



House of Commons
European Scrutiny Committee

**Eleventh Report of
Session 2016–17**

Documents considered by the Committee on 14 September 2016, including the following recommendations for debate:

Financial management

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 14 September 2016*

Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents: Numbers in brackets are the Committee's own reference numbers.

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

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

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

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee)*
EP	European Parliament
EU	Treaty on European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

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

Further information

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

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

Staff

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

Contacts

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

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Meeting Summary

The Committee considered the following documents:

The following chapters on EU Asylum reform are published as a separate Report (Twelfth Report of Session 2016–17)

EU Asylum reform package

The migration and refugee crisis in the Mediterranean shows little sign of abating. The Commission expects migration to remain “one of the defining issues for Europe” for decades to come. Following the publication of its *European Agenda on Migration* in May 2015, which sought to lay the foundations for a “fair, robust and realistic” EU migration policy, the Commission set out an extensive package of reforms in April this year with a view to achieving “a more humane, fair and efficient” EU asylum policy and a better managed legal migration policy. Any legislation implementing these reforms is subject to the UK’s justice and home affairs opt-in, meaning that the UK is under no obligation to participate—it will only be bound if it decides to opt in.

The European Scrutiny Committee has already considered a first set of reform proposals published by the Commission in May. The proposed reforms seek to streamline the Dublin procedures which allocate responsibility for examining applications for international protection made within the EU and underpin the common European asylum system. They would also develop the EU’s asylum database (Eurodac) into a broader migration management tool and transform the European Asylum Support Office into the EU Agency for Asylum, giving it a stronger mandate to monitor the overall functioning of the common European asylum system. The European Scrutiny Committee recommended that the Government’s opt-in decisions on each of the proposals should be debated on the floor of the House. No debate has been scheduled.

The second set of reforms propose changes to substantive EU asylum laws determining who qualifies for international protection, the procedures applicable to asylum claims and how asylum seekers are to be treated while their claims are being examined. The package also includes a proposal for a new EU resettlement framework which is intended to reduce the flow of irregular migrants to the EU and ease the pressure on frontline Member States by providing safe and legal pathways to the EU for individuals in need of international protection. The reforms are intended to reduce the scope for differential treatment, depending on where an application for international protection is made within the EU, deter “asylum shopping” and secondary movements between Member States, and establish effective burden-sharing and solidarity mechanisms to ease the pressure on frontline Member States. The Government has yet to indicate how the outcome of the referendum on the UK’s membership of the EU will affect its approach to these opt-in decisions or to explain what impact differential asylum rules in the EU and the UK might be expected to have on the UK asylum system once the UK has left the EU.

The European Scrutiny Committee recommends that the Government’s opt-in decisions on this second set of reform proposals should also be debated on the floor of the House and makes clear that the debate should take place within the three month period available to the Government to decide whether or not opt in. The debate recommendation covers four new proposals:

- A Regulation setting out the criteria for determining who qualifies for international protection and the rights that individuals granted refugee or subsidiary protection status should enjoy;
- A Regulation establishing a fully harmonised common EU asylum procedure;
- A Directive establishing common minimum standards for the treatment of asylum seekers while their application for protection is being examined; and
- A Regulation establishing an EU framework for the resettlement within the EU of individuals in need of international protection from third countries.

Not cleared from scrutiny; opt-in decisions recommended for debate on the floor of the House; drawn to the attention of the Home Affairs Committee.

Proposed Regulation establishing a European Border and Coast Guard

Establishing a fully-fledged European Border and Coast Guard Agency with enhanced powers to ensure “an efficient, high and uniform level” of control at the EU’s external borders is an important political priority for the EU. Last December, EU leaders called for the new Agency (which would replace the EU’s existing external borders agency, Frontex) to be operational by the summer. The UK is unable to participate in the proposed Regulation as it builds on the border control elements of Schengen.

The Government nevertheless supports the objective of strengthening security at the EU’s external borders and is keen to ensure that the UK is able to cooperate with the new Agency on the same terms as it currently does with Frontex. In his latest update, the Immigration Minister (Mr Robert Goodwill) says that the Council and European Parliament have agreed a compromise text and that the new Agency is expected to be up and running by the autumn. He touches briefly on the scope for UK cooperation with the Agency. We ask him to provide us with a copy of the final agreed text accompanied by an analysis of the provisions dealing with the Agency’s cooperation with the UK while it remains a member of the EU and those dealing with the Agency’s cooperation with third (non-EU) countries which will apply after the UK leaves the EU. We make clear that the analysis should explain how the basis and scope for the UK to cooperate with the Agency will differ before and after the UK’s withdrawal from the EU.

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

Commission Communication on preventing radicalisation and violent extremism

This document builds on earlier Commission Communications setting the strategic direction for policies dealing with internal security and the terrorist threat within the EU. This latest Communication identifies a range of key actions to tackle radicalisation and violent extremism, with the aim of strengthening coordination, developing networks for the sharing of information and exchange of best practice, and mobilising a variety of EU funding instruments. The Government underlines Member States’ “sole responsibility for national security” but accepts that action at EU level can “add value”. In his latest letter, the Minister for Security (Ben Wallace) responds to the Committee’s request for

further information on the UK's relationship with Europol and wider law enforcement cooperation with other EU Member States post-Brexit. He reiterates the Prime Minister's commitment to maintaining law enforcement cooperation once the UK has left the EU, but says that it is "too early to speculate" on future arrangements. The Committee comments: "It is one thing for the Government to assert that such cooperation will continue once the UK has left the EU; it is quite another to explain how that objective can be delivered." The Committee appreciates that it will take time to work through the legal and political complexities involved in establishing a new framework for cooperation but asks the Minister to share his analysis of the options available to the UK, and whether it would be possible for the UK to remain a full member of Europol, even if the UK does not opt into the latest Europol Regulation which will apply from May next year. The Committee reminds the Minister that it expects Parliament to have a say before the Government decides whether or not to opt into the new Europol Regulation.

Previously cleared (13 July).

Digital Single Market: Wholesale roaming charges

In October 2015, the EU agreed to end retail roaming charges (i.e. the charges that mobile operators levy on their customers when they travel abroad) by 15 June 2017. This means that EU citizens will pay the same price for using their mobile devices when travelling in another EU Member State as they do at home (also referred to as 'roam like at home').

As part of the EU's agreement to end retail roaming charges, the Commission committed to review the operation of wholesale roaming markets (i.e. the prices that operators charge each other for use of their networks to allow customers to 'jump' between networks when they travel).

The Commission has, following its review, presented a proposal setting out maximum wholesale roaming charges (the draft Regulation). The caps are intended to better reflect the true costs of providing roaming and provide a fair basis for the delivery of surcharge-free roaming across the EU.

The Government is supportive of the end of retail roaming charges, as it will greatly benefit UK consumers. It is seeking lower wholesale caps than those currently proposed by the Commission in order to minimise the potential negative impacts on UK mobile operators, which tend to experience net outflows of roaming consumers (and therefore potentially higher costs).

The Committee retains this document under scrutiny, pending a clear assessment by the Government of the Brexit implications of the draft Regulation for UK consumers, businesses and mobile operators.

Not cleared; further information requested; drawn to the attention of the Culture, Media and Sport Committee.

