



House of Commons

European Scrutiny Committee

Twenty-seventh Report of Session 2015–16

Documents considered by the Committee on Wednesday 23
March



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Report, together with formal minutes

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Notes

Numbering of documents

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

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

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

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

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

Abbreviations used in the headnotes and footnotes

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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Contents

Meeting Summary	3
Documents not cleared	
1 CO Accessibility of public sector bodies' websites	5
Annex: Types of public sector bodies' websites as referred to in Article 1	11
2 DCMS Network Information Security across the EU	12
3 DfID Towards the World Humanitarian Summit: A global partnership for principled and effective humanitarian action	27
4 HO Application of the EU-Turkey Readmission Agreement	35
Documents cleared	
5 BIS Global Navigation Satellite System	40
6 DECC Fitness check for EU legislation affecting the petroleum refining sector	44
Annex: Legislation assessed	47
7 DECC Paris Agreement on Climate Change	49
8 FCO Restrictive measures against North Korea	51
9 FCO Restrictive measures against the Central African Republic	58
10 HMT Value added taxation	63
Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House	
11 List of documents	66
Formal Minutes	68
Standing Order and membership	69

Meeting Summary

The Committee considered the following documents:

Fitness check for EU legislation affecting the petroleum refining sector

As part of its smart regulation policy, the Commission has reviewed the entire body of legislation in selected policy fields by means of “fitness checks”. This Commission staff working document sets out the findings of a review of the impact of EU legislation on the petroleum refining sector. This sought to identify administrative burdens, overlaps, gaps and inconsistencies in ten pieces of EU legislation in the fields of environment, climate action, taxation and energy, based on five key evaluation criteria (effectiveness, efficiency, coherence, relevance and EU added value), and it also considered the sector’s changing competitiveness position from 2000 to 2012.

The main findings were that, although the impact of seven pieces of legislation was either negligible or not quantifiable, the total cumulative impact of the other three corresponded to up to 25% of the observed decline in the net margin of EU refineries. The review also found that the legislation assessed had so far met its objectives; that the costs involved were generally proportionate to the benefits; that there was no evidence of overlaps or inconsistencies (and some reporting synergies); and that, although the competitiveness of the refining sector had been affected, there was EU added value arising from the creation of a level playing field within the region.

The Government notes that there are no immediate policy implications, but has welcomed the intention to feed the results into future reviews of the assessed legislation. It also agrees with the overall conclusions, noting that, although other factors were more relevant, the loss of competitiveness attributable to the legislation was nevertheless significant.

Cleared.

Application of the EU-Turkey Readmission Agreement

The EU-Turkey Readmission Agreement entered into force in October 2014 but its provisions on the readmission of (non-Turkish) third country nationals transiting through Turkey to the EU only take effect in October 2017. Following high level discussions in November and March, the EU and Turkey have reached a political agreement to bring forward the implementation of these provisions to 1 June 2016. The proposed Council Decision seeks to give effect to that agreement. The EU anticipates that this will make it easier to return irregular migrants entering the EU from Turkey who have no right to stay in the EU and who do not qualify for international protection within the EU. In return, the EU has said it will consider lifting visa requirements for Turkish nationals travelling to the Schengen free movement area (but not to the UK), increase funding for refugees in Turkey, “re-energise” negotiations on Turkey’s accession to the EU and activate a voluntary humanitarian readmission scheme to provide safe passage to the EU for displaced Syrians in Turkey once there is a substantial and sustainable reduction in the number of irregular crossings from Turkey to the EU.

The EU-Turkey Readmission Agreement has taken on an increased significance since the deal reached between the EU and Turkey at last week's summit of leaders to return all irregular migrants crossing from Turkey to the Greek islands (with effect from 20 March). Whilst the objective of the proposed Council Decision is clear, the European Scrutiny Committee questions the means for achieving it and suggests that the Council is seeking a "quick fix" which is difficult to reconcile with the requirements of the Readmission Agreement. The Committee invites the Immigration Minister (James Brokenshire) to comment and to provide an assessment of the risk of legal challenge. The Committee is highly critical of the delay in providing an Explanatory Memorandum on the proposal which contradicts the Government's own Code of Practice on scrutiny of opt-in decisions. It makes clear that it will not release the proposal from scrutiny until the Government has clarified its position on the opt-in (the Commission and Council contest the Government's view that the UK's opt-in applies) and explained whether or not the UK has opted in. The Minister expects the proposal to be adopted on 24 March.

Not cleared; further information requested; drawn to the attention of the Home Affairs Committee.

VAT

The Commission proposes to extend application of the minimum standard VAT rate from 1 January 2016 until 31 December 2017. This will allow for a full discussion of VAT rates in the context of a full scale review (the Action Plan on this is expected next month). The Committee held this proposal under scrutiny as it wanted to hear whether the Government might use its ability to stymie the proposal to secure agreement to amending the VAT Directive to allow zero rating of sanitary protection. The Government now says that the leverage from holding up the current proposal is very small, but zero rating for sanitary products will indeed be dealt with under the rates review.

Cleared.

Paris agreement on climate change

The Committee considered arrangements for signing the agreement on behalf of the EU.

Cleared.

1 Accessibility of public sector bodies' websites

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information awaited
Document details	Proposal for a Directive on the accessibility of public sector bodies' websites
Legal base	Article 114 TFEU; QMV; ordinary legislative procedure
Department	Cabinet Office
Document Number	(34512), 17344/12 + ADDs 1–2, COM(12) 721

Summary and Committee's conclusions

1.1 This proposal first emerged in 2012. It seeks to improve the accessibility of public sector websites, and thereby help Member States meet their obligations under the relevant UN Convention (see “Background”), and facilitate cross-border access, by harmonising the approaches taken by Member States and thus removing the significant differences currently in place across the EU.

1.2 The Directive is aimed at public sector bodies because they provide essential information and services to citizens. The Commission argues that harmonisation would also assist businesses, especially SMEs, by helping to remove uncertainties over web accessibility specifications and standards; and also help web developers create a more secure and sizeable market, with positive spin-off for their work in other sectors. In developing the Directive, the Commission took account of existing standards on Web Content Accessibility Guidelines (WCAG 2.0) issued by the World Wide Web Consortium (W3C); European Standardisation Organisations (CEN, CENELEC, and ETSI)¹ were accordingly developing a standard that conformed with this international standard. The background and details of the draft Directive are summarised in the previous Committee's first relevant Report (and the types of public sector bodies' websites as referred to in Article 1 are at the Annex to this chapter of our Report). The Directive would be reviewed within three years of its entry into force.²

1.3 The then Minister (Mr Francis Maude; now Lord Maude) welcomed the proposal. He explained that the UK was already up with the game, and agreed with the assessed Single Market benefits. He also made it clear that, notwithstanding its acknowledged desirability, the proposed Directive was not a priority under the then EU Presidency. He also suggested that, although referred to, it was not clear how the proposed European Accessibility Act (EAA) would affect the need to report compliance; and that, since the EEA would provide for legal redress if non-accessibility prevented citizens or businesses from interacting with

1 CENELEC is a European regional standards organization that together with its sister organizations CEN, the European Committee for Standardization, and ETSI, the European Telecommunications Standards Institute, compose the so-called and known European Standards Organizations (ESOs), which are officially recognised by the European Commission and act as a European platform through which European Standards are developed. See [European Standards Organizations \(ESOs\)](#) for further information.

2 See Thirty-second Report HC 86–xxxii (2010–12), [chapter 1](#) (13 February 2013).

Government, it might prove to be more effective at ensuring compliance than monitoring and reporting. But he gave no indication of where matters stood on this legislation, other than to say that it was “due in 2013”. All in all, the Committee was left with the impression that:

- Member States wished to make haste slowly with the proposed Directive, since something more effective was in prospect, i.e., the essence of the Directive, but with legal redress in the case of non-compliance; and
- the Minister was content with this approach and, in the meantime, to concentrate on ensuring that all public sector websites in the UK would be compliant with the international standard by December 2015.

1.4 The then Committee also asked for an explanation of the delay in submitting his Explanatory Memorandum, one consequence of which was that the Reasoned Opinion deadline had passed; and for his views on the proposed legal base, Article 114 TEU (approximation measures which have as their object the establishment and functioning of the internal market).

1.5 The then Minister’s response is set out in our predecessors’ second relevant Report. They accepted it as sufficient both in terms of explaining and apologising for the delay, and asked him to ensure that this did not happen again.

1.6 With regard to the use of Article 114 TEU, the then Minister said that, as the Directive was about the technical accessibility of websites, it had been assessed from the perspective of website usability and accessibility, not from that of its impact on the Single Market. But, recalling what he himself had said at the outset, the single market aspects and benefits were evident; thus, in the then Committee’s estimation, basing the Directive on Article 114 was properly arguable. Moreover, it remained difficult not to continue to see the proposed Directive as marking time, until the proposed European Accessibility Act saw the light of day. As the Minister still had no news on timing, the then Committee asked him to keep it informed as and when there were relevant developments with either this proposed Directive or the EAA. In the meantime, the draft Directive remained under scrutiny.³

1.7 Council discussions then stalled on this Directive for some time; the then Minister hoped the Latvian Presidency might renew interest in this Directive, but this did not happen (see “Background” for further details).

1.8 The Minister for the Cabinet Office and Paymaster General (Matthew Hancock) now says that, when his predecessor last wrote, the then Government’s position was:

“to support the Directive as we believed the UK was already going beyond the requirements set out in the Directive. It has been the policy of successive governments to adhere to the WCAG 2.0 standard in the public sector, though this is not enshrined in law. The legal basis for accessibility in the UK is not based on standards but instead on duties to make ‘reasonable adjustments’ to make services accessible to people with disabilities.”

1.9 Much has occurred since this last update. The Minister goes on to say that, after the failure of the Latvian Presidency to renew interest in this Directive, Council Working

³ See (34512), 17344/12: Thirty-fifth Report HC 86–xxxv (2010–12), [chapter 5](#) (13 March 2013).

Group negotiations restarted and progressed rapidly from October to December 2015; the Luxembourg presidency agreed a mandate at COREPER⁴ to begin informal trilogues with the European Parliament in December 2015; but the UK “did not support the mandate at this time because we did not have an agreed position to do so” and because of various policy concerns. Subsequently, he and his officials have been “working with other member states and the Commission to ensure that:

- “web accessibility is considered in a way that is agnostic of the device used to access websites and their content;
- the definition of ‘public sector bodies’ which the standard applies to is practical and clear;
- the types of content that must adhere to the standard (such as documents and time-based media) can reasonably be made accessible, and where they cannot, that they are excluded from the scope of the Directive;
- the transposition dates are reasonable and achievable for implementation;
- any monitoring and reporting requirements were achievable, practical and grounded in repeatable and robust processes; and
- the use of delegated acts and associated standards was limited to ensure appropriate powers are conferred to the Commission in this area.”

1.10 The Minister goes on to say that a “number of these concerns have now been addressed in Council negotiations”; that he is “hopeful that we can maintain them in the informal trilogues and beyond”; but that a “number of areas continue to be a concern” (see “Background” for details).

1.11 So far as the EAA is concerned, the Minister says that “the overlaps” are minimal, with the only significant one being that “the accessibility standard being introduced for websites in the EAA is the same standard being referenced in this Directive”, which means that “[a]t this time, they should be seen as complementary, rather than overlapping in nature”.

1.12 The Minister concludes by stating that his position “should now be” to support this Directive only if the concerns he has highlighted can be addressed.

1.13 The Minister begins with the most cursory of apologies, for not having written sooner (having taken over this portfolio last May). Given the previous history, this is the least he could have done. He also undertakes to “keep you informed on progress ahead of this proposal returning to the Council of Ministers for further discussion or agreement”: likewise, since his and his officials’ apparent lack of attention to the

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

previous consideration of this “dossier” has meant that we have been unnecessarily unaware of any of the developments outlined in his letter. This is unacceptable, and must not be repeated.

1.14 The draft Directive is now presumably very different from that deposited in 2013. Other Ministers find no difficulty in keeping the Committee full up-to-date with the negotiating process, regardless of whether the text under discussion can be put into the public domain, and particularly when a version is going to COREPER for a decision on whether or not to move forward after working group negotiations. This is particularly the case when the Council itself is acting in a most untransparent way establishing an informal mandate through COREPER rather than by agreeing a general approach in Council, which would not only have been a document in the public domain but also subject to the scrutiny reserve of this House. Although he does not refer to it in his letters, the Council has in fact put into the public domain the negotiating mandate of December 2015, but not the second mandate which appears to have been put forward for agreement in a Presidency document of 25 February 2016.⁵ The negotiation mandate of the European Parliament is also in the public domain.

1.15 We intend to take up the issue of the transparency of Council Decision making in a future inquiry. In the meantime we ask the Minister to clarify:

- What trilogue negotiations have taken place and on the basis of what Council mandate;
- Whether a second mandate has been agreed in the Council and if so whether this was at the level of COREPER or the Council and whether the UK voted in favour or not;
- Whether the concerns that “have been addressed in Council negotiations” are embodied in any second negotiating mandate;
- Whether any agreed second mandate will be put into the public domain in the near future, as has happened with the first mandate; and
- What the involvement of the UK will be in the trilogues and what influence it can bring to bear on the outcome.

1.16 We also ask that the Minister ensures that, from now on, he writes to us prior to any further COREPER discussion about how matters stand, and what his position is. We would also require him, as do his counterparts, to write to us prior to any proposal to elevate the “dossier” to Council level, outlining the main features of the revised text and what his own position then is.

1.17 In the meantime, we shall retain the document under scrutiny.

Full details of the documents

Proposal for a Directive on the accessibility of public sector bodies’ websites: (34512), [17344/12](#) + ADDs 1–2, COM(12) 721

⁵ Council Doc [6169/16](#).

Background

1.18 The UN fact sheet, “The Convention in Brief”,⁶ explains, inter alia, that:

“On the fundamental issue of accessibility (Article 9), the Convention requires countries to identify and eliminate obstacles and barriers and ensure that persons with disabilities can access their environment, transportation, public facilities and services, and information and communications technologies”; and

“Countries are to promote access to information by providing information intended for the general public in accessible formats and technologies, by facilitating the use of Braille, sign language and other forms of communication and by encouraging the media and Internet providers to make on-line information available in accessible formats (Article 21).”

The then Minister’s letter of 9 February 2015

1.19 The then Minister said that progress on the proposal had been “effectively stalled with successive Presidencies prioritising other work whilst waiting for a way forward that removed the impasse created by the need for a delegated act”; and that that “impasse” was broken when, in late 2013, the European Telecommunications Standards Institute published a new standard ([ETSI EN 301 549](#)) on “accessibility requirements suitable for public procurement of ICT products and services in Europe”. Publication of the new standard had led to the Commission reviewing the proposal — “making a number of amendments to address concerns from Member States and delays in making progress on the Directive”. However, further progress on the Directive was delayed by the formation of the new Commission; and although the incoming Latvian Presidency had indicated that it would like to see progress on this matter, “they also want to see progress on a number of other Telecommunications Council matters”; he would provide a more substantive update when plans were clearer, and apologised for not having provided an earlier interim update. The then Minister also confirmed that no further progress had been made on the proposals for the European Accessibility Act.

