed that we should support a revision and extension of EUBAM's mandate. Whilst this involves extending EUBAM Libya for a further six months, it is being extended to provide a civilian planning capacity with a view towards evolving into a capacity building and assistance mission, as opposed to rolling over a frozen mission, as has previously happened.
>
> "The UK Government judges that this six-month extension will allow the EU to engage with the Libyan authorities and UN Support Mission in Libya/other international assistance missions, in order to inform EU planning and progress comprehensive thinking on appropriate action to support Libya. The CSDP element

[119] See (37321), —: Eleventh Report HC 342-xi (2015-16), chapter 12 (2 December 2015).

of future EU support to Libya could include other core activities such as rule of law and policing, customs and migration, in addition to border security work. Maintaining EUBAM Libya is also a way of demonstrating support to a GNA, once established.

"The recent progress towards establishing a Government of National Accord (GNA) further reduced the appetite to close EUBAM now. We judge that this proposal offers sufficient scope for a comprehensive redesign of CSDP support to Libya."

The Minister's letter of 27 January 2016

12.27 The Minister adds to his commentary thus:

"We have previously been clear that the UK's preference has been for EUBAM to be closed and replaced by a new mission tailored more closely to a new Libyan Government's needs. Delivery of EUBAM Libya's mandate has proved challenging, not least because of the deterioration in the security situation within Libya. The previous EU Council Decision of 16 November 2015 agreed to extend EUBAM's "on hold" status for a further three months until 21 February 2016, with no regeneration. Following this, the EEAS was tasked to look into the full range of options to succeed EUBAM Libya. Earlier this month the EEAS set out a number of options including the closure of EUBAM and either reinforcing the EU Delegation in Tunis with EEAS and/or seconded national experts; or closure of EUBAM and developing civilian expertise to mirror the EU Planning Cell. The EEAS also suggested assigning additional tasks to EUBAM and using it as a means to deliver additional civilian expertise to inform strategy for possible future EU engagement. This was the EEAS' preferred option.

"The EEAS recommended that Member States agree to extend EUBAM Libya with a revised mandate to provide civilian planning expertise to inform future EU engagement, with a view to the mission potentially evolving into a civilian capacity building and assistance mission. Key concerns have centred around the negative signals that closing EUBAM would send to the Libyans at this sensitive stage of the government formation process. Consequently, there was strong support from many EU Member States for adapting EUBAM Libya. Against this background, and the potential impact that this could have on achieving our objectives on other CSDP missions, we felt that it was not the right time to be pushing for EUBAM's closure. We also share some of the concerns around the messages that closing EUBAM Libya at this time would send. On 19 January 2016 the UK supported the EEAS proposal to extend EUBAM Libya with a revised mandate at the Political and Security Committee.

"Whilst this does see EUBAM Libya being extended for a further six months until August 2016, the difference now is that it is being extended firstly to provide a civilian planning capacity, and secondly, to potentially develop into a capacity building and assistance mission. We made clear our expectations to see a real change to EUBAM Libya as it was not originally designed to be a planning mission, stressing the need for the EU to work in close co-ordination with the UN Support Mission in Libya and other stakeholders, and asked that the PSC be kept updated regularly on

the Mission's work. This has been reflected in the revised Council Decision and operational text for the Mission. We judge that this compromise offers enough scope for the comprehensive design of CSDP support to Libya. Further details on the resourcing of EUBAM Libya for the period of 22 February to 21 August 2016 are provided in the Explanatory Memorandum."

Financial implications

12.28 The details of the indicative budget in the Minister's Explanatory Memorandum are set out in the Annex. The Minister explains that:

— the proposed composition of EUBAM over this period is one Head of Mission (to replace the current Acting Head of Mission), seven Planners, and six Mission Support (one Finance Officer already deployed);

— the money will come from the 2016 CFSP budget, of which a commitment of €30.3 million (£23.2 million) for EUBAM was carried over from the previous budget in 2015, i.e., it is not a new contribution from EU Member States;

— as the full size, scale and cost of the prospective mission after the planning stage is not yet known, these figures could change, but any increase would be subject to evaluation of the need and a new budget; and

— he judges the proposed budget to be "a sensible step forward" and will "monitor its use to ensure that funds are used appropriately and deliver value for money".

Political developments in Libya

12.29 The Minister summarises political developments in Libya thus:

> "The Libyan Political Agreement was signed on 17 December 2015. Following this, the Presidency Council (PC) had thirty days to form a Government of National Accord (GNA). On 19 January 2016 the PC announced the list of members of the GNA and a programme of government. The House of Representatives (HoR) has ten days to endorse the GNA, which would formally establish the GNA. The UK and international partners are working to urge the HoR to endorse the GNA, together with UN SRSG Kobler.[120] Only a stable and representative 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. We, the EU and wider international community are prepared to support a GNA in confronting Libya's challenges."[121]

[120] An experienced German diplomat, who had previously led the UN mission in the Democratic Republic of Congo, and who replaced SRSG León at the end of 2015.

[121] See the 18 January 2016 EU Foreign Affairs Council Conclusions and the EU High Representative for Foreign Affairs and Security Policy/Vice President's statement of 19 January 2016.

Previous Committee Reports

None, but see (37321), —: Eleventh Report HC 342-xi (2015-16), chapter 12 (2 December 2015) and (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 (21 May 2013) and First Report HC 83–i (2013–14), chapter 10 (8 May 2013).

Annex: Minister's indicative budget from 22 February to 21 August 2016

Item	Cost (€)
Personnel costs	516,712
Missions	100,960
Running expenditure	*2,951,175
Capital expenditure	745,400
Representation	2,750
Contingencies	183,003
TOTAL	**4,500,000**

**2.31 million Euros of this is assigned to security costs to cover the Mission's needs in Libya, should political and security conditions allow a return.*

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

Department for Education

(37451) 14746/15 SWD(15) 278	Commission Staff Working Document — *Strategic engagement for gender equality 2016–2019*.

HM Treasury

(37435) 15550/15 COM(15) 621	Commission Report on the *REFIT evaluation of Directive 2011/64/EU and on the structure and rates of excise duty applied to manufactured tobacco*.

Home Office

(37429) 15530/15 + ADD 1 COM(15) 684	Commission Report — *Fourth Progress Report on Georgia's implementation of the action plan on visa liberalisation*.
(37430) 15531/15 + ADD 1 COM(15) 905	Commission Report — *Sixth Progress Report on the Implementation by Ukraine of the Action Plan on Visa Liberalisation*.
(37446) 5036/16 + ADD 1 COM(15) 906	Commission Report — *Third report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap*.

Formal Minutes

Wednesday 3 February 2016

Members present:

Sir William Cash, in the Chair

Kelvin Hopkins	Mr Andrew Turner
Alec Shelbrook	Heather Wheeler
Kelly Tolhurst	

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

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

Paragraphs 1.1 to 1.5 read and agreed to.

Paragraph 1.6 read, amended and agreed to

Paragraphs 1.7 to 5.8 read and agreed to.

Paragraph 5.9 read, amended and agreed to

Paragraphs 5.10 to 13 read and agreed to.

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

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

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[Adjourned till Wednesday 10 February at 1.45pm.

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*)