Strategy for low-emission mobility

Since transport accounts for almost one quarter of Europe's greenhouse gas emissions, and is the main cause of air pollution in cities, the Commission sees a need for an irreversible shift to low-emission mobility, whilst noting also the accelerating pace of the global shift in this direction, and the changes which have already taken place within the EU.

It has accordingly sought in this Communication to introduce a strategy for speeding up that transition, based on three broad priorities—optimising the transport system and improving its efficiency; scaling up the use of low-emission alternative energy sources; and moving towards zero-emission vehicles—and setting out an overarching approach together with the areas in which options should be explored (including how initiatives in related fields might be linked and synergies achieved).

The Government welcomes the Commission’s recognition of the importance of low-emission mobility and, in principle, welcomes proposals which will improve air quality, and reduce impact of transport on human health and on the natural environment. It says that it will consider the policy implications of individual proposals when they are issued, but, in the meantime, has set out its current position on the Commission’s broad priorities and other areas falling out of this Strategy.

This is a wide-ranging strategy covering an area of considerable economic and environmental importance, and, although it is not clear what its impact will be on the UK in the light of the recent referendum vote, the European Scrutiny Committee has drawn it to the attention of the House and of the Transport Committee. However, the document essentially provides a broad framework for future action, enabling more specific attention to be given to individual items as and when the Commission comes forward with detailed proposals.

Cleared; drawn to the attention of the Transport Committee.

Transition to a low-carbon economy

In October 2014, the European Council agreed the EU’s 2030 policy framework for climate and energy, including a binding target to reduce economy-wide greenhouse gas emissions by at least 40%, compared with 1990. At the same time, it also agreed that this should be achieved through a 43% reduction (compared with 2005 levels) in those sectors covered by the EU Emissions Trading System (ETS), and by a corresponding 30% reduction in the non-traded sector (NTS).

In order to achieve this, the Commission put forward in July 2015 a legislative proposal for reform of the ETS, and it has now produced a further proposal, aimed at delivering emission reductions in the NTS through the setting of binding targets for each Member State for 2030, based on the model of the existing Effort Share Decision (406/2009/EC) which set corresponding targets for 2020. This is accompanied by a Commission Communication, and a proposal on the inclusion of Land Use, Land Use Change and Forestry (LULUCF) in the EU’s climate framework after 2020.

The Government says that, although the UK and EU targets have different accounting rules and flexibilities, the UK’s domestic obligations under carbon budgets are expected to be more stringent than those under the Effort Sharing Regulation. As a result, these proposals are likely to have relatively limited additional policy implications for the UK, but will be taken into account when its approach to meeting its targets for reducing greenhouse gas emissions is set out in an emissions reduction plan. In the meantime, the UK will participate in the negotiations on the two measures, which are due to start this month.

As the documents cover an important policy area, the European Scrutiny Committee has drawn them to the attention of the House, but, they do not appear to raise any significant policy issues and are unlikely to come into effect until after the UK has left the EU. However, as the proposal setting binding emission limits from 2021 to 2030 for the non-traded sector complements an earlier proposal for revisions to the EU Emissions Trading System, the Committee regards it as relevant to the debate which it recommended on 16 September 2015 should be held in European Committee A on the latter document.

Cleared; relevant to the debate already recommended on EU Emissions Trading System 2021–2030.

Implementation of the Effort Share Decision (No. 406/2009/EC)

As noted above, reductions in the EU’s greenhouse gas emissions are delivered through its Emissions Trading System (ETS), and through measures in the non-traded sector, which includes most of those not included in the ETS, such as transport (other than aviation and international maritime shipping), building, agriculture and waste.

In particular, the Effort Share Decision (No. 406/2009/EC) is the mechanism for delivering the latter reductions, and establishes greenhouse gas targets for each Member State from 2013 to 2020, with the objective of delivering these in a fair and cost-effective manner, depending on relative wealth. This document fulfils a requirement in Article 14 of the Decision that the Commission should submit by 31 October 2016 a report on its implementation, and it assesses the measure’s relevance, effectiveness, efficiency, coherence, EU value added and impact on competition, based on its implementation to date.

It finds that the objectives of the Decision remain relevant, with the European Council in October 2014 having confirmed its importance and the need for it to continue to 2030, based on the model of the 2013–2020 legislation. It notes the strong consensus amongst stakeholders on the need for such an instrument after 2020, and that its relevance is further confirmed by the Paris Agreement on climate change in December 2015. It also says that the Decision remains coherent with other EU climate and energy policies.

As this document deals with an important area, the Committee has drawn it to the attention of the House.

Cleared.

Financial services: remuneration rules

New EU capital requirements legislation in 2013 strengthened the remuneration rules of credit institutions and investment firms, notably in relation to bonus caps. The legislation required the Commission to report an assessment of the efficiency, implementation and enforcement of the remuneration rules. The Commission’s present broad assessment of the remuneration rules is largely positive, finding that the rules have contributed to the overall objective of curbing excessive risk-taking and better aligning remuneration with performance, thereby contributing to enhanced financial stability. While we did not wish to retain this document under scrutiny we have drawn it to the attention of the House for the preliminary information it contains about the strengthened remuneration rules for credit institutions.

Cleared.

Tax evasion and avoidance, money laundering, terrorist financing

In recent years the EU has introduced legislative and non-legislative measures concerned with money laundering, terrorist financing and tax evasion and avoidance. The Commission has presented a Communication on further measures to enhance transparency and tackle tax evasion and avoidance at the EU level. It identifies a number of areas for possible further action five general headings: strengthening the link between the Fourth Anti-Money Laundering Directive and Tax Transparency rules; improving information exchange on beneficial ownership; increasing oversight of enablers and promoters of aggressive tax planning; promoting higher tax good governance standards worldwide; and improving the protection of whistle-blowers. The Commission has also proposed two Directives. The first would amend the Directive on Administration Cooperation to enable access to anti-money laundering and counter-terrorist financing information by tax authorities. The second would amend the Fourth Anti-Money Laundering Directive, with the aim of countering financing of terrorism and increasing transparency of financial transactions and corporate entities.

The Government is cautiously supportive of the Communication and welcomes the first proposed Directive. As for the proposed Directive to amend the Fourth Anti-Money Laundering Directive, the Government supports five amendments in the proposal, but describes concerns about three other aspects of the proposal, which it intends to address in negotiation of the proposal.

Commission Communication cleared from scrutiny; two proposed Directives remain under scrutiny, pending further information.

EU-Malaysia PCA

This Partnership and Cooperation Agreement is the first-ever bilateral agreement between the EU and Malaysia. It aims to strengthen cooperation in areas such as human rights, counter-terrorism, trade and climate change. The Government is supportive of the Agreement and notes that any subsequent EU-Malaysia Free Trade Agreement would provide a platform for enhancing the UK's trade and investment relationship with Malaysia. The Committee asks the Government how it would seek to retain the advantages of the PCA once the UK has withdrawn from the EU.

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

Blood and human tissues

Blood products and human tissues are imported into, and exported from, the UK. Such exchanges within the EU are regulated by rules on safety and quality. The Committee's only outstanding queries related to the UK's approach to the safety of blood and human tissues post-Brexit. The Minister has indicated that any proposed changes that might have legislative or operational implications for UK policy in these areas will be considered carefully and discussed with the devolved administrations and regulatory authorities. The

Committee accepts the difficulties in giving any further information at a time when there is a great deal of uncertainty about the UK's relationship with the EU post-Brexit. The Committee releases both documents from scrutiny.