The Minister’s letter of 7 March 2016

1.20 The Minister details his concerns as follows:

Definition of “public sector bodies”

“The government does not believe the current definition of ‘public sector bodies’ is appropriate. This broad definition of ‘public sector bodies’ is legally unclear, open to interpretation and could significantly increase the economic burden on the UK.

To be clear, the UK should live up to its existing commitments and legal requirements in respect of people with disabilities; but nationally these obligations are framed in the context of ‘reasonable adjustments’. If we are to move away from the concept of reasonable adjustments, which are based

⁶ Available at [CONVENTION on the RIGHTS of PERSONS with DISABILITIES](#).

on individual user need, towards a hard rule of applying standards for web accessibility that we monitor and enforce, we must have clarity about what constitutes a public sector body.

The government would like to see a scope that is clear — that means limiting the applicability of the Directive to central, local and devolved government. Given the Commission’s belief that implementing this Directive will create a multiplier effect in the broader digital services industry, this does not water down the intent, but instead helps to clarify it so that we know what action we need to take”.

Compliance, monitoring and reporting

“The need for a clear definition of ‘public sector bodies’ is further highlighted in relation to compliance, monitoring and enforcement. The Directive asks member states to establish a regime to assess how well they are meeting the new standards. Whilst a good objective, it is unachievable in its proposed form because:

1. without a clear scope (e.g. without a clear definition of ‘public sector body’) we cannot assess the UK’s compliance with the standards in the Directive
2. the technology and assessment techniques to achieve monitoring of web accessibility simply don’t exist at a scale that make this objective possible to achieve without significant financial cost to public sector institutions

Separately, the standard which this Directive will bring into force requires compliance to be absolute. In order to be compliant with that standard, a website must meet or exceed all of the listed criteria and remain compliant at all times. Whilst this is technically possible, it is practically unachievable”.

Relation to the European Accessibility Act

“In previous correspondence, the committee noted the potential overlaps with the European Accessibility Act (EAA). At the time, the Commission’s plans were unclear about when the Act might actually be published — it now has been.

The Department for Business, Innovation and Skills already submitted an Explanatory Memorandum on the EAA to Parliament earlier this year on 13 January 2015. Broadly, the overlaps of this Directive with the EAA are minimal. The only significant overlap is that the accessibility standard being introduced for websites in the EAA is the same standard being referenced in this Directive. At this time, they should be seen as complementary, rather than overlapping in nature.”

1.21 The Minister concludes thus:

“Given how negotiations on this Directive have progressed, our position should now be to only support this Directive if the concerns I have highlighted above can be addressed. I will keep you informed on progress ahead of this proposal returning to the Council of Ministers for further discussion or agreement.”

Previous Committee Reports

Thirty-fifth Report HC 86–xxxv (2010–12), [chapter 5](#) (13 March 2013) and Thirty-second Report HC 86–xxxii (2010–12), [chapter 1](#) (13 February 2013).

Annex: Types of public sector bodies’ websites as referred to in Article 1

- i) Income taxes: declaration, notification of assessment;
- ii) Job search services by labour offices;
- iii) Social-security benefits: unemployment benefits, child allowances, medical costs (reimbursement or direct settlement), student grants;
- iv) Personal documents: passports or driving license;
- v) Car registration;
- vi) Application for building permission;
- vii) Declaration to police, e.g. in case of theft;
- viii) Public libraries, e.g. catalogues and search tools;
- ix) Request and delivery of birth or marriage certificates;
- x) Enrolment in higher education or university;
- xi) Notification of change of residence;
- xii) Health-related services: interactive advice on the availability of services, online services for patients, appointments.

2 Network Information Security across the EU

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

Summary and Committee’s conclusions

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

- obliging all Member States to produce a national cyber security strategy, including establishment of “competent authority” and a Computer Emergency Response Team (CERT);
- mandating information sharing between Member States, as well as establishing a pan-EU cooperation plan and coordinated early warnings and procedure for agreement of a coordinated EU response for cyber incidents;
- promoting the adoption of good risk management practices by the private sector through expanding the requirement of obligatory security breach disclosure (currently imposed only upon the telecoms sector) to the finance, energy, transport and health sectors, as well as to “providers of internet society services”; and
- encouraging the take up of cyber security standards, with possible harmonisation measures being taken by the Commission.⁷

2.2 In the 18 months following the draft Directive’s publication, a number of contentious issues were satisfactorily resolved, and were reported to the House (see the previous Committee’s several Reports for details).⁸

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

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

2.3 Come the autumn of 2015, there were two outstanding issues: *scope* (much the more important) and *operational cooperation*. The Minister Mr Edward Vaizey reported last November that a text had now been developed that met his “light touch/consistent across the EU” objectives (see “Background” for further details).

Our assessment hitherto

2.4 Two matters remained uppermost in our mind. Firstly, the final *scope* of the proposed Directive, where — as the Minister made clear — further discussion and negotiation was still required; for example, on the legal definition of the digital service providers.

2.5 Second, the opaque nature of *the negotiating process*. As long ago as March 2014, the European Parliament (EP) adopted a First Reading position. Then, a year later, the Minister was anticipating agreement, during the prorogation prior to the May 2015 general election, based on a much-changed text.⁹ Instead, there were then a number of subsequent “informal” exchanges involving the Presidency, the relevant Council working group, the Commission and the EP, with (come last November) a further exchange in prospect, “informally” testing the latest text and with the “feedback” then to be taken into account. Somewhere along that timeline the Minister seemingly expected all the remaining uncertainties to be resolved, so that a formal Council position could be adopted in the New Year — with a view to adoption of the proposal at its second reading.

2.6 So, in the first instance, the Committee asked the Minister to write again as soon as the informal testing of the new text with the EP had been completed, outlining how matters then stood and what his expectations were on timing and process.

2.7 We also reiterated the need, in due course, to hear from the Minister, via the depositing of a final text under cover of a fresh Explanatory Memorandum, explaining (a) precisely what was now within the scope of the Directive and (b) how it would affect the UK enterprises thus involved, and outlining the general benefits to the UK as well as the EU. We asked for this to be done well before it went to the Council — whether for endorsement of its formal first reading position; or if there was to be agreed, at that level, a text for further negotiation (as opposed to “testing”) with the European Parliament. This was to enable any questions that might continue to arise to be dealt with prior to that Council meeting.

2.8 We also asked the Minister to look backwards, along the negotiating process in 2015, and explain how it had been conducted; in particular, at which stages decisions were taken in COREPER, and whether and to what extent he himself had been involved in giving COREPER direction or guidance before the process moved to the next stage.

2.9 In the meantime, we continued to retain the draft Council Directive under scrutiny.

2.10 We also drew these developments to the attention of the Business, Innovation and Skills and Culture, Media and Sport Committees because of the importance of the central issue — protecting critical digital and digitally-dependent infrastructure — and the fact that the “end game” was now clearly in prospect.¹⁰

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

10 See Eleventh Report HC 342–xi (2015–16), [chapter 3](#) (2 December 2015).

2.11 The Minister continued his characteristic openness in his further letter, on the eve of the Christmas 2015 recess, and the outcome thus far, as outlined by him, appeared to be satisfactory (see “Background” for further details). But we again drew these developments to the attention of the Business, Innovation and Skills and Culture, Media and Sport Committees, to ensure that our inexpert eye had not overlooked anything important.

2.12 Noting the Minister’s sympathy with our views on the opacity of the negotiating process, the Committee also reminded him of its earlier request about the negotiating process and our requirement that the finally-agreed full text be deposited, with a revised Explanatory Memorandum, in good time before adoption by the Council.

2.13 In the meantime, we continued to retain the draft Directive under scrutiny.¹¹

The latest developments

2.14 The Minister has now provided the final draft text under cover of a missive from the Council secretariat, headed “Political agreement”, referring to the text as having been “agreed in substance at the informal trilogue of 7 December 2015” and “subsequently endorsed by the Permanent Representatives Committee¹² and by the Internal Market and Consumer Protection (IMCO) Committee of the European Parliament, on 18 December 2015 on 14 January 2016 respectively”.

2.15 The Minister says that the obligations in the draft Directive now “fall roughly” into three separate approaches:

- Member States will need to establish at least one competent authority on network and information security; maintain a Computer Security Incident Response Team (CSIRT); and publish a national network and information security strategy;
- companies in certain sectors will be required to introduce risk management on their networks and to notify security breaches; and
- increased voluntary information sharing and cooperation on cyber security across the EU (see the key points of the Minister’s further Explanatory Memorandum, summarised in “Background”, for his detailed analysis).

2.16 All of this, he says:

“addresses the real need for infrastructure companies to raise their level of network security whilst providing Member States with the flexibility to make the final decisions on what exactly that security should look like.”

2.17 Nevertheless, the Minister abstained from voting when at the instigation of the Presidency and the Council Secretariat — a decision made “in full knowledge that the file remains under UK Parliamentary Scrutiny” — the Directive was adopted by the 29 February Competitiveness Council. Moreover, the Minister explains that, though the agreement was finalised by the Presidency on the 10 February, the Council Secretariat failed to notify the Member States that the new text was available, which meant that he

¹¹ Sixteenth Report HC 342–xv (2015–16), [chapter 5](#) (6 January 2016).

¹² Doc. 15229/2/15 REV 2.

was unable to prepare his updated Explanatory Memorandum in advance of the Council vote. So, in addition to abstaining, the Minister has instructed the UK Permanent Representation to the EU:

“to raise a complaint about the handling of this point with the Presidency and the Council Secretariat as their poor communications about process have made it extremely challenging to provide Parliament with the necessary updates on the negotiation.”

2.18 From the policy perspective, the outcome would appear to be satisfactory. However, we again draw these developments to the attention of the Business, Innovation and Skills and Culture, Media and Sport Committees in case there are any elements that need attention during the transposition process.

2.19 From the scrutiny perspective, however, the ending could hardly have been less satisfactory. We ask the Minister, as a matter of urgency, to supply us with:

- **an explanation as to why, as the document circulated by the Council secretariat on 10 February, with a view to a political agreement by the Council, had been endorsed by COREPER and by the EP’s Internal Market and Consumer Protection (IMCO) Committee as long ago as 14 January 2016, it was not then possible to provide a supplementary Explanatory Memorandum;**
- **a detailed timeline of what instead happened between 10 and 29 February, including details of what representations were made, and by whom and when, to whom in the Presidency and Council, and their responses;**
- **a copy of the request that he subsequently made to UKRep Brussels, including details of who made the request and at what level it was made; and**
- **details of the response from the Presidency and Council.**

2.20 In the meantime, the matter remains under scrutiny.

Full details of the documents

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

Background

2.21 The background between March 2013 and autumn 2015 is set out in the relevant Reports listed at the end of this chapter.

2.22 Last November The Minister reported that a text had now been developed that met his “light touch/consistent across the EU” objectives, based on the following principles:

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

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

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

2.24 Looking ahead, the Presidency was “planning to informally test this new text with the European Parliament in late November to take on board their feedback”. Nevertheless, “a few outstanding areas” would require further discussion and negotiation — “for example the legal definition of the digital service providers”. However, “I expect that Council will be asked to formally endorse a final text of the Directive in the New Year” (see our 2 December 2015 Report for further details).¹³

2.25 On 8 December, the Commission announced that “Negotiators of the European Parliament, the Council and the Commission have agreed on the first EU-wide legislation on cybersecurity”, and noted that:

“Following this political agreement, the text will have to be formally approved by the European Parliament and the Council. After that it will be published in the EU Official Journal and will officially enter into force. Member States will have 21 months to implement this Directive into their national laws and 6 months more to identify operators of essential services.”¹⁴

2.26 The Minister wrote further a day before the House rose for the Christmas recess. He agreed that “the process on this negotiation has been particularly opaque, even in the context of the European system”. He reported that, after informal trilogues on 17 November and 7 December 2015:

“the Presidency announced that an informal agreement had been reached on the Directive, the text of which was communicated to me yesterday.¹⁵ This will be considered by COREPER on Friday.¹⁶ I will remind COREPER that this Committee is holding the file under scrutiny.”

2.27 The Minister also attached the text; but at the same time, noting that it was marked *limité*, asked that “the Committee do not publish the document, respecting its *limité*”

¹³ Eleventh Report HC 342–xi (2015–16), [chapter 3](#) (2 December 2015).

¹⁴ See [press release](#).

¹⁵ i.e. on 15 December 2015.

¹⁶ i.e., on 18 December 2015.

status”.¹⁷ His letter accordingly served “to relay the Directive’s obligations — in addition to an Explanatory Memorandum, which I will deposit once a public text is ready for agreement” — whereby he hoped that “the outline of the informal agreement helps the Committee to prepare their position on this file in advance of the EM issuing and sent to the Committee before formal agreement at a Council meeting in the new year”.

2.28 The Minister’s “outline of the informal agreement” is set out in full in our previous Report.¹⁸ In summary:

- *Institutional obligations on Member States:*
 - the majority of the proposals were based on the UK approach, with a text that was now flexible enough to ensure minimal disruption to the UK’s current approach and structures;
- *Scope:*
 - water, health, transport, energy, internet exchange points, domain name services and finance and banking (with an exemption for those financial firms that already complied with similar EU rules related to network protection);
 - the UK authorities would determine during transposition which infrastructure operators should fall within scope, based on their criticality;
 - the criteria would not interfere with how the UK authorities identified critical national infrastructure;
 - specific obligations for firms in terms of risk management and reporting would be outlined in national guidance following EU level discussions;
 - overall:

“the text addresses the real need for infrastructure companies to raise their level of network security whilst providing Member States with the flexibility to make the final decisions on what exactly that security should look like.”
- *Impact on Digital Services:*
 - an exemption for micro and small businesses;
 - the final text would only apply to search engines, e-commerce platforms and cloud computing companies;
 - E-payment gateways, application stores and social networks had been removed from scope;

¹⁷ *Limité* is not a security classification, but a distribution marking. Council Secretariat guidance states that documents marked *limité* may be given to any member of a national administration of a member state and the Commission; for the purposes of this guidance, national Parliaments are considered as part of national administrations. *Limité* documents may not, however, be given to any other person, the media, or the general public without specific authorisation, nor may they be published in any way which makes them accessible in the public domain. It is for Member States to decide whether to share *limité* documents with their national Parliaments. However, the document must retain the *limité* marking and so must not be used by the Parliamentary Committees in any way which makes public the substance or detail of the document.

¹⁸ Sixteenth Report HC 342–xv (2015–16), [chapter 5](#) (6 January 2016).

- digital companies would be allowed to select their own approach to risk management based on a list drawn up by the European Network and Information Security Agency (ENISA) in consultation with the affected sectors and codified in implementing acts, which would “avoid a patchwork of different obligations for global companies”;
- incident reporting would apply for only the most “significant” network incidents;
- the companies in scope would only have to deal with one “home” Member State when reporting incidents, rather than each country where they offer services;
- taken together, the obligations were “proportionate and effective in delivering the desired security goals”, and the sectors themselves were “clearly defined”; while there would be “some challenges in transposition”, the Minister was “confident that we have minimised the risk of fragmentation that would have represented a considerable burden on these global firms”.
- *Cooperation and information sharing aspects:*
 - the revised Directive would establish two new cooperation mechanisms on network security: one to discuss the technical and policy aspects of security (for example sharing best practices and discussing skills issues) and an operational network of Computer Security Incident Response Team (CSIRTs), who would determine their rules of procedure and their priorities;
- *General benefits for the UK and the EU:*
 - the final result was balanced and proportionate;
 - the introduction of the first formal discussion group of Member State CSIRTs would “raise the level of cooperation and information sharing on network security without mandating to Member States how this should be done, safeguarding our national security interests in this area”;
 - the rules on businesses were much improved: only the most important infrastructure operators would be obliged to follow these rules and the UK would have the flexibility to determine both the final list of operators in scope and the rules these companies would have to follow;
 - the text recognised that digital companies faced different challenges and threats to infrastructure operators and so these requirements were lighter-touch and a safeguard against a fragmented application;
 - the net result of these obligations would be to raise the level of network security across the economy, minimising the risk of a cyber-attack and safeguarding both essential services and customer information.

2.29 All in all, the Minister was:

“content that the UK has helped ensure the deal on the table strikes a good balance: enabling cooperation between countries across Europe, whilst being flexible, proportionate and minimising the impact on business.”

The Minister's letter of 26 February 2016

2.30 The Minister wrote thus:

“This file will be going to Competitiveness Council on 29 February for political agreement. I am intending to abstain from this vote as the file has not been released from scrutiny.”

2.31 The Minister then continued as follows:

“I last wrote to you on 16 December to tell the committee that an informal agreement between Council and Parliament had been reached on the file and that we expected formal agreement at a Council in the spring. Communications from the Presidency earlier this month indicated that we could expect the vote at a Council in April or May.

“I learned on 22 February that the Council Secretariat has scheduled a political agreement at the Competitiveness Council on 29 February when Council is expected to endorse the informal agreement. This decision was made by the Presidency and the Council Secretariat in full knowledge that the file remains under UK Parliamentary Scrutiny and despite a lack of urgency to secure political endorsement. This is why I intend to abstain from this vote.

“This timing is extremely unfortunate. The final text of the agreement was finalised by the Presidency on the 10 February; however, the Council Secretariat failed to notify the Member States that this new text was available. My officials only learned this new text was available on 22 February and so it has not been possible to prepare an updated EM for the Committee to consider in advance of the Council vote on 29 February. My officials are currently preparing the updated explanatory memorandum for the Committee on the basis of this text.

“I will write again shortly to send this updated explanatory memorandum to the Committee and to answer the Committee's outstanding question regarding the timetable.

“We now expect the text endorsed by this political agreement to go through the lawyers linguist process in March before formal agreement takes place at a Council and in the European Parliament in May.

“I have also asked the UK Permanent Representation to the EU to raise a complaint about the handling of this point with the Presidency and the Council Secretariat as their poor communications about process have made it extremely challenging to provide Parliament with the necessary updates on the negotiation.”

The Minister's letter of 9 March 2016

2.32 The Minister writes to provide the Committee with a supplementary Explanatory Memorandum (see below), which he says “outlines the final informal agreement reached

between the Luxembourg Presidency and the European Parliament in December” and “explains the content of the final version of the agreement and outlines how this has changed from the original Commission proposal” (see paragraphs ... below for details).

2.33 The Minister notes the Committee “also requested that I ‘*look backwards, along the negotiating process in 2015, and explain how it was conducted; in particular, at which stages decisions were taken in COREPER, and whether and to what extent he himself had been involved in giving COREPER direction or guidance before the process moved to the next stage*’”, and continues as follows:

“The NIS Directive was discussed at the Telecoms Council on 6 June 2014. I attended this Council meeting and clearly set out the Government’s approach to the negotiation including our priorities and red lines. This Council exchange set the parameters for the subsequent working group level discussions that took place on the Directive and the working group made changes to the text, based on this Council position. The changes made as a result of the working group discussions were consistently in line with the Government’s position.

As I previously wrote to the Committee in my letter of 16 December 2015, COREPER discussed the Directive at their meetings on 17 November and 7 December. Their role at these meetings was to consider the new text changes that were made by the working group. As the working group preparation of the text was in line with the Government’s position, I did not provide any particular instruction in advance of the COREPER meeting, except to ensure that COREPER was reminded that the file remains under UK Parliamentary Scrutiny.”

The Minister’s supplementary Explanatory Memorandum

2.34 In his Explanatory Memorandum of 11 March 2016, the Minister (Mr Edward Vaizey) says that the NIS Directive will “raise the level of cyber security across the EU” and that its obligations “fall roughly into three separate approaches”, viz:

“Member States will need to ensure that they have certain institutional arrangements in place, including: establishing at least one competent authority on network and information security; maintaining a Computer Security Incident Response Team (CSIRT); and, publishing a national network and information security strategy;

“The Directive will require companies in certain sectors to introduce risk management on their networks and to notify security breaches; and

“The Directive will also increase voluntary information sharing and cooperation on cyber security across the EU.”

Legal issues

2.35 With regard to the legal basis, the Minister says that “[h]aving carefully considered the measure, the Government broadly considers this to be appropriate”, i.e., the use of

Article 114 TFEU, under which measures relating to the Single Market are adopted. The Minister describes the proposal as “within the boundaries of this article” and states that “the Justice and Home Affairs opt-in is not a consideration”.

2.36 Turning to the impact on United Kingdom law, the Minister says:

“The UK will be required to transpose this Directive into UK law. New legislation will need to be “introduced to impose obligations on companies in scope of the legislation to take measures to manage risks to security of information networks and systems and to notify network incidents. Where possible the UK will seek to adapt existing law, for example to designate the role of the sector specific competent authorities to existing organisations and to ensure that these competent authorities have the required enforcement powers.”

Subsidiarity and Proportionality

2.37 The Minister says:

“The Government believes that the proposal is justified in accordance with the principle of subsidiarity as set out in Article 5 of the EC Treaty. The Government remains of the view that a certain degree of voluntary EU coordination is beneficial in order to manage the cross-border context of cyber risks. This is particularly important from a Government perspective, where we agree that it is important to ensure that all Member States reach a minimum standard of capability and have measures in place to allow coordinated response where required.

“The Government’s previous concerns about the proportionality of Article 14 have been addressed during the negotiation process. The Directive now allows enough flexibility and latitude for Member States themselves to determine which of their infrastructure operators should be included in scope and what sort of security arrangements they should have in place. In addition, operators will now only have to notify significant incidents that impact on the continuity of the service that is delivered, rather than incidents that have no impact on services. This will considerably reduce the regulatory burden on the operators in scope of the Directive.

“The flexibility in the text means that the Government is content that these measures do not interfere with our national critical infrastructure protection mechanisms, which are a national matter. The Government also welcomes the new exemption for sectors that are already obliged by EU rules on network risk management and incident notification, as long as the effect of legislation is at least equivalent to the NIS Directive. The expectation is that the financial services sector which is already tightly regulated in EU law will be out of scope of the NIS Directive obligations in the UK.

“Regarding digital service providers the Government believes that, given the cross-border nature of these companies, it would be inappropriate for Member States to set down individual rules regarding their network security and incident

reporting and the more harmonised approach to these companies is welcomed. In addition the Government welcomes the more proportionate language in the Directive’s recitals that explicitly recognises that these companies should be treated in a lighter-touch manner than infrastructure companies and the exemption from scope of small companies (under 50 employees).

“Finally, the final text does not contain any of the delegated acts which the Government viewed as inappropriate when addressing security issues.”

Consultation

2.38 The Minister says that the Government undertook a formal consultation when the Directive was first published by the Commission to ensure that industry views informed the Government’s position;¹⁹ has “continued informal consultations with the affected sectors and Government departments, including the devolved administrations, throughout the negotiation process”; and “is planning a full, formal consultation process on the options for transposition later this year”.

Impact Assessment

2.39 The Minister says that, given that the proposal, and particularly its scope, has changed considerably during the negotiation, a new Impact Assessment will be produced as part of the transposition process.

Financial Implications

2.40 These “are likely to be minimal as the Government will seek to use already established organisations and relationships to meet the obligations of the Directive”.

Timetable

2.41 The Minister notes that “the Council and Parliament will be asked to formally agree the Directive in May (precise dates are still not yet known)”, and that the deadline for transposition is 21 months.

The Government’s view

2.42 The Minister comments as follows:

Institutional obligations on Member States

“The UK will be obliged to meet certain requirements to improve their institutional cyber security functions including maintaining a national Computer Security Incident Response Team (CSIRT), publishing a national network and information security strategy and identifying competent authorities and a single point of contact responsible for network and information security.

¹⁹ See [EU directive on network and information security: call for evidence](#) of 13 May 2013.

The Government's view is that these obligations will materially increase the level of cyber security across Europe as all Member States' capacity will improve with these sorts of structures in place.

The UK has already published a national cyber security strategy and an updated version of this document is scheduled for publication later this year. Likewise, it is the Government's view that CERT UK already fulfils the broad obligations related to the establishment of a CSIRT (the words CSIRT and CERT are interchangeable).

With regards to the competent authority, the Directive now makes it clear that this role can be allocated to more than one body which means that Member States will have the flexibility to designate it to bodies with existing relationships with the affected sectors. The competent authorities will be responsible for providing guidance about incidents and security risk management and the operators in scope will notify incidents to either the competent authority or their CSIRT. Competent authorities will also be responsible for enforcement and ensuring the operators in scope are compliant with the Directive.

Whilst the Government has not yet made any decisions regarding which body or bodies may eventually take on this function this new flexibility is welcome, not least as it should reduce the financial implications we may have incurred in setting up a new, special 'NIS' competent authority.

The single point of contact will act as a point of communication on all network and information security matters with counterparts across the EU and to work with the competent authorities to submit an annual, anonymised, aggregated report on the number and nature of reported incidents to the cooperation group. This role may be designated to an existing body, again, minimising any financial implications for Government."

Impact on infrastructure sectors

"The Directive will require Member States to ensure that operators of essential services in certain infrastructure sectors put in place appropriate and proportionate risk management approaches and report those network incidents that significantly disrupt the continuity of the services that they provide. The sectors in scope are water, health, transport, energy, internet exchange points, domain name services and finance and banking (although there is an exemption for those financial firms that already comply with similar EU rules related to network protection and incident notification).

The main change secured in this section is that it will be up to the UK to determine during transposition which infrastructure operators should fall within scope of the Directive based on their criticality. In order to determine which operators provide an essential service in their country, Member States will apply criteria that is set in the Directive. This change will significantly reduce the burden on the sectors in scope. The specific obligations for firms in terms of risk management and reporting will be outlined in national guidance

following EU level discussions, again, a significant improvement from the initial proposal which said that these rules would set by the Commission via implementing acts”.

Impact on Digital Services

“In terms of digital services we have secured an exemption for micro and small businesses (up to 50 employees) and the final text will only apply to search engines, e-commerce platforms and cloud computing companies; e-payment gateways, application stores and social networks have been removed from scope.

There has been agreement on text that would allow digital companies to select their own approach to risk management based on a list drawn up by ENISA and codified in implementing acts. This will avoid a patchwork of different obligations across the EU and will result in consistency for these global companies. Incident reporting will apply for only the most ‘significant’ network incidents. The supervisory arrangements also provide clarity that the companies in scope will only have to deal with one ‘home’ Member State when reporting incidents, rather than each and every country where they offer services. In terms of the supervision itself, the obligations are now much lighter touch and expensive audits have been removed from scope.

Finally, any reference to these sectors being ‘critical’ has been rejected and text has been introduced to assert that the improved sector definitions only apply in the context of the NIS Directive to avoid setting difficult precedents for the wider digital single market”.

Cooperation and information sharing aspects

“The concerning proposals that would have required a very high level of information sharing and coordination across the EU in response to incidents have been amended so that cooperation and information sharing will take place on a voluntary basis. The one exception to this is when an incident in one Member State has an impact on another Member State, the first Member State is obliged to notify the second; this is in line with the information we currently share. These changes addressed the Government’s concerns that information sharing on the scale originally proposed by the Commission could impact on our national security.

The Directive will now set up a Cooperation Group that will establish strategic cooperation on cyber security between officials from all EU Member States. This cooperation will be enhance technical and strategic exchange of best practices and experiences including:

- Exchange of best practice on cross border incident information; collect best practices on risks and incidents; discuss modalities for incident reporting.
- Exchange best practice on capacity building; discuss NIS strategies and CSIRTs.

- Exchange information and best practices on training, awareness raising and research and innovation.
- Examine the annual summary report of incidents.
- Discuss identification of operators.

The Government judges that this sort of information exchange will help to achieve a greater consistency in the application of the Directive across the EU whilst respecting that much of the final decision making and guidance rests with the Member State themselves.

A CSIRT network will also be set up to further voluntary cooperation and information exchange across Europe. This community will have responsibility for:

- exchanging information about CSIRT capabilities.
- discussing live and historic incidents (although there is a mechanism for affected Member States to decline to provide information about current incidents).
- raising a request for a coordinated response to an incident on a voluntary basis.
- discussing further forms of operational cooperation including: categories of risks and incidents; early warnings; mutual assistance; and, principles and modalities for a coordinated response.

The CSIRT network will be responsible for establishing its own rules of procedure. This is the first time that all EU Member State CSIRTs will be brought together in a single community and the Government believes that this network will drive up trust and cooperation across Europe on cyber security issues, particularly as it will be up to the CSIRTs themselves to set the parameters of their discussions. Trust on sensitive issues like cyber security needs to develop gradually and naturally; this network puts in place solid foundations for improving trust on a voluntary basis.

The Government believes that the final version of the text strikes a good balance. It enables cooperation between countries across Europe, whilst being flexible, proportionate and minimising the impact on the businesses in scope of its obligations. It is now broadly in line with the announcements made on cyber security as part of the UK's recent Strategic Defence and Security Review".

2.43 The Minister concludes thus:

“I hope that this addresses all of the Committee's outstanding concerns on this file and would ask that the Committee considers lifting its scrutiny reservation in advance of the expected vote in Council in May.”

Previous Committee Reports

Sixteenth Report HC 342–xv (2015–16), [chapter 5](#) (6 January 2016) and Eleventh Report HC 342–xi (2015–16), [chapter 3](#) (2 December 2015); Thirty-seventh Report HC 219–xxxvi (2014–15), [chapter 5](#) (18 March 2015); Sixteenth Report HC 219–xvi (2014–15), [chapter 1](#) (29 October 2014); Fifteenth Report HC 219–xv (2014–15), [chapter 1](#) (22 October 2014); Thirteenth Report HC 219–xiii (2014–15), [chapter 6](#) (15 October 2014); Twelfth Report HC 219–xii (2014–15), [chapter 4](#) (10 September 2014); First Report HC 219–i (2014–15), [chapter 2](#) (4 June 2014); Forty-fifth Report HC 83–xl (2013–14), [chapter 2](#) (2 April 2014); Fortieth Report HC 86–xxxix (2012–13), [chapter 4](#) (24 April 2013); Thirty-fifth Report HC 86–xxxv (2012–13), [chapter 6](#) (13 March 2013); also see (34680), 6225/13: Thirty-fifth Report HC 86–xxxv (2012–13), [chapter 3](#) (13 March 2013).