Cleared; drawn to the attention of the Health Committee.

A Global Strategy for the EU's Foreign and Security Policy

The EU proposed a new foreign and security policy strategy at the end of June. Following the Committee's first consideration, the Minister has written to the Committee emphasising the Government's commitment to continued engagement with both the EU and NATO on security and defence matters. The Committee releases the document from scrutiny.

Cleared.

European Agency for Safety and Health at Work (EU-OSHA) and European Foundation for the improving of living and working conditions (Eurofound)

The Commission proposes to update the objectives and tasks of these Agencies. The Committee notes that the changes are being proposed before completion of evaluations and therefore seem premature. The Committee asks the Government how it intends to fill the potential knowledge gaps in this area created by Brexit. The Committee notes that Eurofound datasets are stored with, and are accessible via, the UK Data Service. This prompts the Committee to ask what engagement the Government has had with Eurofound as regards the future storage of its data following Brexit.

Not cleared; further information requested.

The European External Action Service's management of its buildings around the world

The European Court of Auditors found that the European External Action Service's buildings did not provide best value for money for a number of reasons. The Committee asked the Government for details on how the EEAS' capacity to manage its portfolio effectively is to be enhanced. The Minister has responded, noting the UK position that the EEAS should build its expertise in property management and should sell or rent out unoccupied owned buildings to avoid the related maintenance or security costs.

Cleared.

Documents drawn to the attention of select committees:

(‘NC’ indicates document is ‘not cleared’ from scrutiny; ‘C’ indicates document is ‘cleared’)

Culture, Media and Sport Committee: Digital Single Market: Wholesale roaming charges [Commission Report (C) and Proposed Regulation (NC)];

Energy and Climate Change Committee: Transition to a low-carbon economy [Commission Communication and Proposed Regulation] (C);

Foreign Affairs Committee: A Global Strategy for the EU's Foreign and Security Policy [EU High Representative for Foreign Affairs and Security Policy's Report] (C); EU-Malaysia Partnership and Cooperation Agreement [Joint Council Decisions] (NC);

Health Committee: Blood and Human Tissues Directives [Commission Reports] (C);

Home Affairs Committee: Establishing a European Border and Coast Guard [Proposed Regulation] (NC); Revision of EU rules on who qualifies for international protection [Proposed Regulation] (NC); Establishing a common EU asylum procedure [Proposed Regulation] (NC); Establishing an EU framework for the resettlement of individuals in need of international protection [Proposed Regulation] (NC); Revision of EU rules on reception conditions for asylum seekers [Proposed Directive] (NC); Preventing radicalisation and violent extremism [Commission Communication] (C);

Transport Committee: Strategy for Low-Emission Mobility [Commission Communication] (C);

Clearance of certain EU documents for which debate recommendations have been rescinded

Since the beginning of this Parliament, we have rescinded several debate recommendations, either because the European Union Documents recommended for debate have been superseded, or because ongoing lengthy delays on the Government's part in scheduling debates have meant that the priority issues for the House of Commons and the UK have shifted. We confirm that the following EU Documents for which our debate recommendations have been rescinded, are cleared from scrutiny:

Financial Assistance for Greece

EU Documents No. 11134/15; No. 11459/15; No. 11458/15; and No. 11502/15.

Completing Europe's Economic and Monetary Union

Unnumbered European Union Documents, an Opinion of the European Central Bank of 6 April 2016 on a proposal for a Council Decision laying down measures in view of progressively establishing unified representation of the euro area in the International Monetary Fund; and a Commission Report: Completing Europe's Economic and Monetary Union; and EU Documents No. 13348/15; No. 13352/15; No. 13356/15; No. 13358/15; and No. 13374/15.

European Semester 2016

Unnumbered European Union Documents, a Commission Communication: 2016 Draft Budgetary Plans: Overall Assessment; a Commission Communication: Assessment of action taken by the United Kingdom in response to the Council Recommendation of 19 June 2015 with a view to bringing an end to the situation of excessive government deficit; and a Commission Staff Working Document on the assessment of action taken by the United Kingdom in response to the Council Recommendation of 19 June 2015 with a view to bringing an end to the situation of excessive government deficit—Analysis of the budgetary situation in the United Kingdom; and EU Documents No. 9182/16; No. 9145/16; No. 6587/16; No. 7076/1/16; No. 14270/15; No. 14291/15 and Addendum; No. 14694/15; and No. 14272/15.

Zero waste programme for Europe

EU Document No. 11592/14 and Addenda 1–3.

Common European Asylum System

EU Document No. 7665/16.

1 Financial management

Committee's assessment	Politically important
Committee's decision	Not cleared from scrutiny; recommended for debate in European Committee B, together with the principal audit reports for 2015, once available
Document details	Commission's annual Report for 2015 about the fight against fraud
Legal base	—
Department	HM Treasury
Document Numbers	(37971), 11335/16 + ADDs 1–7, COM(16) 472

Summary and Committee's conclusions

1.1 The Commission is required to report annually on protection of the EU's financial interests and on the fight against fraud, a shared responsibility between the Commission and Member States. In this report the Commission summarises and evaluates measures taken by it and Member States to counter fraud and irregularities against EU funds in 2015. An analysis of the main achievements of national and EU bodies in detecting and reporting fraud and irregularities relating to EU expenditure and revenue is also provided. The Commission makes four specific recommendations to Member States.

1.2 The Government tells us of its continuing commitment to assisting in reducing fraudulent irregularities.

1.3 **As is customary, we recommend that this document be debated in European Committee B with the European Court of Auditors' annual audit reports on the general budget and the European Development Fund, once they are available.**

Full details of the documents

Commission Report: *Protection of the European Union's financial interests: Fight against fraud: 2015 Annual Report*: (37971), [11335/16](#) + ADDs 1–7, COM(16) 472.

Background

1.4 The Commission is required to report annually on protection of the EU's financial interests and on the fight against fraud, a shared responsibility between the Commission and Member States imposed by Article 235 TFEU. These reports are to cover measures taken by Member States as well as by the Commission. Each year the Commission, in cooperation with Member States, reports the latest statistics on, and recent measures to reduce, irregularities and fraud. Where concerns and risks are identified, recommendations are made to address them.

1.5 There is an important distinction between irregularities and fraud. An irregularity occurs when a beneficiary is not in compliance with the EU rules and requirements linked to the spending of EU funds and these are usually the result of genuine errors. Fraud is a deliberately committed irregularity, which constitutes a criminal offence.

The document

1.6 This latest “Fight against fraud” Report summarises and evaluates measures taken by the Commission and Member States to counter fraud and irregularities in EU spending in 2015. An analysis of the main achievements of national and EU bodies in detecting and reporting fraud and irregularities relating to EU expenditure and revenue is also provided. The Report is accompanied by seven Staff Working Documents.

1.7 On anti-fraud policies at EU level the Commission describes the initiatives it has taken in 2015 to counter fraud affecting the EU budget, including:

- launch of an ‘Experience Sharing Programme’ to share best practice in the fight against corruption;
- progress on negotiations between the European Parliament and the Council on the proposed Directive on the protection of the EU’s financial interests by means of criminal law¹ and the proposal to set up a European Public Prosecutors’ Office;²
- establishing an anti-fraud Early Detection and Exclusion System;
- adoption of delegated and implementing Regulations to improve quality and consistency of irregularity reporting; and
- a number of initiatives to protect EU revenues, such as measures to combat cigarette-smuggling.