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

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

Summary and Committee's conclusions

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

3.2 The Communication outlines the European Commission's vision and makes a number of recommendations for the Summit under the following themes: *reaffirming humanitarian values; access; protection at the heart of humanitarian response; the basics of humanitarian effectiveness; partnership with local, national and regional actors; efficient and sufficient humanitarian financing; and partnership with development actors*. These recommendations are detailed in our October 2015 Report.²⁰

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

²⁰ See Fifth Report HC 342–v (2015–16), [chapter 7](#) (14 October 2015).

truly global commitment to address the growing risks of humanitarian crises, driven by the values of our shared humanity”. There were four thematic areas where the Minister saw potential to move the agenda forwards at the Summit, and which she said had much in common with the Commission’s recommendations for action: namely, *Protection of Civilians; Building Resilience; Smarter Crisis Financing; and Women and Girls* (also see our October 2015 Report for details). In the immediate future, the Minister noted an upcoming “orientation” debate on the WHS at the October “Development” Foreign Affairs Council and the possibility of Council Conclusions in late 2015 or early 2016.

Our assessment

3.4 With a 2014–20 budget of €6.6 billion²¹ (£5.19 billion) for humanitarian and civil protection activities, and providing funding to over 200 partner organisations that implemented humanitarian actions on the ground, the Commission would clearly have a major role in the Summit, and in implementing its recommendations. What happened within the Councils of the EU to establish the EU’s position at the summit between October 2015 and May 2016 was thus politically important.

3.5 So we retained the Commission Communication under scrutiny.

3.6 We also drew these developments to the attention of the International Development Committee.²²

The Minister’s November 2015 update

3.7 The Minister said that the main features of the council’s orientation debate were:

- a shared ambition for the Summit, and the need for serious reform of the existing humanitarian system;
- notable common priorities including: “a smarter approach to humanitarian financing; more effective linkages between humanitarian and development assistance; and the need for renewed political commitment to the laws of war and the protection of civilians”;
- the Government leading calls for a reformed approach to finance, blending public and private approaches and moving beyond the initial emergency response to focus on education and livelihoods; and
- better enforcement of International Humanitarian Law (IHL) to protect civilians; and a bold approach to gender equality in humanitarian action, including a global coordinated approach to prevent and respond to gender-based violence.

3.8 She noted that the Luxembourg Presidency now envisaged concise Council Conclusions in December 2015, followed by further Conclusions setting out a more detailed EU position on the Summit in the spring of 2016, after publication of the UNSG’s

²¹ 1€= £0.7858

²² Fifth Report HC 342–v (2015–16), [chapter 7](#) (14 October 2015).

report.²³ The Minister endorsed this approach, which would underline EU Member States’ united ambition for the Summit to deliver serious reform, guarantee an ambitious report from the UNSG, and send a clear message to the heads of UN agencies that change is required (see our most recent Report for further details).²⁴

Our further assessment

3.9 We looked forward to a further Report from the Minister, providing her assessment of the December Council Conclusions and updating us on the UNSG’s report and on how she then expected the rest of the preparatory process to be taken forward.

3.10 In the meantime, we continued to retain the Commission Communication under scrutiny, and again drew these developments to the attention of the International Development Committee.²⁵

3.11 The Minister describes the December 2015 Council Conclusions (see paragraphs 3.19–3.21 below for details) as “brief, uncontroversial, and reflect[ing] the UK’s position”, and highlights the call for “practicable outcomes and specific commitments” regarding respect of IHL and reform of the humanitarian system through: “better coordination and transparency; improved accountability to beneficiaries; better use of local capacity and innovative instruments; and better coherence between the instruments of humanitarian and development policy”, which, the Minister says, aligns well with the UK’s ambition and priorities for the summit. But they were agreed prior to the publication (on 9 February) of the UNSG’s report for the WHS, which the Minister describes as a “good report that is ambitious, well-argued and evidenced” (see paragraph 3.25 below for details). The Minister says that, led by her Department in coordination with the rest of Whitehall, the UK is “well underway in its preparations for WHS, ... working to forge a series of coalitions to progress the UK’s priority concerns”, at the core of which is “working with the major donors and the EU to deliver a set of agreed positions where there is significant appetite for reform” As well as Ministers and officials using various international meetings to raise WHS issues, the relevant EU Council Working Party will prepare draft Council Conclusions to be adopted at the 12 May “Development” Foreign Affairs Council — as an agreed EU position on the Summit “will show unity of purpose amongst many of the major donors to humanitarian crises, and help build momentum for genuine reform following the Summit in Istanbul.”

3.12 We are grateful to the Minister for her full (if somewhat tardy) update. Looking ahead, we should be grateful if she would write again, prior to the 12 May “Development”

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

24 Eleventh Report HC 342–xi (2015–16), [chapter 6](#) (2 December 2015).

25 Eleventh Report HC 342–xi (2015–16), [chapter 6](#) (2 December 2015).

Council meeting,²⁶ outlining what sort of Council Conclusions she will be seeking/are in prospect, so that the House may at least know what “agreed EU position on the Summit” is on the cards.

3.13 In the meantime, we shall continue to retain the Commission Communication under scrutiny.

3.14 We also again draw these developments to the attention of the International Development Committee.

Full details of the documents

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

Background

3.15 The European Commission’s Humanitarian Aid and Civil Protection department (ECHO) aims to save and preserve life, prevent and alleviate human suffering and safeguard the integrity and dignity of populations affected by natural disasters and man-made crises. Headquartered in Brussels with a [global network](#) of field offices, ECHO aims to ensure rapid and effective delivery of EU relief assistance through its two main instruments: [humanitarian aid](#) and [civil protection](#). Since November 2014, ECHO operates under the mandate of [Mr Christos Stylianides](#), EU Commissioner for Humanitarian Aid and Crisis Management.

3.16 The annual EU budget for humanitarian and civil protection actions amounts to approximately €1 billion (£785.8 million); the total 2014–20 budget being €6.6 billion (£5.19 billion), with the precise annual figures being decided at the end of each year. An EU Emergency Aid Reserve can also be called upon to respond to unforeseen events and major crises, financing notably humanitarian, civilian crisis management and protection operations in non-EU countries. ECHO provides funding to over 200 partner organisations which implement humanitarian actions on the ground. These include non-governmental organisations (NGOs), international organisations and United Nations agencies (UN).²⁷

3.17 The Commission sees the summit as presenting the global community “with a unique opportunity to establish an international consensus reaffirming the principles of humanitarian aid and strengthening humanitarian action”, bringing together governments, donors, implementing organisations,²⁸ the private sector and representatives of affected populations who:

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

²⁶ i.e., no later than 28 April 2016.

²⁷ See [Humanitarian Aid and Civil Protection](#) for full information.

²⁸ Implementing organisations deliver humanitarian aid, e.g. UN agencies, international organisations, Red Cross and Red Crescent Movement, NGOs. They can be international, regional, national, or community-based.

3.18 As major humanitarian donors, and thus key policy-setters with global operational experience, the EU and its Member States, and the Commission, would be “expected by many stakeholders to contribute to the success of the summit”. The Communication, building on the European Consensus on Humanitarian Aid,²⁹ accordingly:

“sets out the Union’s vision for reshaping humanitarian action and proposes recommendations that should be endorsed by the summit. The underlying message is to build and reinforce partnerships among a multitude of actors. It is only through linked and coordinated action that the global community can respond to the escalating and multifaceted crises and disasters that demand humanitarian assistance.”³⁰

The December 2015 Council Conclusions

3.19 The Council sees the WHS as an historic opportunity to build a global partnership among a wide range of actors within and beyond the existing humanitarian system so as to prevent and end human suffering, address the root causes of crises and make sure no one is left behind. The Summit should commit to mobilising all instruments — humanitarian, developmental and diplomatic — to reduce vulnerability and fragility, resolve conflicts and build resilience in communities. The Summit marks a decisive moment to ensure that humanitarian action — based on the humanitarian principles of humanity, impartiality, neutrality and independence — delivers more effectively and ensures a sustainable future for the millions affected by conflicts as well as by natural and man-made disasters.

3.20 In the spirit of Solferino,³¹ the Summit should lead to a collective commitment by the international community to put respect for International Humanitarian Law (IHL) at the top of the international agenda. Humanitarian assistance should become more efficient and effective, with greater coordination and transparency and increased accountability towards the people it aims to serve. Strengthened coherence between humanitarian and development financing and programming is required, but without jeopardising the unique, neutral, independent and impartial nature of humanitarian work. In this regard, the Council welcomes UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Stephen O’Brien’s, 24 November 2015 statement on the preparation of the WHS,³² and looks forward to the Secretary-General’s report and the recommendations by the High-Level Panel on Humanitarian Financing.

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

30 [Commission Communication 11667/15](#), p.3.

31 The battle of Solferino was fought in northern Italy on 24 June 1859. It was a pivotal moment in the evolution of modern humanitarianism. It is at the origins of the International Red Cross and Red Crescent Movement and the Geneva Conventions. See [Solferino and the International Committee of the Red Cross](#).

32 See [USG/ERC O’Brien’s Statement](#).

3.21 All actors should remain fully engaged in the preparatory process and be present in Istanbul at the highest level possible. The EU and its Member States stand ready to play their part to develop a compelling vision for transformative change and specific initiatives to deliver that change.³³

The Minister's letter of 21 March 2016

3.22 The Minister describes the December Council Conclusions as “brief, uncontroversial, and reflect[ing] the UK’s position”, and highlights the Conclusions’ call for “practicable outcomes and specific commitments” regarding:

- “A re-commitment to respect of International Humanitarian Law; and
- Reform of the humanitarian system through: better coordination and transparency; improved accountability to beneficiaries; better use of local capacity and innovative instruments; and better coherence between the instruments of humanitarian and development policy.”

3.23 This, the Minister says, aligns well with the UK’s ambition and priorities for the summit:

“However, it is important to note that the Conclusions were agreed before the UN Secretary General’s report was published, and specifics on both the EU’s and Member States’ positions on the content of the Secretary General’s report will become clear at subsequent Council meetings over the coming months.”

UN Secretary General’s report

3.24 The Minister says that the Secretary General published his report for the World Humanitarian Summit — [One Humanity: Shared Responsibility](#) — on 9 February 2016.

3.25 She continues thus:

“It is a good report that is ambitious, well-argued and evidenced. It provides a comprehensive analysis of the key trends and challenges that need to be addressed. It examines the changing scale and nature of risk: conflict, the threat of disease outbreaks as well as climate change, arguing that these threaten the achievement of the SDGs. It also emphasises that there is a shared global responsibility (as well as interest) to address these interlocking threats. As such, it provides a rich and challenging foundation for Istanbul. There are three key messages in the report:

Serious and significant political commitment is required if we are to stop the escalation of conflict and enforce better conduct of hostilities: unless we do that, the prospects for humanity are grim;

Addressing the needs of people at risk of conflict and crises is an integral part of Agenda 2030 and ensuring that no one is left behind. This means getting

³³ See [World Humanitarian Summit preparatory process Council Conclusions](#) for full details.

humanitarian and development actors to work together to deliver more comprehensive approaches to prevent and address the growing risk of crises associated with conflict, fragility and climate change;

We need an international humanitarian system that is fit for the 21st Century. That is: driven by need not mandates; accountable; efficient and able to access adequate and predictable finance.

The report makes clear that in order to address these challenges a number of key shifts will be required by political leaders, as well as by those responsible for humanitarian and development action. An Annex: Agenda for Humanity (see Annex B) sets out a number of specific recommendations for action. This could provide the core of a statement/shared vision that political leaders could sign up to at Istanbul.”

3.26 The Minister says that the Agenda comprises five key action areas:³⁴

“Global leadership to prevent and end conflict; strengthen early warning and early action; invest in stability; building peace through engagement with national, local government and civil society;

Uphold the norms that safeguard humanity: uphold International Humanitarian Law (IHL); refrain from bombing and shelling in urban areas; humanitarian access; speak out on violations; concrete steps to improve compliance; eradicate Sexual and Gender-based Violence (SGBV); global campaign on IHL;

Leave no one behind: includes elements on reducing displacement; protect vulnerable migrants and make migration pathways safer; end statelessness; empower and protect women and girls; educate children and youth and enable them to be agents of positive transformation;

Change people’s lives: from delivering aid to ending need: put people at the centre to build resilience: strengthen local and national capacity in the most disaster prone countries; transcend the humanitarian-development divide;

Invest in humanity. Building on the High Level Panel Report, this section focuses on: investment in local capacity; development of a comprehensive approach to financing risk; increasing investment in fragile states; shifting from funding to predictable and adequate financing that is multi-year, strategic and comprehensive.”

Preparations over the coming months

3.27 The Minister says that the:

“The UK is well underway in its preparations for WHS, with work being led by DfID in coordination with the rest of Whitehall. The UK is working to forge a

³⁴ Which are referred to as “Core Responsibilities” in the UN Secretary General’s report.

series of coalitions to progress the UK’s priority concerns. At the core of this is working with the major donors and the EU to deliver a set of agreed positions where there is significant appetite for reform.”

3.28 Over the coming months:

“Ministers and officials will take advantage of various international meetings to raise WHS issues. Furthermore, EU-specific discussions will continue in the EU Council Working Party for Humanitarian Aid and Food Aid (COHAFA) (attended by officials). COHAFA will lead on the preparation of draft Council Conclusions to be adopted at the Foreign Affairs Council (Development) on 12 May. An agreed EU position on the Summit will show unity of purpose amongst many of the major donors to humanitarian crises, and help build momentum for genuine reform following the Summit in Istanbul.”

Previous Committee Reports

Eleventh Report HC 342–xi (2015–16), [chapter 6](#) (2 December 2015) and Fifth Report HC 342–v (2015–16), [chapter 7](#) (14 October 2015).

4 Application of the EU-Turkey Readmission Agreement

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Council Decision bringing forward the implementation of Articles 4 and 6 of the EU-Turkey Readmission Agreement on the readmission of third country nationals and stateless persons
Legal base	Articles 79(3) and 218(9) TFEU; QMV
Department	Home Office
Document Number	(37516), 6020/16 + ADD 1, COM(16) 72

Summary and Committee's conclusions

4.1 The EU concluded a Readmission Agreement with Turkey in April 2014.³⁵ It establishes reciprocal obligations requiring each participating EU Member State (all bar Denmark and Ireland) and Turkey to readmit their own nationals if they do not meet the necessary conditions for entry, stay or residence in each other's territories. These obligations, as well as the procedures governing their application, entered into force on 1 October 2014. The Agreement also includes provisions requiring the parties to readmit third country nationals or stateless persons for whom they are deemed to be responsible by virtue of issuing a visa or residence permit or by allowing them to remain in or transit through their territory before "directly and illegally" entering the territory of another party. These provisions (Articles 4 and 6 of the Agreement) only enter into force on 1 October 2017.