1.8 The Commission summarises measures taken by Member States to combat fraud and other irregularities affecting the financial interests of the EU, saying that:

- those measures cover, for example, public procurement, conflict of interest, financial crime, corruption, and the definition of fraud;
- all Member States have designated an Anti-Fraud Coordination Service (AFCOS);
- it considers that Member States have, in general, adequately implemented the recommendations in its 2013 Report, for example, designation of an AFCOS, transposition of the public procurement Directives into national legislation and the implementation of anti-fraud measures; and

1 (34091) 12683/12 + ADDs 1–4: see Twenty-second Report HC 342-xx (2015–16), [chapter 4](#) (3 February 2016); Thirty-seventh Report HC 219-xxxvi (2014–15), [chapter 1](#) (18 March 2015); Thirty-second Report HC 219-xxxi (2014–15), [chapter 10](#) (4 February 2015); Ninth Report HC 219-ix (2014–15), [chapter 14](#) (3 September 2014); Twenty-second Report HC 83-xx (2013–14), [chapter 13](#) (6 November 2013); Thirteenth Report HC 83-xiii (2013–14), [chapter 18](#) (4 September 2013); and Twelfth Report HC 86-xii (2012–13), [chapter 10](#) (12 September 2012).

2 (35217) 12558/13 + ADDs 1–2, (36931) 9372/15: see Tenth Report HC 342-x (2015–16), [chapter 6](#) (25 November 2015); First Report HC 342-i (2015–16), [chapter 37](#) (21 July 2015); Nineteenth Report HC 83-xviii (2013–14), [chapter 6](#) (23 October 2013); and Fifteenth Report HC 83-xv (2013–14), [chapter 1](#) (11 September 2013).

- some recommendations were, however, not fully addressed.

1.9 As for detection and reporting of irregularities the Commission says that:

- in 2015 22,349 fraudulent and non-fraudulent irregularities were reported to the Commission, involving a total of approximately €3.21 billion (£2.71 billion), of which €2.79 billion (£2.35 billion) concerned the expenditure side of the EU budget;
- compared to 2014, the number of irregularities detected increased by 36% and the corresponding financial amounts remained stable (-1%);
- between 2011 and 2015, the number of reported irregularities increased by 98%, while the related amounts increased by 81%;
- these irregularities include non-fraudulent transactions, and all cases of fraud reported are ‘suspected’ as opposed to ‘established’;
- several factors lie behind this increase —the link to resources available to the EU budget, which in 2015 were over 14% higher than in 2010, certain cyclical circumstances have an impact, for example the approaching closure of the 2007-2013 programming period, control over the management of EU funds by the Commission, the Court of Auditors and by national services is constantly improving, and Spain and Ireland reported an anomalously high number of irregularities in 2015;
- in 2015, 1,461 irregularities were reported by Member States as potentially fraudulent, involving €637.6 million (£538.1 million)—this represents an 11% decrease by number on 2014, and an 18% increase by value;
- there are significant differences between different spending areas;
- most of the cases reported in 2015 as fraudulent concerned spending on agriculture, totalling 444;
- spending on cohesion policy, however, recorded the highest amount by value, totalling €477.5 million (£403 million), which represents a 74% increase on 2014;
- the use of false or falsified documentation or declarations remained the most common type of fraud;
- for expenditure directly managed by the Commission, five cases of fraudulent irregularities were identified with an estimated financial impact of €200,000 (£170,000);
- in 2015, it was notified of 20,888 irregularities not reported as fraudulent, representing a 41% increase on 2014;
- the value of the reported irregularities however decreased to approximately €2.58 billion (£2.18 billion), 7% less than in 2014; and

- in 2015, OLAF (the European Anti-Fraud Office) launched 219 investigations, sent 98 recommendations to Member States for judicial action, and recommended the recovery of €888.1 million (£749.6 million).

1.10 In conclusion the Commission emphasises that Member States are pivotal in ensuring the protection of EU financial interests and recommends that they:

- exchange best practice and information on customs initiatives;
- adapt customs controls strategies to take account of voluntary admissions;
- improve quality control of information submitted via the Irregularity Management System; and
- make better use of risk analysis IT tools such as Arachne³ and IMS.

The Government's view

1.11 In his Explanatory Memorandum of 30 August 2016 the Chief Secretary to the Treasury (Mr David Gauke), in now familiar terms, first notes, in the context of the outcome of the EU referendum, that until the UK exits the EU the Government will continue to negotiate, implement and apply EU legislation. He then says that:

- the Government takes fraud against the EU budget extremely seriously and supports efforts to improve the detection and tackling of fraud;
- it supports the work of OLAF and welcomes Commission recommendations which strengthen the EU's capacity to detect and combat fraud; and
- it will encourage other Member States to adopt the recommendations quickly and in full.

Previous Committee Reports

None.

3 See Commission's publication [Arachne](#).

2 European Foundation for the improvement of living and working conditions (Eurofound)

Committee’s assessment	Legally and politically important
Committee’s decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation establishing the European Foundation for the improvement of living and working conditions (Eurofound), and repealing Council Regulation (EEC) No. 1365/75
Legal base	Article 153(2)(a) TFEU
Department	Business, Energy and Industrial Strategy
Document Numbers	(38024), 11530/16, COM(16) 531

Summary and Committee’s conclusions

2.1 The European Foundation for the Improvement of Living and Working Conditions (Eurofound) is an EU Agency—based in Dublin—that was established in 1975 to contribute to the planning and design of better living and working conditions. It provides facts and figures, identifies trends and analyses policies and practices as the basis of evidence-based advice for the development of policy responses in the priority areas (set out in the Background section below). The Agency has no regulatory powers.

2.2 As part of its analytical work, Eurofound has developed three regularly repeated surveys—the European Companies Surveys; the European Quality of Life Surveys; and European Working Conditions Surveys. It has published a range of Reports based on those surveys, such as a Report on “Workplace practices: Patterns, performance and well-being”.

2.3 The Commission proposes to update Eurofound’s objectives and tasks in the light of changing circumstances and changes that have been agreed for all EU Agencies.

2.4 The Minister for Small Business, Consumers and Corporate Responsibility (Margot James) supports the basic purpose of the Agency and notes that most of the changes are administrative or procedural, with no extension to the role of the Agency. She raises concerns, however, over the legal base and over the size of the Agency’s Management Board. These concerns are along the lines of those expressed by the Health and Safety Executive about amendments to the Regulation governing the European Agency for Safety and Health at Work (EU–OSHA), which are set out elsewhere in this Report.

2.5 The Government will seek an explanation for the proposed change to the legal base from the “flexibility clause” (Article 352 TFEU (formerly Article 308 TEC)) to Article 153(2)(a). She notes that, while the revised legal base would be more appropriate for the content, it would result in a move away from unanimous decision-making.

2.6 The Minister notes that the Commission proposes some changes in order to align the governance of the Agency with the Common Approach to EU Decentralised Agencies⁴ but notes that other elements remain inconsistent. While the Common Approach proposes a Management Board comprised of one representative from each Member State, retention of the present structure would leave three members from each Member State (one each from the Government, employers' organisations and employees' organisations respectively). The Government will seek information from the Commission about the relative merits between the status quo and a smaller Management Board.

2.7 **This Committee took issue with the reliance on Article 308 TEC when the Commission proposed amendments to the Agency's Regulation in 2004. The Committee would have preferred a legal base more suited to the aim and content of the instrument.**

2.8 **Like our predecessors, we take the view that a legal base aligned with the aim and content of the instrument is appropriate. The Government seems to share this view, but maintains reservations pertaining to the move to QMV. Can the Government identify an alternative legal base which would align with the aim and content of the proposal and leave unanimity in place?**

2.9 **On the Government's other concern—that of the size of the Management Board—the Commission makes oblique reference to this in the document through its statement that “Certain elements of the Founding Act are not being reviewed in the light of the Common Approach in the framework of this proposal, pending further evaluation”. We consider that the Commission needs to justify deviation from the Common Approach and ought to have undertaken evaluation prior to making its proposal. In the meantime, is the Minister aware of the progress of any such evaluation and of whether the size of the Board is included? It would be helpful to be clear on the timing and nature of any such evaluation as it seems premature to amend the Founding Act without completing the evaluation.**

2.10 **The Government makes no comment on the implications of Brexit for negotiation of this proposal. We consider that the proposal raises a number of important issues relating to Brexit on which we would welcome the Minister's comments. Given the Government's support for EU-OSHA, we assume that the Government considers the data and analysis to be important. How will the Government fill the potential knowledge gap in this area created by the UK's withdrawal from the EU?**

2.11 **Furthermore, we note that Eurofound datasets are stored with, and are accessible via, the UK Data Service. What engagement has the Government had with Eurofound as regards the future storage of its data following the UK's withdrawal from the EU?**

2.12 **The Minister gives no indication of the position of other Member States and the European Parliament. We would welcome any early indications of the likely direction and speed of negotiations.**

2.13 **We look forward to a response to this Report by the end of October. In the meantime, we retain it under scrutiny.**

4 [Common Approach to EU Decentralised Agencies](#), 19 July 2012.

Full details of the documents

Proposal for a Regulation establishing the European Foundation for the improvement of living and working conditions (Eurofound), and repealing Council Regulation (EEC) No. 1365/75: (38024), [11530/16](#), COM(16) 531.

Background

2.14 Eurofound’s annual budget for 2016 is €20.56 million (£17.31 million). Its strategic objective for 2013–16 is: “to provide high-quality, timely and policy-relevant knowledge as input to better informed policies in four priority areas:

- “increasing labour market participation and combating unemployment by creating jobs, improving labour market functioning and promoting integration;
- “improving working conditions and making work sustainable throughout the life course;
- “developing industrial relations to ensure equitable and productive solutions in a changing policy context; and
- “improving standards of living and promoting social cohesion in the face of economic disparities and social inequalities.”

2.15 The reasons for the proposed revision of Eurofound are twofold. First, the revision will align certain provisions of the existing Regulation governing Eurofound with the Common Approach on Decentralised Agencies. These guiding principles for all EU agencies were adopted in 2012 to make the agencies more coherent, effective and accountable. Second, the revision also offers the opportunity to update the objectives and tasks of Eurofound.

The Commission’s proposal

2.16 The Commission makes the following proposals to revise the objectives and tasks of Eurofound:

- inclusion of a clear statement that the objectives of the Agency shall be to “increase and disseminate knowledge to assist the Commission, other EU institutions and bodies, Member States and social partners in shaping and implementing policies aimed at the improvement of living and working conditions, in supporting employment policies and in promoting the dialogue between management and labour”;
- clearly articulate Eurofound’s range of tasks, notably regarding its analytical role;
- inclusion of anti-fraud measures, a conflict of interest policy, evaluation and review and the establishment of a headquarters agreement;

- harmonisation of the provisions on programming and reporting with the requirements set by the revised Framework Financial Regulation;⁵
- modify and align the appointment procedure of the Executive Director with the procedure provided for in the Common Approach, suppressing the current position of Deputy Director;
- the role of appointing authority will be conferred to the Management Board of the Agency; and
- the terminology for the management structure will be aligned with the Common Approach.

2.17 Certain elements of the Founding Act are not being reviewed in the light of the Common Approach in the framework of this proposal, pending further evaluation.

2.18 Regarding the appointment by the Council of the Management Board members representing the employers' and employees' organisations from each Member State, it is proposed that this is done on the basis of a list submitted by the EU social partners' organisations (Business Europe and ETUC).

Minister's Explanatory Memorandum of 7 September 2016

2.19 On the necessity of the proposal and of the Agency, the Minister says:

“The Government agrees that this matter needs to be addressed at EU level as it concerns the functioning of a European Agency and its place within the EU institutional framework. The Agency encourages and facilitates cooperation between Member States on living and working conditions in the EU, and undertakes research to inform and contribute to better evidence-based policymaking.”

2.20 The Minister considers that most of the proposed changes are administrative or procedural and notes that there would be no extension in the role of the Agency, which has no regulatory powers. She notes that the Government has two concerns.

2.21 The Minister expresses the Government's concerns about the legal base in the following terms:

“The Commission has proposed the use of Article 153 TFEU to replace the current treaty base of what is now Article 352 TFEU (previously Article 308 of the Treaty establishing the Economic Community). Article 153(2)(a) allows the European Parliament and the Council to ‘adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States.’ Whilst this would mean a move from unanimity to qualified majority voting, the nature of Article 153(2)(a) might suggest a better fit

5 Regulation [2015/1929](#) of 28 October 2015 on the financial rules applicable to the general budget of the Union.

with the purpose of the Agency, i.e. to raise knowledge and to exchange information to improve living and working conditions. The Government will seek information from the Commission to justify this change.”

2.22 On the lack of alignment between the proposal and the Common Approach to EU Decentralised Agencies, the Minister writes:

“In its proposal, the Commission has taken account of certain elements of the Common Approach to EU Decentralised Agencies in the design of the Agency’s governance structures. For example, it has changed the terminology so that the present Governing Board will be called a Management Board; it has proposed a small Executive Board to prepare and implement decisions by the Management Board and firms up the responsibilities of the Director of the Agency—now to be called the Executive Director. The Commission has, however, decided to retain the present structure of the Governing Board for the Management Board. This means that there will continue to be three members from each Member State on the Management Board. The Government sees some role for tripartite involvement in the proposed Management Board but will seek information from the Commission about the relative merits between the status quo and a smaller management board.”

Previous Committee Reports

None, but the following Reports are relevant: Twenty-fifth Report HC 42–xxv, [chapter 9](#) (30 June 2004); Twenty-second Report HC 42–xxii, [chapter 10](#) (9 June 2004).