4.2 Following a meeting with the Turkish Prime Minister last November, EU leaders issued a Statement on relations between the EU and Turkey which includes a commitment to apply all of the provisions of the EU-Turkey Readmission Agreement from June 2016. The accelerated application of the Agreement is intended to make it easier to return irregular migrants entering the EU from Turkey who have no right to stay in the EU and who do not qualify for international protection. In return, the EU has said it will consider lifting visa requirements for Turkish nationals travelling to the Schengen free movement area by October 2016.³⁶ In a more recent Statement, EU leaders indicated that visa requirements could be lifted by the end of June 2016.³⁷

4.3 The EU-Turkey Readmission Agreement establishes a Joint Readmission Committee to monitor the application of the Agreement, decide on implementing arrangements and recommend amendments to the Agreement. The proposed Council Decision establishes the EU's position within the Joint Readmission Committee. Its effect is to give approval for Articles 4 and 6 of the EU-Turkey Readmission Agreement to be applied from 1 June 2016.

35 See the [Council Decision](#) concluding the EU-Turkey Readmission Agreement.

36 See the [Statement](#) issued by EU leaders on 29 November 2015.

37 See the [Statement](#) issued by EU leaders on 7 March 2016.

4.4 The Immigration Minister (James Brokenshire) notes that the UK opted into the EU-Turkey Readmission Agreement and says that the UK's Title V (justice and home affairs) opt-in applies to the proposed Council Decision, although this is contested by the Council and the Commission.³⁸ He explains that consideration of the proposal has been expedited with a view to formal adoption by the Council on 24 March and requests our views on the Government's opt-in decision by 23 March. He indicates that the proposal is likely to have "a significant impact on managing migration flows" to the EU and that UK participation would "assist us in returning third country nationals to Turkey".

4.5 **We note the political imperative of securing full implementation of the EU-Turkey Readmission Agreement and the operational utility of Articles 4 and 6 in managing the movement of third country nationals transiting through Turkey to the EU who have no legitimate claim for international protection. Whilst the objective is clear, we question the means proposed to achieve it. Article 19(1) of the EU-Turkey Readmission Agreement only authorises the Joint Readmission Committee to "decide on implementing arrangements necessary for the uniform application" of the Agreement — in other words, arrangements to determine how (not when) the Agreement is applied. Article 19(1) does not authorise the Committee to amend the Agreement — a much lengthier process involving ratification of any changes agreed by the Council and by Turkey. It appears to us that altering the date on which the obligations contained in Articles 4 and 6 of the Agreement are to be applied constitutes an amendment of Article 24(3) of the Agreement and would therefore exceed the powers given to the Joint Readmission Committee under Article 19(1) of the Agreement. We ask the Minister for his view, as well as his assessment of the risk that the legality of the Council Decision and/or the Decision of the Joint Readmission Committee could be challenged, for example by an individual seeking to resist or delay return to Turkey.**

4.6 **The Minister apologises for the late submission of his Explanatory Memorandum — more than two weeks after the ten day deadline imposed by the Government's own Code of Practice on Parliamentary scrutiny of Title V opt-ins — but does not explain the reasons for the delay. As he acknowledges, this reduces the time available for us to consider the Government's opt-in decision and all but eliminates the possibility of recommending an opt-in debate to allow Members to express their views. We seek a clear assurance from the Minister that the Government intends to adhere to the Code of Practice in future and an explanation of the reasons for failing to do so in this case.**

4.7 **We note that the Commission and Council do not accept that the UK's Title V opt-in Protocol applies to the proposed Council Decision since they consider the UK to be automatically bound by virtue of its participation in the EU-Turkey Readmission Agreement. The Government disagrees and intends to assert its opt-in. We support the Government's position on the grounds that the proposal cites a Title V legal base. We are nevertheless unwilling to clear the proposal from scrutiny until the Government is able to clarify its position on the opt-in. Should the Government decide to opt in, the UK would clearly be bound by the Council Decision (once adopted). If, however, the Government decides not to opt in, it would have no vote and would not consider the UK to be bound by the Council Decision, putting the UK at odds with the Commission and Council. We ask the Minister to tell us whether the Government has decided to opt in. If it has, we also ask him to tell us how the UK voted and what steps the Government**

³⁸ The previous Coalition Government formally notified our predecessor Committee of its decision to opt into the Council Decision concluding the Agreement on 24 October 2012. An opt-in debate was held on 10 September 2012.

has taken to ensure that the UK’s position on the application of the UK’s Title V opt-in Protocol is formally placed on record. If the Government has decided not to opt in, we ask the Government whether or not it considers the UK to be bound by the Council Decision (once adopted) and, if not, whether it intends to bring a legal challenge.

4.8 We note the wider context of which this proposal forms part, including a high level political commitment to consider lifting visa requirements for Turkish nationals travelling to the Schengen free movement area (but not to the UK) in the near future. We therefore consider it appropriate to draw this chapter to the attention of the Home Affairs Committee.

Full details of the documents

Proposal for a Council Decision establishing the position to be taken on behalf of the European Union within the Joint Readmission Committee on a Decision of the Joint Readmission Committee on implementing arrangements for the application of Articles 4 and 6 of the Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation as of 1 June 2016: (37516), [6020/16](#) + ADD 1, COM(16) 72.

Background

4.9 EU leaders and the Turkish Prime Minister met last November and agreed to activate a Joint Action Plan to improve their management of the refugee crisis created by the conflict in Syria.³⁹ The Action Plan seeks to address the crisis in three ways: by tackling the root causes leading to the massive influx of Syrians; by supporting Syrians under temporary protection in Turkey as well as their host communities; and by strengthening cooperation to prevent irregular migration flows to the EU.

4.10 A Statement issued by EU leaders welcomed Turkey’s commitment to meet the benchmarks set out in the Visa Roadmap agreed with the EU, adding:

“The European Commission will present the second progress report on the implementation by Turkey of the visa liberalisation roadmap by early March 2016. Both sides agree that the EU-Turkey readmission agreement will become fully applicable from June 2016 in order for the Commission to be able to present its third progress report in autumn 2016 with a view to completing the visa liberalisation process i.e. the lifting of visa requirements for Turkish citizens in the Schengen zone by October 2016 once the requirements of the Roadmap are met.”⁴⁰

4.11 More recently, EU leaders issued a further Statement indicating that they would seek to accelerate the implementation of the visa liberalisation roadmap “with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016”.⁴¹

39 See the Commission’s [fact sheet](#) on the EU-Turkey Joint Action Plan.

40 See foot note 2 above.

41 See foot note 3 above.

The proposed Council Decision

4.12 The purpose of the proposed Council Decision is to establish the position to be taken by the EU within the EU-Turkey Joint Readmission Committee. The text of a draft Decision to be adopted by the Joint Readmission Committee is annexed to the proposed Council Decision. The draft Decision cites Article 19(1)(b) of the EU-Turkey Readmission Agreement which authorises the Committee to “decide on implementing arrangements necessary for the uniform application of this Agreement”, as well as the political agreement reached between the EU and Turkey last November to make the Agreement fully applicable from June 2016. Article 1 of the draft Decision provides for the obligations contained in Articles 4 and 6 of the EU-Turkey Readmission Agreement concerning the readmission of third country nationals and stateless persons to apply from 1 June 2016. Article 2 specifies that the Decision shall enter into force on the day it is adopted.

The Minister’s Explanatory Memorandum of 14 March 2016

4.13 The Minister explains that a meeting of the EU-Turkey Joint Readmission Committee in January discussed the possibility of taking a Decision under Article 19(1)(b) of the Readmission Agreement to “advance the applicability of the obligations” contained in Articles 4 and 6 of the Agreement on the readmission of third country nationals and stateless persons. He adds:

“The conclusions reached at the EU-Turkey Summit on 7 March increase the importance and urgency of this proposal.”⁴²

4.14 The Minister notes that the proposed Council Decision cites a Title V (justice and home affairs) legal base and includes a recital indicating that the UK’s Title V opt-in Protocol (Protocol No. 21 to the EU Treaties) applies and that the UK has decided to opt in. He continues:

“We understand the recital will be removed. The Commission and Council will consider that the UK is automatically bound, as it already partakes in the Readmission Agreement. However, as the proposal cites a legal base in Title V TFEU, in accordance with Protocol 21, our position is that the UK’s opt-in applies to this proposal.”⁴³

4.15 Under the terms of the UK’s Title V opt-in Protocol, the UK has three months in which to decide whether or not to opt into a proposed Title V measure — this three month period runs from the date on which the last language version was published, in this case 12 February. Notwithstanding these requirements, the Minister continues:

“Given the importance the EU places on this proposal, the EU has requested we expedite the opt-in process so that it can be adopted by 24 March, in time for the next JRC [Joint Readmission Committee] with Turkey. The deadline is therefore 24 March.”⁴⁴

4.16 He indicates that the Government will reach an opt-in decision within this expedited March deadline and invites us to express our views no later than 23 March. The Minister

42 See para 3 of the Minister’s Explanatory Memorandum.

43 See para 8(i) of the Minister’s Explanatory Memorandum.

44 See para 11 of the Minister’s Explanatory Memorandum.

reminds us of the Government’s commitment to take all opt-in decisions “on a case-by-case basis, putting the national interest at the heart of the decision making process”.⁴⁵ He sets out the factors which will inform the Government’s decision:

- The effect of the change of date from 1 October 2017 to 1 June 2016 (“a key consideration”);
- The extent to which the proposal would be likely to improve the process for returning third country nationals and stateless persons to Turkey who have illegally entered, or are illegally present in, the UK; and
- Whether the proposal would have “wider benefits in terms of better management of the movement of migrants from Turkey into the EU, some of whom travel through other Member States to the UK, thereby preventing the onward movement further upstream”.⁴⁶

4.17 Commenting on the substance of the proposal, the Minister says:

“We welcome the renewed focus on returns and readmission. All EU Member States must improve their processes for returning those people who are not in need of international protection. Returning those with no right to remain is an important part of ensuring the credibility of EU border and asylum systems and improving public confidence in them. We welcome improved processes on readmission and return of third country nationals as a means of effectively managing migration.

We have entered into the Readmission Agreement between the European Union and Turkey. Returns to Turkey of Turkish nationals are taking place and processes are currently acceptable. I believe this Council Decision would assist us in returning third country nationals to Turkey, but there are also significant benefits to the UK and other Member States as this would assist in managing the current (and future) flows of migrants into the EU, including the UK. It is likely to have significant impact on managing migration flows.”⁴⁷

4.18 He adds that the Government will “continue to analyse the proposal”.⁴⁸

Previous Committee Reports

None.

45 See para 12 of the Minister’s Explanatory Memorandum.

46 Ibid.

47 See paras 13–14 of the Minister’s Explanatory Memorandum.

48 See para 15 of the Minister’s Explanatory Memorandum.

5 Global Navigation Satellite System

Committee's assessment Legally and politically important

Committee's decision Cleared from scrutiny

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 Number (37331), 14644/15, COM(15) 582

Summary and Committee's conclusions

5.1 We have twice considered 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. When we last considered the document, in February 2016, the Government expressed to us its confidence that the text of the proposed Council Decision would 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 gave us an illustration of EU and Member State competences in the EU's global navigation satellite system programmes, but suggested that it is often difficult in practice to be precise about the type of competence that is engaged.

5.2 We noted the Government's confidence in the alignment of the proposed Council Decision with earlier Council Decisions and asked to hear how the proposed revised text reads. We commented that, as the Government had provided no indication how it intended to secure transparency in the legal texts as to the exercise of competence, we inferred that the intention was to compromise that transparency (and also, therefore, the Government's policy that shared competence should, generally, be exercised by Member States). In order to assess the extent of the compromise we asked the Government to provide us with its analysis of competence, and whether it intended to lay a minute statement setting out the UK position.

5.3 While we awaited information on both the revised alignment text and the competence issue the document was to remain under scrutiny.

5.4 The Government tells us now the revised text that it has secured, based on precedents, ensures that the Council would determine the EU's position in the agreement's fora. However, on the matter of transparency in the legal texts as to the exercise of competence, the Government has refused to share with us its analysis of the competences concerned and says that it does not intend to enter a minute statement on the issue.

5.5 We welcome the news that the Government has secured suitable text in relation to establishing the EU's positions in the agreement's fora. We now clear the document from scrutiny.

5.6 In doing so we draw the attention of the House to the lack of transparency in this text as to the respective exercise of competence by the EU and the Member States meaning that the Government has, once again, effectively compromised its own policy that, in general, shared competence⁴⁹ should be exercised by the Member States. This compromise brings with it the risk of competence creep because the EU institutions can treat this as an example the EU exercising shared competence. It can be inferred from the Government's insistence that its own competence analysis be kept secret, even from Parliamentary scrutiny, that this is a significant risk.

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

5.7 We have twice considered 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 originally 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, and whether any elements of this agreement are matters of shared competence and, if so, which and whether, if so, how the Government intended to secure transparency in the legal texts as to the exercise of competence, including matters of shared competence.

5.8 When we last considered the document, in February 2016, the Government expressed to us its confidence that the text of the proposed Council Decision would be amended to align it with earlier Council Decisions, would be secured so ensuring that the Council would determine the EU's position in the agreement's fora. The Government also gave us an illustration of EU and Member State competences in the EU's global navigation satellite system programmes, but suggested that it is often difficult in practice to be precise about the type of competence that is engaged. It concluded 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".

5.9 We noted the Government's confidence that alignment of the proposed Council Decision with earlier Council Decisions, would be secured so ensuring that the Council would determine the EU's position in the agreement's fora. We understood that a possible precedent could be found in Article 3 of Council Decision 2014/228/EU concerning the similar agreement with Ukraine,⁵⁰ but that, in the light of a recent Court of Justice judgement, C-28/12,⁵¹ the provision would need to be expressed differently, albeit still achieving the required effect. Accordingly, we asked to hear how the proposed revised text reads.

49 Shared competence can be exercised either by the EU or by the member States.

50 See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014D0228>.

51 See <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-28/12>.

5.10 We commented further that as the Government had provided no indication how it intended to secure transparency in the legal texts as to the exercise of competence, including the exercise of shared competence, we inferred that the intention was 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 asked the Government to provide us with its analysis of competence, and whether it intended to lay a minute statement setting out the UK position.

5.11 While we awaited information on both the revised alignment text and the competence issue the document was to remain under scrutiny.

The Minister’s letter of 1 March 2016

5.12 The Minister of State for Universities and Science, Department for Business, Innovation and Skills (Joseph Johnson) first addresses the question of amending the proposed Council Decision to ensure that the Council would determine the EU’s position in the agreement’s fora, saying that:

- the agreement establishes a committee, on which the Commission will represent the EU, to discuss cooperation in the field of satellite navigation;
- the Government has sought to make it clear that the position to be taken by the Commission in this committee should be determined by the Council; and
- the Government has secured a revised text which addresses its concerns and delivers the effect sought via two Recitals in the proposed Council Decision.