3 Digital Single Market: Wholesale roaming charges

Committee's assessment	Politically important
<u>Committee's decision</u>	(a) Cleared from scrutiny; (b) Not cleared from scrutiny; further information requested; drawn to the attention of the Culture, Media and Sport Committee
Document details	(a) Commission Report on <i>the review of the wholesale roaming market</i> (b) Proposal for a Regulation amending Regulation (EU) No. 531/2012 as regards rules for wholesale roaming markets
Legal base	(a) —; (b) Article 114 TFEU; ordinary legislative procedure; QMV
Department	Culture, Media and Sport
Document Numbers	(a) (37869), 10327/16 + ADD 1, COM(16) 398 (b) (37870) 10329/16 + ADDs 1–2, COM(16) 399

Summary and Committee's conclusions

3.1 In October 2015, the EU agreed to end *retail* roaming charges (i.e. the charges that mobile operators levy on their customers when they travel abroad) by 15 June 2017.⁶ This means that EU citizens will pay the same price for using their mobile devices when travelling in another EU Member State as they do at home (also referred to as 'roam like at home' (RLAH)).⁷

3.2 As part of the EU's agreement to end retail roaming charges, the Commission committed to review the operation of *wholesale* roaming markets (i.e. the prices that operators charge each other for use of their networks when their customers roam on the 'visited' operators' networks).

3.3 On 16 June, the Commission presented its report on wholesale roaming and a proposal setting out maximum *wholesale* roaming charges (the draft Regulation). The proposed revisions to wholesale data caps are intended to better reflect the true costs of providing roaming and provide a fair basis for the delivery of surcharge-free roaming across the EU.

3.4 The Minister of State for Culture, Communications and Creative Industries (Mr Edward Vaizey) notes that the Government is generally supportive of the end of roaming charges, as it will greatly benefit UK consumers. In relation to wholesale roaming charges,

6 The Telecoms Package (A Connected Continent: Building a Telecoms Single Market) was adopted by the Council on 1 October 2015 and by the European Parliament on 27 October 2015. See Report Chapter for further information.

7 Subject to 'fair use' and 'sustainability' clauses, which are currently being worked up by the Commission.

it is seeking lower wholesale caps (than those currently proposed by the Commission) in order to minimise the potential negative impacts on UK mobile operators, which tend to experience net outflows of roaming consumers (and therefore potentially higher costs).

3.5 We are content to clear document (a) from scrutiny, but consider that the Minister’s Explanatory Memorandum lacks detail on both the Brexit implications and substance of the draft Regulation (document (b)).

3.6 We would be grateful if the Minister could respond to these questions by the end of October:

- **How active a role the Government intends to play during negotiations on the draft Regulation within the Council;**
- **What the Government’s key negotiating objectives are (i.e. what caps are specifically being sought and why)?;**
- **The expected timescale for the adoption and implementation of the draft Regulation;**
- **Whether the Government will want to retain the proposal as domestic law following Brexit, particularly in view of the fact that the draft Regulation is one of the key components of delivering a Single Market for telecommunications, and of the Digital Single Market strategy more broadly (which the Government has been a keen proponent of from its inception)?;**
- **If the proposal does not apply to the UK after Brexit, or is not retained after Brexit, what barriers to trade would be likely to arise from a divergence with EU rules, and how would different UK stakeholders (consumers, businesses, mobile operators) be affected?; and**
- **How actively will the Government be consulting the Devolved Administrations on the UK’s post-Brexit position on this proposal?**

3.7 In the meantime, we retain the draft Regulation (document (b)) under scrutiny and draw our conclusions to the attention of the Culture, Media and Sport Committee.

Full details of the documents

(a) Commission Report on *the review of the wholesale roaming market*: (37869), [10327/16](#) + ADD 1, COM(16) 398; (b) Draft Proposal for a Regulation amending Regulation (EU) No. 531/2012 as regards rules for wholesale roaming markets: (37870) [10329/16](#) + ADDs 1–2, COM(16) 399.

Background

Developing a Single Market for telecommunications

3.8 On 1 October 2015, the Council adopted the Telecommunications Single Market or ‘Connected Continent’ Regulation (TSM Regulation), which introduces a:

- ‘RLAH’ pricing mechanism for mobile roaming services, with:
 - a cap on surcharges from 30 April 2016: roaming surcharges cannot exceed: €0.05 per minute for outgoing voice calls; €0.02 for text messages (SMS); and €0.05 per megabyte of mobile internet use; and
 - a view to ending retail roaming charges from 15 June 2017; and
- a principles-based mechanism for ‘net neutrality’, under which internet access service providers must treat all traffic equally, without discrimination or restriction; however, ‘reasonable’ traffic management measures—provided they are transparent, non-discriminatory and proportionate—will still be allowed, for example, to preserve network security or comply with national legislation (such as preventing access to child sex abuse material).

3.9 To put the retail roaming charges objective of the TSM Regulation into practice, the Commission noted that it will be necessary to implement three ‘accompanying’ measures.

- A Regulation to address wholesale pricing (the subject of this Report chapter);
- An implementing act to address policy regarding ‘fair-use’ (a proposal is currently being worked up by the Commission); and
- An implementing act to address policy regarding the ‘sustainability clause’ (a proposal is currently being worked up by the Commission).

The Commission review into wholesale roaming markets

3.10 In its assessment of wholesale pricing, the Commission undertook or commissioned the following pieces of work:

a) A public consultation on roaming charges

3.11 The Commission ran a 12 week public consultation between November 2015 and February 2016 on the functioning of roaming markets in the EU and the current regulation of national wholesale roaming markets, to which the UK Government responded.⁸

3.12 The Commission’s initial analysis concluded that while there was little scope to reduce the current wholesale caps for voice and SMS, there was significant scope to reduce the current data cap (currently 5 € cents/MB), potentially to 10% of the current cap.

8 [UK government response to EU consultation on the review of national roaming markets, fair use policy and the sustainability mechanism referred to in the Roaming Regulation 531/2012 as amended by Regulation 2015/2120.](#)

b) A report by the Body of European Regulators of Electronic Communications' (BEREC) on the wholesale roaming market

3.13 The report:

- provided detailed data analysis of wholesale pricing across the EU;
- noted that there is a 'lack of convergence' between Member States, both in terms of the wholesale price of data and roaming patterns during the tourist season, and that wholesale data roaming caps were generally much higher than actual roaming wholesale tariffs used in practice, with consumers taking advantage of a wide range of RLAH offers;
- noted trade-offs between the protection of competition, investment and consumers in the home and visited markets; and
- outlined a range of possible regulatory approaches, setting out the pros and cons of each.

The documents of 16 June 2016

Commission Report on wholesale roaming markets

3.14 The Report provides an overview of the functioning of the wholesale markets in the EU, including competition developments and the impact of the introduction of the retail RLAH obligation.

3.15 It goes to set out the rationale for the Commission's proposal (and EU intervention in) the wholesale roaming market, concluding that:

- further regulation of wholesale roaming markets is required to deliver lower wholesale charges and enable the sustainable abolition of retail roaming charges for [virtually] all operators in the EU;
- there is scope to reduce wholesale caps below current levels, in particular for data services, while keeping them above underlying costs in all Member States (necessary for preserving incentives to invest in networks); and
- revised proposed levels should minimise the number of operators seeking derogations from RLAH for sustainability reasons.

Draft Regulation on rules for wholesale roaming markets

3.16 The Commission's explanatory memorandum sets out the objectives of the proposal, the legal basis (and its compliance with the principles of subsidiarity and proportionality), the results of the Commission's evaluations, stakeholders' consultations and impact assessments, as well as the implementation plans and monitoring, evaluation and reporting arrangements.

3.17 The draft Regulation updates the existing Regulation on rules for wholesale roaming markets (Regulation (EU) No. 531/2012) to reflect the Commission's Report. It proposes the following maximum regulated wholesale roaming charges (caps):

- Voice—four € cents per minute;
- Text messages—one € cent per SMS message; and
- Data—0.85 € cents per MB.