5.13 The Minister then explains that:

- the text confirms that any act which has legal effect or that suspends the application of the agreement shall be decided by the Council, on a proposal from the Commission;
- in addition, with respect to any discussion in the committee of matters which do not have legal effect, the Commission should coordinate the position to be taken with Member States; and
- the net effect of this text, combined with Article 218(9) TFEU, is the same as the text contained in earlier cooperation agreements, such as Council Decision 2014/228/EU.

5.14 Noting that the proposal is to be adopted by QMV, the Minister says that:

- a number of Member States are keen to exploit the industrial opportunities offered by the cooperation agreement, and are therefore pressing the Presidency and Commission for a swift conclusion to the matter; and
- securing this new text is therefore particularly welcome.

5.15 Turning to the matter of transparency in the legal texts as to the exercise of competence and the Government’s analysis of competence, the Minister says that:

- the Government has chosen not to share an analysis of the nature and extent of competence in this international agreement;
- in practice, it is often very difficult 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 is difficult to disentangle;
- 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; and
- the Government does not wish to make public the consideration of competence, as this could be used by those who take a different view on the division of competences; and the Government does not intend to lay a minute statement setting out the UK's position.

Previous Committee Reports

Twenty-second Report HC 342–xxi (2015–16), [chapter 2](#) (3 February 2016) and Fifteenth Report HC 342–xiv (2015–16), [chapter 4](#) (16 December 2015).

6 Fitness check for EU legislation affecting the petroleum refining sector

Committee’s assessment	Politically important
Committee’s decision	Cleared from scrutiny
Document details	Commission Staff Working Document: <i>Sectoral fitness check for the petroleum refining sector</i>
Legal base	—
Department	Energy and Climate Change
Document Number	(37522), 15146/15, SWD(15) 284

Summary and Committee’s conclusions

6.1 As part of its smart regulation policy, the Commission has reviewed the entire body of legislation in selected policy fields by means of “fitness checks”, with one of the first sector-specific assessments related to the refining sector. This Commission staff working document sets out the findings of the review, which sought to identify administrative burdens, overlaps, gaps and inconsistencies in ten pieces of EU legislation in the fields of environment, climate action, taxation and energy, relying on five key evaluation criteria (effectiveness, efficiency, coherence, relevance and EU added value), with consideration also being given to the sector’s changing competitiveness position from 2000 to 2012.

6.2 The main findings — which will be fed into future reviews of the legislative acts in question — were that the total cumulative impact of three of the measures in question over the period assessed added an annual average of £0.36 per barrel of refined crude oil throughput (the impact of the other seven pieces of legislation being either negligible or not quantifiable). This corresponds to up to 25% of the observed decline in the net margin of EU refineries, the main factor being the relative increase in the energy costs of refining. It also found that the legislation assessed had so far met its objectives; that the costs involved were generally proportionate to the benefits; that there was no evidence of overlaps or inconsistencies, and some reporting synergies; and that, although this was not the intention, the competitiveness of the refining sector was affected, but with EU added value arising from the creation of a level playing field within the region.

6.3 The Government notes that there are no immediate policy implications, but has welcomed the intention to feed the results into future reviews of the assessed legislation, thereby helping to reinforce best practice in evidence-based policy development. It also agrees with the overall conclusions, noting that, although other factors were more relevant, the loss of competitiveness attributable to the legislation was nevertheless significant.

6.4 This document provides a useful assessment of the effect of various pieces of EU legislation on the petroleum refining sector and its competitiveness. Consequently, although we see no need to hold it under scrutiny, we are drawing it to the attention of the House.

Full details of the documents

Commission Staff Working Document: *Sectoral fitness check for the petroleum refining sector*: (37522), [15146/15](#), SWD(15) 284.

Background

6.5 As part of its smart regulation policy, the Commission’s Work Programme for 2010 announced its intention to keep current regulation fit for purpose by reviewing the entire body of legislation in selected policy fields by means of “fitness checks”. Four pilot projects were launched in 2010, covering specific policy areas, and one of the first sector-specific assessments of the regulatory burden related to the refining sector, in response to calls from Member States and industry representatives at the EU Refining Forum. In particular, the review sought to identify administrative burdens, overlaps, gaps and inconsistencies, and relied on five key evaluation criteria (effectiveness, efficiency, coherence, relevance and EU added value), with consideration also being given to the sector’s changing competitiveness position from 2000 to 2012.

The current document

6.6 This Commission staff working document sets out the findings of the review, which was conducted in 2014 and 2015, and assesses the regulatory impact on the refining sector of ten pieces of EU legislation in the fields of environment, climate action, taxation and energy (see Annex). Each of the measures was individually assessed, and, where possible, its impact on refining margins assessed. The main findings — which will be fed into future reviews of the legislative acts in question — were that:

- the total cumulative impact of EU regulation over the period assessed added an annual average of £0.36 per barrel of refined crude oil throughput;
- of that sum, £0.22 was attributable to the energy costs associated with reducing the contents of sulphur in order to comply with the Fuels Quality Directive, £0.10 to the capital costs incurred by refineries in complying with emissions limits specified in the Industrial Emissions Directive, and £0.04 to the blending, storage and transport of biofuels as a consequence of the Renewable Energy Directive, whilst the impact of the other seven pieces was either negligible or not quantifiable;
- the impacts of these Directives increased from £0.13 per barrel in 2000 to £0.40 by 2012, having peaked in 2008; and
- the deterioration in competitiveness due to rising EU operational costs was mostly attributable to the relative increase in the energy costs of refining, but the average regulatory cost impact accounted for up to 25% of the observed decline in the net margin of EU refineries.

6.7 In terms of the five evaluation criteria, the document concludes:

Effectiveness

The legislation assessed has so far met its objectives (for instance, in terms of emissions reductions), but one conflict identified arises where the energy required to achieve emissions reductions by removing sulphur from fuel increases exponentially.

Efficiency

The cost-benefit analysis indicates that costs can be considered proportionate to the relative benefits achieved, but, whilst individually assessed costs were not disproportionate, the cumulative impact was far from negligible, accounting for up to 25% of competitiveness loss. In particular, whilst some refineries have been able to absorb such costs and remain competitive, this has not been the case for others, the gap between the highest and lowest operating margins having increased during the period.

Coherence

No evidence was found of overlaps or inconsistencies which would have led to an excessive administrative burden, regulatory gaps or obsolete measures, and some reporting synergies were identified.

Relevance and EU added value

Whilst it is clear that the legislation being assessed did not intend to affect the competitiveness of the refining sector, this was nevertheless one outcome (although there were other factors which had a greater effect). However, the EU added value of the legislation lay in levelling the playing field within the region, as compared with some competitor regions (notably the Middle East and Former Soviet Union).

6.8 Overall, the final assessment in the review is that the legislation delivered its objectives at the sectoral level, and that the costs and benefits (based on the data obtained in the analysis) were proportionate. There were other factors which impacted more significantly on sector competitiveness than the assessed legislation, with energy costs being the main driver, but no assessment was made of the future impact on the sector of this legislation, or of other future legislation. However, it was noted that this does not mean that future regulatory policy would not have more significant impacts on the sector's competitiveness.

The Government's view

6.9 In her Explanatory Memorandum of 29 February 2016, the Minister of State for Energy (Andrea Leadsom) notes that, as the report does not recommend any legislative changes, there are no immediate implications for government policy. However, she welcomes the fact that the follow-up actions proposed, under which the results presented will be fed into upcoming reviews of the assessed legislative acts, appear designed to help reinforce best practice in evidence-based policy development.

6.10 She describes the report as analytically robust, and agrees with its overall conclusions, commenting that the 25% loss of competitiveness attributable to EU legislation is significant. However, she also notes that it was possible to quantify the costs for only three pieces of legislation, and that, given the large competition impact of increased energy costs, it is possible that the cumulative impacts of the remaining legislation may also have contributed to loss of competitiveness, albeit indirectly. She also says that there is already a significant policy effort in the UK in ensuring indirect energy costs are addressed in order to combat carbon leakage.⁵²

6.11 The Minister concludes by saying that the Government agrees that, in considering future legislation, the EU and the UK should try to address the adverse impacts on competition, particularly whilst there is still no overall level playing field for fuel product suppliers globally. She adds that this is line with existing UK policy, which recognises that there is a national need to ensure a competitive and resilient supply chain for oil products during the transition to a low carbon economy, and that the Government will continue to work with industry to remove market distortions and ensure relevant regulations are fit for purpose so that the sector can compete within Europe and, as far as possible, globally. It will also continue to pro-actively push for greater ambition at an EU level to ensure a proportionate regulatory burden is placed on the sector.

Previous Committee Reports

None.

Annex: Legislation assessed

Renewables Energy Directive (2009/28/EC);

Energy Taxation Directive (2003/96/EC);

EU Emissions Trading System (2003/87/EC);

Fuels Quality Directive (2009/30/EC);

Directive on Clean and Energy Efficient Vehicles (2009/33/EC);

Industrial Emissions Directive (2010/75/EU);

Strategic Oil Stocks Directive (2009/119/EC);

Marine Fuels Directive (2012/33/EU);

⁵² This can arise when businesses relocate to other countries with less stringent constraints on emissions.

Energy Efficiency Directive (2012/27/EU);

Air Quality Directive (2008/50/EC).

7 Paris Agreement on Climate Change

Committee's assessment	Legally and Politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Council Decision on the signing of the Paris Agreement
Legal base	Articles 192(1) and 218(5) TFEU; QMV
Department	Energy and Climate Change
Document Number	(37557), 6742/16, COM(16) 62

Summary and Committee's conclusions

7.1 In the light of the December 2015 Paris Agreement on Climate Change, the Commission has now produced this draft Decision which authorises the President of the Council to decide who should sign the Agreement on behalf of the EU.

7.2 **This does not raise any difficulties for the UK, which regards signature of the Agreement as an important precursor to ratification by the EU, and will itself be signing in its own right. However, given the importance of the subject matter, we think it right to draw this development to the attention of the House. We shall however consider carefully the declaration of competence due to be lodged, in accordance with Article 20 of the Agreement, at the time of the EU's conclusion (ratification); in particular the extent to which it indicates that the EU will be able to exercise any competence that is shared with the Member States.**

Full details of the documents

Proposal for a Council Decision on the signing, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change: (37557), 6742/16, COM(16) 62.

Background

7.3 On 21 July 2015, we drew to the attention of the House a Communication⁵³ from the Commission setting out the steps which it believed the EU needed to take in advance of the conference to be held in Paris in December 2015 to reach an agreement, legally binding on all parties, on the reduction in greenhouse gas emissions needed to contain the increase in global average temperatures compared with pre-industrial levels.

53 See (36686) 6588/15: First Report HC 342–i (2015–16), chapter 45 (21 July 2015).

The current document

7.4 Following the Agreement reached in Paris, the Commission has now brought forward this draft Council Decision which authorises the President of the Council to decide who should sign the Agreement on behalf of the EU.

The Government's view

7.5 In his Explanatory Memorandum of 17 March 2016, the Parliamentary Under Secretary of State at the Department for Energy and Climate Change (Lord Bourne of Aberystwyth) describes this as a straightforward proposal under Article 218(5) TFEU, with signature of the Agreement being an important precursor to ratification, which is expected to take place at a later date, probably after the conclusion of negotiations on the EU effort share for the 2030 climate and energy package, at which point it will be subject to Parliamentary approval in each Member State. (He suggests that the Commissioner responsible for Climate Action and Energy would be the natural choice to sign the Agreement on behalf of the EU, and adds that he will himself be signing on behalf of the UK.)

7.6 In the meantime, he notes that signature in itself does not commit the EU or its Member States to implement the Agreement before ratification takes place, although he points out that the EU must in the meantime refrain from acts which would defeat the object and purpose of the Agreement, unless it subsequently expresses its intention not to become a Party to it.

Previous Committee Reports

None.

8 Restrictive measures against North Korea

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	(a) Council Decision amending Decision 2013/183/CFSP concerning restrictive measures against the Democratic People's Republic of Korea; (b) Council Implementing Regulation amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea
Legal base	(a) Article 29 TEU; unanimity; (b) Article 13 of Council Regulation (EC) No.329/2007, —
Department	Foreign and Commonwealth Office
Document Numbers	(a) (37568), —; (b) (37569), —

Summary and Committee's conclusions

8.1 The Democratic People's Republic of Korea (DPRK) is currently subject to comprehensive sanctions measures imposed by the UN and EU. These measures include an asset freeze, travel ban and an extensive embargo which prohibits the export of arms, dual-use goods, and luxury goods and imposes restrictions on the export of other listed items that could contribute to nuclear or ballistic missile programmes (see "Background" for further details).

8.2 The DPRK has continued in its attempt to circumvent these sanctions measures in order to support its nuclear, ballistic or other weapons of mass destruction related ambitions — most recently by "the nuclear test conducted on 6 January 2016 'in violation and flagrant disregard' of the relevant resolutions, its actions thereby constituting a challenge to the Treaty on Non-Proliferation of Nuclear Weapons (NPT) and to peace and stability in the region and beyond"; and then by the "launch of 7 February 2016, using ballistic missile technology". In response, on 4 March, the UN Security Council unanimously passed UN Security Council resolution 2270 (2016) (see paragraphs 8.19–8.20 below for details of the relevant UN statement).

8.3 The UN statement sets out the detailed picture, which the BBC sums up thus:

- "A ban on the export of coal, iron and iron ore used for North Korea's nuclear or ballistic missile programmes;
- A ban on all exports of gold, titanium ore, vanadium ore and rare earth minerals;
- A ban on aviation fuel exports to the country, including 'kerosene-type rocket fuel';
- A ban on military and police co-operation, closing down North Korea's training programmes abroad, especially in Africa;

- Upmarket watches, watercraft, snowmobiles and other recreational sports equipment added to a ban on luxury goods; and
- Countries working in North Korea’s financial and banking sector are now obliged to freeze the assets of companies and other entities linked to North Korea’s nuclear and missile programmes — under a previous resolution, they were only encouraged to do so.”⁵⁴

The EU response

8.4 On 4 March the EU issued the following statement:

“On 4 March 2016, the Council added 16 people and 12 entities to the list of targets subject to EU restrictive measures against the Democratic People’s Republic of Korea (DPRK).

The decision transposes the new listings imposed by United Nations Security Council Resolution 2270 adopted on 2 March 2016 in response to North Korea’s nuclear test and rocket launch on 6 January 2016 and 7 February 2016, respectively.

The legal acts will be published in the Official Journal on 5 March 2016.

EU restrictive measures against North Korea were introduced on 22 December 2006. The existing measures implement all UNSC resolutions adopted after the DPRK’s nuclear tests and launches using ballistic missile technology and also include additional EU autonomous measures. They target North Korea’s nuclear, WMD and ballistic missile programmes. The measures include prohibitions on the export and import of arms, goods and technology that could contribute to these programmes. Both the UN and the EU, autonomously, also imposed measures targeting financial services, trade and transport. The EU last strengthened its measures on 22 April 2013, transposing UNSC resolution 2094”.⁵⁵

The Council Decision and Council Implementing Regulation

8.5 The Minister for Europe (Mr David Lidington) explains that “transposition of the new UN sanctions measures to EU law will be complex”, and that the EU:

“has therefore taken the decision to transpose the new listings first, thereby mitigating the risk of asset flight, with the sectoral measures following at a slightly later date, once corresponding legal texts have been negotiated and agreed by all 28 EU Member States.”