3.18 The Commission commits to reviewing the measures adopted by the co-legislators (Council and European Parliament) every two years after 15 June 2017 (when RLAH is introduced).

The Minister’s Explanatory Memorandum of 1 July 2016

3.19 The Minister states that the “Government’s policy positions on roaming and the setting of wholesale caps were detailed in the UK’s response to the Commission’s public consultation”.

3.20 The Minister notes that while the Government supports the end of roaming charges in general, as “an important measure of benefit to consumers travelling within the EU and as a vital ingredient of the Digital Single Market”, the Government will also be pushing for lower wholesale caps (than currently proposed by the Commission) in the Council negotiations, to minimise the impact of RLAH on UK-based mobile service providers (which are likely to experience relatively higher net loss of earnings than certain other EU operators, as more UK consumers travel to the EU than vice versa):

“Nevertheless, the Government recognises that there will be negative impacts on UK based mobile service providers. This is particularly true since, because of the large number of consumers taking holidays elsewhere in the EU, UK operators expect to experience a net loss of earnings due to the coming of RLAH. However the position is complicated, not least because the likely usage of mobile services while roaming is uncertain in the future RLAH world. In particular, the amount of data consumed while roaming is likely to rise considerably, even above domestic levels.

“Therefore, Government has been prepared to go into the negotiations on the wholesale regulation with the intention of securing caps for data, voice and SMS lower than those contained in the proposed regulation. Lower caps would reduce the impact of RLAH on UK mobile network operators (MNOs) and virtual network operators (MVNOs). The latter are particularly affected since they have to pay roaming wholesale charges, through their host networks, but do not benefit from charges the networks make to the home networks of inward roamers.”

3.21 The Minister notes that Member States’ positions on wholesale caps will depend on whether their MNOs and MVNOs are likely to face a net influx or net outflow of roaming consumers:

“However, EU Member States that experience net influxes of roaming consumers, mainly the southern Member States, have an interest in maintaining higher levels of wholesale caps in order that their MNOs can

benefit from the greater proportion of inward roamers. Arguably, this would help such MNOs make investments in their networks beyond what the local population alone needs.”

Previous Committee Reports

None.

4 European Agency for Safety and Health at Work

Committee's assessment	Legally and politically important
Committee's decision	Not cleared from scrutiny; further information requested
Document details	Proposal for a Regulation establishing the European Agency for Safety and Health at Work (EU-OSHA), and repealing Council Regulation (EC) 2062/94
Legal base	Article 153(2)(a), TFEU
Department	Health and Safety Executive
Document Numbers	(38025), 11531/16, COM(16) 528

Summary and Committee's conclusions

4.1 The European Agency for Safety and Health at Work (EU-OSHA)—established in 1994 and based in Bilbao—collects, analyses and disseminates technical, scientific and economic information on occupational safety and health. One recent strand of work, for example, sought to identify practical solutions to improving health and safety in small and medium enterprises. The strategic objectives of the Agency are set out in the Background section below. The Agency has no regulatory powers.

4.2 The Commission proposes to update EU-OSHA's objectives and tasks in the light of changing circumstances and changes that have been agreed for all EU Agencies under the Common Approach to EU Decentralised Agencies.⁹ This revision will provide a clearer description of the role of EU-OSHA in supporting the Commission in shaping policies on health and safety at work. It will update the mandate of EU-OSHA as a centre for the technical, scientific, legal and economic information and qualified expertise of use in the field of safety and health at work.

4.3 The Minister for Disabled People, Health and Work (Penny Mordaunt) supports the basic purpose of the Agency and notes that most of the changes are administrative or procedural, with no extension to the role of the Agency. She raises concerns, however, over the legal base and over the size of the Agency's Management Board. These concerns are along the lines of those expressed by the Department for Business, Energy and Industrial Strategy about amendments to the Regulation governing the European Foundation for the improvement of living and working conditions (Eurofound), which are set out elsewhere in this Report.

4.4 The Government will seek an explanation for the proposed change to the legal base from the "flexibility clause" (Article 352 TFEU (formerly Article 308 TEC)) to Article 153(2) (a). She notes that, while the revised legal base would be more appropriate for the content, it would result in a move away from unanimous decision-making. The Government is also concerned that the new legal base could open the door to new regulations.

9 [Common Approach to EU Decentralised Agencies](#), 19 July 2012.

4.5 The Minister notes that the Commission proposes some changes in order to align the governance of the Agency with the Common Approach to EU Decentralised Agencies but notes that other elements remain inconsistent. While the Common Approach proposes a Management Board comprised of one representative from each Member State, retention of the present structure would leave three members from each Member State (one each from the Government, employers' organisations and employees' organisations respectively). The Government will need to be persuaded that the proposed size is suitable for effective decision-making.

4.6 As the Minister mentions in her Explanatory Memorandum, this Committee took issue with the reliance on Article 308 TEC when the Commission proposed amendments to the Agency's Regulation in 2004. The Committee would have preferred a legal base more suited to the aim and content of the instrument.

4.7 Like our predecessors, we take the view that a legal base aligned with the aim and content of the instrument is appropriate. The Government seems to share this view, but maintains reservations pertaining to the move to QMV and a possibility of new regulations. Can the Government identify an alternative legal base which would align with the aim and content of the proposal and leave unanimity in place? Given that regulations of a harmonising nature are strictly precluded under Article 153(2)(a), what sort of regulatory measures is the Government concerned about?

4.8 On the Government's other concern—that of the size of the Management Board—the Commission makes oblique reference to this in the document through its statement that “Certain elements of the Founding Act are not being reviewed in the light of the Common Approach in the framework of this proposal, pending further evaluation”. We consider that the Commission needs to justify deviation from the Common Approach and ought to have undertaken evaluation prior to making its proposal. In the meantime, is the Minister aware of the progress of any such evaluation and of whether the size of the Board is included? It would be helpful to be clear on the timing and nature of any such evaluation as it seems premature to amend the Founding Act without completing the evaluation.

4.9 The Government makes no comment on the implications of Brexit for negotiation of this proposal. We consider that the proposal raises a number of important issues relating to Brexit on which we would welcome the Minister's comments. Given the Government's support for EU-OSHA, we assume that the Government considers the Agency's work to be important. How will the Government fill the potential knowledge gap in this area created by the UK's withdrawal from the EU?

4.10 The Minister gives no indication of the position of other Member States and the European Parliament. We would welcome any early indications of the likely direction and speed of negotiations.

4.11 We look forward to a response to this Report by the end of October. In the meantime, we retain it under scrutiny.

Full details of the documents

Proposal for a Regulation establishing the European Agency for Safety and Health at Work (EU-OSHA), and repealing Council Regulation (EC) 2062/94: (38025), [11531/16](#), COM(16) 528.