8.6 Thus, the Minister says, the Council Decision and Commission Implementing Regulation “implement the addition of 16 persons and 12 entities to the current list of persons and entities subject to sanctions measures, and the biographical amendments only”.

⁵⁴ See [UN imposes tough North Korea sanctions](#).

⁵⁵ See [North Korea: EU expands restrictive measures, adds 16 people and 12 companies](#).

8.7 The Minister notes that this was “the DPRK’s fourth nuclear test since 2006 and was in violation of a number of existing UN Security Council sanctions on the country”. He summarises the strengthened sanctions as “a range of measures” that:

“tackle proliferation networks; increase inspections of North Korean cargo and controls on shipping; adds new sectoral bans on the export of coal, iron ore, gold and other metals, and on the import of aviation fuel; requires the mandatory closing of North Korean financial sector entities and banks that we suspect could be contributing to the DPRK’s nuclear or ballistic missile programmes...[and] also designates additional North Korean individuals, entities, registered vessels, as well as certain luxury goods.”

8.8 All in all, Minister notes, these “robust sanctions measures” strengthen the means of tackling North Korea’s illicit proliferation and its illegal nuclear programmes; constitute “a strong signal that the international community is prepared to take tough action in response to violations of UNSC resolutions”; will “severely disrupt DPRK’s ability to acquire the material it needs to support its nuclear and other WMD related programmes” and have “sent a very clear message that the DPRK’s actions pose a serious challenge to the Nuclear Non-Proliferation Treaty, as well as to international peace and stability, and will not be tolerated”.

8.9 The US has also introduced these and further measures of its own; and, in recent days, the DPRK has both imprisoned a US student and carried out further ballistic missile tests (see “Background”). Annual US-South Korea military exercises are in prospect. Tensions are thus high. The EU is among those again calling on the DPRK “to refrain from actions that increase tensions in the region and threaten international peace and security”, in a statement that also says that it will “continue to closely monitor developments and coordinate with our partners on how to respond to these violations of UN Security Council Resolutions (see “Background” for details).

8.10 When he submits the next iteration in this process, we should therefore be grateful if the Minister would provide a full outline and analysis of the wider political context (which is minimal in his present Explanatory Memorandum).

8.11 In the meantime, we now clear this Council Regulation and Council Implementing Regulation from further scrutiny.

8.12 In the circumstances and on this occasion, we do not take issue with the Minister having over-ridden scrutiny (see paragraph 8.23 below for details).

Full details of the documents

(a) Council Decision (CFSP) 2016/319 of 4 March 2016 amending Decision 2013/183/CFSP concerning restrictive measures against the Democratic People’s Republic of Korea: (37568), —; (b) Council Implementing Regulation (EU) 2016/315 of 4 March 2016 amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People’s Republic of Korea: (37569), —.

Background

8.13 The EU and the DPRK established diplomatic relations in 2001, but political contacts had started earlier, with political dialogue on a relatively regular basis since 1998.⁵⁶ However, according to the EU website:

“The EU and the DPRK have very different views on issues that are of major concern to the international community, in particular on the DPRK’s weapons of mass destruction and ballistic missile-related programmes, human rights and regional relations... [and] [i]n this context, the EU has been robustly implementing the resolutions of the UN Security Council.”⁵⁷

8.14 In 2013, the EU further strengthened restrictive measures against the DPRK in view of nuclear and ballistic missile tests in December 2012, thereby giving effect to measures provided for in UNSCR 2087 (2013) and also including autonomous EU measures: it banned the export and import of key components for ballistic missiles with the DPRK, such as certain types of aluminium used in ballistic missile-related systems. The Council also prohibited trade in new public bonds from the DPRK. It outlawed trade in gold, precious metals and diamonds with North Korean public bodies and stopped the delivery of new DPRK denominated banknotes and coinage to the central bank of the DPRK. North Korean banks were no longer allowed to open new branches in the Union, nor establish joint ventures with European financial institutions. Nor were European banks permitted to establish offices and subsidiaries in the DPRK.⁵⁸

8.15 On 7 March 2013, the UN Security Council passed unanimously UNSCR 2094 (2013), strengthening and expanding the scope of UN sanctions against the DPRK by targeting the illicit activities of diplomatic personnel, transfers of bulk cash, and the country’s banking relationships, in response to a third nuclear test on 12 February 2013.⁵⁹

8.16 Subsequently, on 22 April 2013, the EU adopted [Council Decision 2013/183/CFSP](#) concerning restrictive measures against the DPRK. This legislation implemented the provisions as proscribed by UNSCRs 1718 (2006), 1874 (2009), 2087 (2013) and 2094 (2013), and implemented certain EU autonomous restrictive measures, including additional listings of individuals and entities.

8.17 On 2 July 2015, via Council Decision (CFSP) 2015/10668, the EU added one entity and six persons to the list of persons and entities subject to restrictive measures in Annex II to Decision 2013/183/CFSP.⁶⁰ The Minister for Europe explained that KNIC GmbH — a subsidiary of KNIC headquarters based in Pyongyang — had been generating foreign exchange revenue within Europe; was linked to Office 39 of the Korean Workers Party, which had already been designated under EU sanctions; had therefore been sanctioned under the provisions in the EU sanctions regime directed against entities and individuals acting on behalf of, or at the direction of, an entity that had been sanctioned by the EU;

56 See [EU relations with the Democratic People’s Republic of Korea \(North Korea\)](#) for full background.

57 See the [EU Fact Sheet](#).

58 See [Council reinforces EU sanctions against North Korea](#) of 18 February 2013 for details.

59 See [Security Council Strengthens Sanctions on Democratic People’s Republic of Korea, in Response to 12 February Nuclear Test](#) for full details.

60 The Korea National Insurance Company (KNIC) GmbH (alias Korea Foreign Insurance Company), its managing director and three members of staff, and two members of staff at the KNIC headquarters in Pyongyang.

and this action would prevent the DPRK from accessing a significant revenue stream, potentially slowing down the progress of its weapons programmes, and also demonstrate the EU's commitment to properly implementing sanctions against the DPRK.

8.18 Important as the overall measures themselves are, the Committee did not consider these additions, in and of themselves, of sufficient political and legal interest to warrant a substantive Report, and cleared them from further scrutiny accordingly.⁶¹

UN Security Council resolution 2270 (2016)

8.19 On 2 March 2015, the UN Security Council issued the following statement:⁶²

“The Security Council today condemned in the strongest terms the nuclear test conducted by the Democratic People’s Republic of Korea on 6 January 2016 “in violation and flagrant disregard” of the relevant resolutions, its actions thereby constituting a challenge to the Treaty on Non-Proliferation of Nuclear Weapons (NPT) and to peace and stability in the region and beyond.

Unanimously adopting resolution 2270 (2016), the 15-member Council also condemned the Democratic People’s Republic of Korea launch of 7 February 2016, using ballistic missile technology, and demanded that it comply immediately with its international obligations. Its previous actions on the subject included the adoption of resolutions 1718 (2006), 1874 (2009), 2087 (2013) and 2094 (2013).

By today’s resolution, the Council decided that all States should inspect cargo within or transiting through their territory — including airports, sea ports and free trade zones — that was destined for or originating from the Democratic People’s Republic of Korea. It also decided that Member States should prohibit that country’s nationals and those in their own territories from leasing or chartering their flagged vessels and aircraft to it, or providing it with crew services. The prohibition should apply also to any designated individuals or entities assisting in the evasion of sanctions or violation of all related resolutions.

The Council also decided that all States should prohibit their own nationals and others subject to their jurisdiction, as well as entities incorporated in their respective territories from registering vessels in the Democratic People’s Republic of Korea and obtaining authorization for vessels to use their respective flag. In addition, it decided that all States should deny permission for any aircraft to take off from, land at or overfly their respective territories if such aircraft contained items for supply, sale, transfer or export of which were prohibited by all related resolutions, except in cases of emergency landing.

Further by the text, the Council decided that Pyongyang should not supply, sell or transfer coal, iron, iron ore, gold, titanium ore, vanadium ore, and rare earth minerals, and that all States should prohibit their nationals from procuring such materials. By other terms, it decided that all States should prevent the

61 See (36971) — and (36972) —: Third Report HC 342–iii (2015–16), [chapter 45](#) (9 September 2015).

62 For the full text, which includes a number of subsequent statements by UN member state representatives and the text of UNSCR 2270 (2016), see [Statement](#).

sale or supply of aviation fuel — including aviation gasoline, naphtha-type jet fuel, kerosene-type jet fuel, and kerosene-type rocket fuel — whether or not originating in their own territory, to the Democratic People’s Republic of Korea.

By other terms, the Council decided that Member States should expel Pyongyang’s diplomats, governmental representatives or nationals acting in a governmental capacity who assisted in the evasion of sanctions or the violation of related resolutions. It decided further that all Member States should prevent specialized teaching or training of Democratic People’s Republic of Korea nationals within their territories, or by their nationals, in disciplines that could contribute to the proliferation of sensitive nuclear activities or the development of nuclear-weapon delivery systems.”

8.20 According to the UN statement, the UK Permanent Representative to the UN:

“noted that the resolution contained some of the toughest measures ever taken by the Council, adding that the Democratic People’s Republic of Korea had to be deterred from pursuing illegal actions. However, the resolution was not intended to have adverse humanitarian consequences, nor to affect those activities not prohibited by Council resolutions, nor to affect international relief efforts, he emphasized, pointing out that the new provisions on cargo inspection were consistent with obligations set out in the Vienna Convention on Diplomatic Relations. Encouraging all States to implement the new resolution’s provisions in full, he urged Pyongyang to return to credible and authentic multilateral talks and permit full access by International Atomic Energy Agency (IAEA) inspectors.”

The Council Decision and the Council Implementing Regulation

8.21 In his Explanatory Memorandum of 18 March 2016, the Minister explains that, as transposition of the new UN sanctions measures to EU law will be complex, the EU decided to transpose the new listings first, thereby mitigating the risk of asset flight, with the sectoral measures following, once corresponding legal texts have been negotiated and agreed by all 28 EU Member States.

The Government’s view

8.22 The Minister says:

“These robust sanctions measures will severely disrupt DPRK’s ability to acquire the material it needs to support its nuclear and other WMD related programmes. The United Nations has also sent a very clear message that the DPRK’s actions pose a serious challenge to the Nuclear Non-Proliferation Treaty, as well as to international peace and stability, and will not be tolerated.”

The Minister’s letter of 18 March 2016

8.23 The Minister notes that the EU adopted these measures on 4 March 2016, and says:

“The rapid transposition of UN sanctions designations into EU legislation is highly desirable in so far as it mitigates the risk of asset flight once designations have been published by the UN and ensures the effectiveness and credibility of the sanctions regime. I regret that I found myself in the position of having to agree to the adoption of these documents before your Committee had an opportunity to scrutinise them.”

Related developments

8.24 On 17 March, according the BBC, US President Barack Obama issued an executive order imposing new sanctions on North Korea that freezes North Korean government property in America and bans US exports to, or investment in, North Korea, and also “greatly expands powers to blacklist anyone, including non-Americans, dealing with North Korea”; thus including both measures from the recently agreed UN Security Council sanctions and separate sanctions passed by Congress and enacted by the president on 19 February.⁶³

8.25 The following day, the BBC and others reported that North Korea test-fired two further ballistic missiles, which US officials described as medium-range, launched off the east coast and flying about 800km (500 miles) before falling into the water. The BBC notes that the DPRK also sentenced a US student to 15 years hard labour on 16 March for “severe crimes” against the state — he having been “arrested for trying to steal a propaganda sign from a hotel while on a visit in January”. The BBC also notes that the “US and South Korea are also holding their biggest annual military drills this month, which routinely generate tension”, and that “this year North Korea threatened to launch a “pre-emptive nuclear strike of justice” against the US and South Korea”.⁶⁴

8.26 On 18 March, the EU also issued the following statement:

“The reported launch of ballistic missiles by the Democratic People’s Republic of Korea (DPRK) is another clear violation of several United Nations Security Council Resolutions, including the latest one adopted on 2 March. We call again on the DPRK to refrain from actions that increase tensions in the region and threaten international peace and security. The DPRK must fully and rapidly comply with its international obligations, including by halting any launch using ballistic missile technology and abandoning its ballistic missile programmes in a complete, verifiable and irreversible manner. We will continue to closely monitor developments and coordinate with our partners on how to respond to these violations of UN Security Council Resolutions.”⁶⁵

Previous Committee Reports

None.

63 See [Barack Obama imposes new North Korea sanctions](#).

64 See [North Korea fires ballistic missiles, US officials say](#).

65 See [statement](#).

9 Restrictive measures against the Central African Republic

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	(a) Council Implementing Decision concerning restrictive measures against the Central African Republic (b) Council Implementing Regulation concerning restrictive measures against the Central African Republic
Legal base	(a) Article 31(2) TEU and Article 2c of Council Decision 2013/798/CFSP; QMV, (b) Article 17(1) and (2) of Council Regulation (EU) No. 224/2014; QMV
Department	Foreign and Commonwealth Office
Document Numbers	(37592), —; (37593), —

Summary and Committee's conclusions

9.1 On 28 January 2014, the United Nations Security Council adopted Security Council Resolution (UNSCR) 2134 (2014) providing a framework for sanctions (including an arms embargo, a travel ban and asset freeze measures) for use against certain persons responsible for, complicit in or having engaged in, directly or indirectly, actions or policies that threaten the peace, security or stability of the Central African Republic. The resolution provided the UN Security Council with the means to apply sanctions against individuals who meet the designation criteria, in support of resolving the conflict in the Central African Republic. This was given effect by Council Regulation (EU) No. 224/2014 of 10 March 2014.

9.2 On 20 August 2015, the UN Sanctions Committee established to oversee the relevant sanctions measures concerning the Central African Republic added three persons and one entity to the list of persons and entities subject to the measures imposed by UNSC Resolution 2134 (2014).⁶⁶ On 2 September 2015, the European Union then adopted Council Decision (CFSP) 2015/1488 and Council Regulation 2015/1485 which transposed the UN measures into EU law. The full background, including the EU's wider role in supporting the UN, is outlined in our earlier relevant Report.⁶⁷

9.3 On 17 December 2015, that same UN Sanctions Committee added two further persons to the list of persons and entities subject to the measures imposed by UNSC Resolution 2134 (2014).⁶⁸

9.4 In submitting them for scrutiny, the Minister for Europe (Mr David Lidington) explained clearly and convincingly why these further measures were appropriate: in sum,

66 Habib SOUSSOU, Ouman YOUNOUS ABDOULAY, Alfred YEKATOM and Badica (Bureau d'Achat de Diamant en Centrafrique).

67 See (37080), —; (37081), —: Fifth Report HC 342–v (2015–16), [chapter 24](#) (14 October 2015).

68 Haroun GAYE and Eugene Barret NGAIKOSSET.

those affected — both extant and additional — were undermining attempts to bring peace, reconciliation and the establishment of a democratic polity to this deeply traumatised country, and these measures sent

“a strong unified message condemning the incidents of violence and intimidation, holding to account the actions of spoilers in their attempt to undermine the election process and who threaten the peace and stability of CAR” (see our most recent Report for details).⁶⁹

9.5 On 27 January 2016, the United Nations Security Council adopted Security Council Resolution (UNSCR) 2262 (2016) renewing the sanctions framework. On 7 March 2016, the UN Sanctions Committee added one person and one entity to the list of persons and entities subject to the measures imposed by UNSC Resolution 2262 (2016): viz., Joseph KONY; and the Lord’s Resistance Army (LRA).

The EU Council Implementing Decision and Regulation

9.6 These transpose the UN designations into EU law.

9.7 **The Minister has explained the justification with equal clarity:**

“Joseph Kony has been described as the founder, religious leader, chairman and Commander-in-Chief of the LRA. He is responsible for implementing the LRA’s brutal strategy involving abductions, forced displacement, sexual violence and rape, killing, and mutilation of thousands of civilians, as well as looting and destruction of property across central Africa”(see paragraphs 9.16–9.17 below for details).

9.8 **In the circumstances and on this occasion, we do not take issue with the Minister having over-riden scrutiny (see paragraph 9.18 below for details).**

9.9 **We now clear the documents.**

Full details of the documents

(a) Council Implementing Decision (CFSP) 2016/360 of 11 March 2016 implementing Decision 2013/798/CFSP concerning restrictive measures against the Central African Republic: (37592), —; (b) Council Implementing Regulation (EU) 2016/354 of 11 March 2016 implementing Article 17(1) of Regulation (EU) No.224/2014 concerning restrictive measures in view of the situation in the Central African Republic: (37593), —

Background

9.10 Council Decision 2013/798/CFSP imposed a year-long arms embargo on the direct or indirect supply, sale or transfer to the Central African Republic (CAR) of arms and related materiel, including weapons and ammunition, military vehicles, paramilitary equipment and spare parts related to military activities, in line with UNSCR 2127 (2013) of 5 December 2013, which the United Nations Security Council (UNSC) adopted in response to the

69 See (ESC (37436), — and (37437) —: Eighteenth Report HC 342–xvii (2015–16), chapter 17 (13 January 2016).

deteriorating situation in the CAR, which centred on fighting between predominantly Muslim militants, known as the ex-Séléka,⁷⁰ and bands of Christian vigilantes, the anti-balaka.⁷¹

9.11 On 28 January 2014, the UNSC adopted Resolution 2134 (2014), which extended and clarified the arms embargo imposed by UNSCR 2127 (2013) and introduced a travel ban on, and provided for the freezing of funds and economic resources of, certain persons engaging in, or providing support for, acts that undermine the peace, stability or security of the Central African Republic.

9.12 Council Decision 2014/125/CFSP of 10 March 2014 amended Council Decision 2013/798/CFSP, to reflect the changes that UNSCR 2134 (2014) introduced; the Regulation accompanying it enabled the embargo, travel ban and asset freeze measures in the UNSCR and Council Decision to be implemented.

9.13 France has played a prominent role in this process, having deployed 1,600 French troops in early December 2013 on a mission to stem the fighting: the focus was on specific individuals with Séléka or anti-balaka links, although no specific listings had yet been proposed.

9.14 The EU has also become heavily engaged in enabling the safe and secure environment that would provide the right conditions for a sustainable political process, via its two ESDP missions: the EU military stabilisation force, EUFOR CAR, which was launched on 1 April 2014 under UNSCR 2134 (2014) and ended on 15 March 2015; handing over to the EU Military Advisory Mission to the Central African Republic, EUMAM CAR (a.k.a. EUMAM RCA in French), which was established via the Council Decision that was cleared on 14 January 2015.⁷² EUMAM CAR is tasked working with MINUSCA on security sector reform (SSR), i.e., introducing order into the CAR armed forces.⁷³

The Council Implementing Decision and Council Implementing Regulation

9.15 In his Explanatory Memorandum of 18 March 2016, the Minister for Europe explains that the UN Joseph Kony and the LRA were listed by the United Nations on 7 March 2016 pursuant to paragraphs 12 and 13 (b), (c), and (d) of resolution 2262 (2016) for

“engaging in or providing support for acts that undermine the peace, stability or security of the CAR”;

involved in planning, directing, or committing acts that violate international human rights law or international humanitarian law, as applicable, or that constitute human rights abuses or violations, in the CAR, including acts involving sexual violence, targeting of civilians, ethnic or religious-

70 Séléka was an alliance of rebel militia factions that overthrew the Central African Republic government on 24 March 2013. Nearly all the members of Séléka are Muslim.

71 The term used to refer to the Christian militias formed after the rise to power of the Séléka, who had been linked to atrocities against Muslim communities; Anti-balaka means “anti-machete” or “anti-sword” in the local Sango and Mandja languages.

72 See (36595), —: Twenty-ninth Report HC 219–xxviii (2014–15), [chapter 14](#) (14 January 2015) for full details.

73 See [EUMAM RCA](#) for full details.

based attacks, attacks on schools and hospitals, and abduction and forced displacement”; “recruiting or using children in armed conflict in the CAR, in violation of applicable international law”;

providing support for armed groups or criminal networks through the illicit exploitation or trade of natural resources, including diamonds, gold, and wildlife products in or from the CAR”.

The Government’s view

9.16 The Minister goes on to say:

- Joseph Kony has been described as the founder, religious leader, chairman and Commander-in-Chief of the LRA, and is responsible for implementing the LRA’s brutal strategy involving abductions, forced displacement, sexual violence and rape, killing, and mutilation of thousands of civilians, as well as looting and destruction of property across central Africa;
- additionally, the LRA is also responsible for attacks on diamond and gold mining sites and for the illegal poaching of elephants in the Garamba National Park in the Democratic Republic of Congo;
- the trade in natural resources, wildlife and wildlife products represents a significant source of income for Kony and the LRA;
- Kony is subject to an arrest warrant issued by the International Criminal Court under the charges of twelve counts of crimes against humanity including murder, enslavement, sexual enslavement, rape, inhumane acts of inflicting serious bodily injury and suffering, and twenty-one counts of war crimes including murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, pillaging, inducing rape, and enlisting, through abduction, of children under the age of 15 years.

9.17 More generally, the Minister says:

“Multilateral sanctions play an important role in supporting the peace, security and stability of CAR. Through the designation of Joseph Kony and the LRA, the UN Security Council has sent a strong unified message condemning the incidents of violence and intimidation, holding to account and severely disrupting the actions of spoilers in their attempt to undermine this process.”

The Minister’s letter of 18 March 2016

9.18 The Minister explains the over-ride of scrutiny as follows:

“The draft EU legal acts were received by my officials on 8 March 2016 and formally adopted on 11 March 2016. The rapid transposition of UN sanctions designations into EU legislation is highly desirable in so far as it mitigates the risk of asset flight once designations have been published by the UN and

ensures the effectiveness and credibility of the sanctions regime. I regret that I found myself in the position of having to agree to the adoption of these Council documents before your Committee had an opportunity to scrutinise them.

As you know, the responsibility to keep your Committee informed on issues concerning sanctions is something I take seriously and the need for the override of scrutiny on this occasion was regrettably unavoidable.”

Previous Committee Reports

None; but see (37436) and (37437): Eighteenth Report HC 342–xvii (2015–16), [chapter 17](#) (13 January 2016) and (37080) and (37081): Fifth Report HC 342–v (2015–16), [chapter 24](#) (14 October 2015).

10 Value added taxation

Committee's assessment	Politically important
<u>Committee's decision</u>	Cleared from scrutiny
Document details	Proposal for a Council Directive concerning the duration of the obligation to respect a minimum standard value added tax rate.
Legal base	Article 113 TFEU; consultation; unanimity
Department	HM Treasury
Document Number	(37399), 15373/15, COM(15) 646

Summary and Committee's conclusions

10.1 The Commission has proposed a Directive to extend application of the minimum standard VAT rate, of 15%, for a period of two years from 1 January 2016 until 31 December 2017. When we considered this proposal last month we found it of itself unexceptionable. However, we held it under scrutiny pending some further information. We asked to hear from the Government whether it might use its ability to stymie the proposal in order to secure agreement to amending the Principal VAT Directive so as to allow zero rating of sanitary products, and, if not, why not.

10.2 The Government now tells us of its view that the question of zero rating of sanitary products should be addressed in discussion of the Commission's Action Plan for a simple, efficient and fraud proof definitive system of VAT, publication of which is expected this month. It also says that, that aside, the potential for any leverage arising from holding up the minimum standard rate proposed Council Directive is, in its view, very limited.

10.3 Given the Government's comments we now clear this document from scrutiny. However, we expect the Government to robustly pursue zero rating for sanitary products in the context of the Commission's forthcoming Action Plan.

Full details of the documents

Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, with regard to the duration of the obligation to respect a minimum standard rate: (37399), [15373/15](#), COM(15) 646.

Background

10.4 An EU minimum standard rate of VAT of 15% was introduced on 1 January 1993 as part of a package of measures for the completion of the single market. The provision has been extended five times, most recently until 31 December 2015. The Commission now proposes a Directive to extend application of the minimum standard VAT rate for a period of two years from 1 January 2016 until 31 December 2017. The Commission suggests that,

in addition to the single market case for the proposal, a two year extension will allow a full discussion of VAT rates in the context of an Action Plan about a simple, efficient and fraud proof definitive system of VAT, which it intends to publish, probably in late spring 2016.

10.5 When we considered this proposal last month we heard from the Government that:

- there are grounds for a time limited extension of the minimum standard VAT rate, as doing so sets a floor for EU wide standard VAT rates and so helps to minimise the potential for distortion of competition;
- the proposal has no consequences for the UK's VAT rates, nor does it limit the Government's ability to set the level of the UK's standard VAT rate above the agreed EU wide minimum;
- this extension will also serve to provide legal certainty, particularly in light of the Commission's envisaged Action Plan; and
- in light of these considerations, although it notes that the previous extension lasted until 31 December 2015, the Government does not consider there are any issues with retrospective agreement to an extension from 1 January 2016.

10.6 Although we found this proposal of itself unexceptionable, we held it under scrutiny as we wanted the Government to tell us whether it might use its ability to stymie the proposal in order to secure agreement to amending the Principal VAT Directive so as to allow zero rating of sanitary products,.

The Minister's letter of 11 March 2016

10.7 The Financial Secretary to the Treasury (Mr David Gauke) now responds to our question, saying that:

- the potential extension of the zero rate to include sanitary products will be dealt with in the context of the VAT rates review, linked to the Action Plan due to be unveiled by the Commission this month;
- he wrote to the Commission on 3 November 2015 to ask it to consider the case for an extension of the zero rate;
- in his letter responding to the Commission's Digital Single Market consultation he also re-iterated the call for greater flexibility on VAT rates for sanitary products; and
- the Government thinks that the arena of the rates review, where it is already engaged, is the most appropriate one in which to deal with the question of the VAT rate for sanitary products.

10.8 The Minister continues that:

- that aside, the potential for any leverage arising from holding up the minimum standard rate proposed Council Directive is, in his view very limited;

- the Government is prepared to support the renewal of the minimum standard rate as it provides some certainty, through continuity, for all concerned while the overall approach to the rates framework in the EU is considered;
- the minimum standard rate was envisaged as a floor to ensure that Member States did not compete on tax rates and distort the market, especially in the area of cross border shopping;
- it is doubtful, however, that its renewal is essential, or would be viewed by other Member State governments as essential, at a time when they appear keen to increase yields from VAT, and where the pressure on rates for a number of years has been upwards rather than downwards;
- as of September 2015 only four Member States had a standard rate lower than 20% and the lowest standard rate was 17% in Luxembourg; and
- in this scenario it seems unlikely that there will be a widespread demand from other Member States for the renewal that could be exploited to assist with the discussions on the zero rate.

Previous Committee Reports

Twenty-third Report, HC 342–xxii (2015–16), [chapter 8](#) (10 February 2016).

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

Department for Business, Innovation and Skills

Other

37499 Report from the Commission to the European Parliament and the Council on the Generalised Scheme of Preferences covering the period 2014–2015.
5710/16

+ ADD 1

COM(16) 29

37505 Proposal for a Regulation amending Regulation (EU) 2015/936 on common rules for imports of textile products from certain third countries not covered by bilateral arrangements, protocols or other arrangements, or other specific Union import rules.
5838/16

+ ADD 1

COM(16) 44

(37540) Annual Report from the Commission to the European Parliament and the Council on the Implementation of Part IV of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other.
6362/16

COM(16) 73

(37542) Proposal for a COUNCIL DECISION amending Decision 2008/376/EC on the adoption of the Research Programme of the Research Fund for Coal and Steel and on the multiannual technical guidelines for this programme.
6411/16

COM(16) 75

(37590) Proposal for a Council Decision on the conclusion, on behalf of the European Union, of an agreement in the form of a Declaration on the expansion of Trade in Information Technology Products (ITA).
6914/16

+ ADD 1

COM(16) 122

Department for Environment, Food and Rural Affairs

(37555) European Court of Auditors' Special Report No. 25/2015 — EU support for rural infrastructure: Potential to achieve significantly greater value for money (pursuant to Article 287(4), second subparagraph, TFEU).
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Department for Transport

- (37553) Proposal for a Council Decision establishing the position to be adopted by the Union at the 54th session of the OTIF Committee of Experts on the Transport of Dangerous Goods as regards certain amendments to Appendix C to the Convention concerning International Carriage by Rail (COTIF) as applicable from 1 January 2017.
- 6682/16
- + ADD 1
- COM(16) 89

Foreign and Commonwealth Office

- (37570) Council Decision (CFSP) 2016/318 of 4 March 2016 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.
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- (37571) Council Implementing Regulation (EU) 2016/311 of 4 March 2016 implementing Regulation (EU) No. 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.
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- 37578 Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EU) 182/2011.
- 6819/16
- COM(16) 92

HM Treasury

- (37545) European Court of Auditors' Special Report No. 2/2016 — 2014 report on the follow-up of the European Court of Auditors' Special Reports (pursuant to Article 287(4), second subparagraph, TFEU).
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- (37577) Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No. 883/2013, as regards the secretariat of the Supervisory Committee of the European Anti-Fraud Office (OLAF).
- 6803/16
- COM(16) 113

Formal Minutes

Wednesday 23 March 2016

Members present:

Sir William Cash, in the Chair

Richard Drax

Stephen Kinnock

Peter Grant

Mr Jacob Rees-Mogg

Damian Green

Kelly Tolhurst

Kate Hoey

Mr Andrew Turner

Kelvin Hopkins

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

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

Paragraphs 1.1 to 11 read and agreed to.

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

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

[Adjourned till Wednesday 13 April 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*)