Background

4.12 EU-OSHA's annual budget for 2016 is €15.24 million (£12.83 million). It has six strategic objectives for the period 2014–20:

- the provision of credible and good quality data on new and emerging risks that meet the needs of policy-makers and researchers and allow them to take timely and effective action;
- the provision of an accurate and comprehensive picture of current OSH risks, their health effects, and how they can be prevented and managed, to allow a better understanding of these issues among policy-makers and researchers;
- the provision of relevant tools for smaller workplaces to manage health and safety, and the engagement of intermediaries in the further development and dissemination of these tools;
- to get the occupational safety and health message across to multiple beneficiaries by raising awareness about workplace risks and how to prevent them, together with the Agency's intermediaries;
- the mobilisation of the OSH community through new tools to promote and facilitate the generation and maintenance of a body of high quality knowledge; and
- to develop and implement networking and communication activities to ensure that the Agency's activities meet the needs of its key stakeholders, to promote tripartism at European and Member State level, to enable networks to take an active part in the Agency's activities, and to ensure that Agency information reaches the intended beneficiaries and intermediaries.

4.13 The reasons for the proposed revision of EU-OSHA are twofold. First, the revision will align certain provisions of the existing Regulation governing EU-OSHA with the Common Approach on Decentralised Agencies. These guiding principles for all EU agencies were adopted in 2012 to make the agencies more coherent, effective and accountable. Second, the revision also offers the opportunity to update the objectives and tasks of EU-OSHA to reflect developments since its establishment in 1994.

The Commission’s proposal

4.14 The Commission makes the following proposals to revise the objectives and tasks of EU-OSHA:

- focus on practical tools to be used in drawing up an assessment of the risks to safety and health at work and in identifying the measures to be taken to tackle such risks;
- include an objective to carry out awareness-raising and communication activities and campaigns on health and safety at work issues and to ensure that information disseminated is tailored to the intended users;
- provide for anti-fraud measures, conflict of interest policy, evaluation and review and the establishment of a headquarters agreement;
- harmonise the provisions on programming and reporting with the requirements set by the revised Framework Financial Regulation;¹⁰ and
- align the terminology for the management structure with the Common Approach.

4.15 Certain elements of the Founding Act are not being reviewed in the light of the Common Approach in the framework of this proposal, pending further evaluation.

Minister’s Explanatory Memorandum of 6 September 2016

4.16 The Minister recalls in the following terms the parliamentary scrutiny of an earlier proposal to amend the Agency’s Founding Regulation:

“The proposal made in 2004 to amend the Founding Regulation (EM 9050/04) was held under scrutiny by both the House of Commons European Scrutiny Committee and the House of Lords EU Select Committee. Both committees were concerned about the continued use of the general flexibility clause as the Treaty base for the Agency (in 2004 it was proposed to continue with the clause, using the updated reference, Article 308 of the Treaty establishing the European Community (TEC)). This was made as part of a wider concern by both committees about the use of the flexibility clause in general.

“The Government thought that Article 137 TEC provided a more satisfactory legal base but was unable to persuade other Member States to support this view. In the light of this, the Government decided that on balance it was better to join the consensus and agree the amending regulation and thus overrode scrutiny to do so. The House of Commons European Scrutiny Committee subsequently called the then Minister of State for Work, Jane Kennedy, to give evidence on why the Government had agreed to the proposal.”

10 Regulation [2015/1929](#) of 28 October 2015 on the financial rules applicable to the general budget of the Union.

4.17 On the necessity of the proposal and of the Agency, the Minister says:

“The Government agrees that this matter needs to be addressed at EU level as it concerns the functioning of a European Agency and its place within the EU institutional framework. As to the actual need for the Agency, the Government supports its basic purpose, which is to encourage and facilitate cooperation between Member States on health and safety at work as a way to share good practice and help ensure the level playing field in the EU.”

4.18 The Minister considers that most of the proposed changes are administrative or procedural and notes that there would be no extension in the role of the Agency, which has no regulatory powers. She notes that the Government has two concerns.

4.19 The Minister expresses the Government’s concerns about the legal base in the following terms:

“The Commission has proposed the use of Article 153(2)(a) TFEU to replace the current treaty base of Article 308 TEC. Article 153(2)(a) mentions that the European Parliament and the Council ‘may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States.’ This would mean a move from unanimity to majority voting. However, the nature and greater level of specificity in Article 153(2) (a) might suggest a better fit with the purpose of the Agency, i.e. to raise knowledge and to exchange information on occupational safety and health good practices. The Government also understands that the term ‘measures’ has been used elsewhere to include regulations. The Government will seek a justification for this change.”

4.20 On the lack of alignment between the proposal and the Common Approach to EU Decentralised Agencies, the Minister writes:

“The Commission has taken account of certain elements of the Common Approach to EU Decentralised Agencies in the design of the Agency’s governance structures. For example, it has changed the terminology so that the present Governing Board will be called a Management Board; it has proposed a small Executive Board (what is currently the Agency’s ‘Bureau’) to prepare and implement decisions by the Management Board; and has firmed up the responsibilities of the Director of the Agency. The Commission has, however, decided to retain the present structure of the Governing Board for the Management Board. This means that there will continue to be three members from each Member State on the Management Board. The Common Approach instead proposes a streamlined Management Board comprised of one representative from each Member State and, where appropriate, a fairly limited number of stakeholders’ representatives. The Government sees some role for tripartite involvement in the Management Board but will need to be persuaded that the proposed size is suitable for effective decision-making.”

Previous Committee Reports

None, but the following Reports are of relevance: Third Report HC 38–iii (2004–05), [chapter 2](#) (12 January 2005); Thirty–second Report HC 42–xxxii (2003–04), [chapter 11](#) (13 October 2004); Thirtieth Report HC 42–xxx (2003–04), [chapter 6](#) (9 September 2004); Twenty–second Report HC 42–xxii (2003–04), [chapter 11](#) (9 June 2004).

5 EU-Malaysia Partnership and Cooperation Agreement

Committee's assessment	Legally and politically important
<u>Committee's decision</u>	Not cleared from scrutiny; further information requested; drawn to the attention of the Foreign Affairs Committee
Document details	(a) Joint Proposal for a Council Decision on the signing of the Framework Agreement on Partnership and Cooperation between the European Union and the Government of Malaysia; (b) Joint Proposal for a Council Decision on the conclusion of the Framework Agreement on Partnership and Cooperation between the European Union and the Government of Malaysia
Legal base	Article 37, TEU; Articles 207, 209 TFEU; Unanimity
Department	Foreign and Commonwealth Office
Document Numbers	(a) (38015), 11644/16 + ADD 1, JOIN(16) 37; (b) (38016), 11645/16 + ADD 1, JOIN(16) 38

Summary and Committee's conclusions

5.1 Malaysia is the EU's second most important trading partner in South East Asia. The Partnership and Cooperation Agreement (PCA) is the first-ever bilateral agreement between the EU and Malaysia. It aims to strengthen cooperation in areas such as human rights, counter-terrorism, trade and climate change.

5.2 Federica Mogherini, the EU High Representative for Foreign Affairs and Security Policy/Vice-President of the European Commission, described the Agreement as:

“a concrete step that will further advance our bilateral relations. The Agreement will reinforce our political dialogue with Malaysia on a range of issues, among them counter-terrorism and the promotion of human rights and of international justice.”

5.3 The two proposals that have been submitted (each of which is accompanied by an identical copy of the agreement itself) enable the EU to (a) sign and (b) conclude (ratify) the Agreement. The Agreement is one between the EU and Malaysia, without the separate participation of the Member States. The proposals are based on (a) the Common Foreign and Security Policy (which is outside the mainstream of EU competences and permits greater Member State control) (b) the common commercial policy (which is a matter of exclusive EU competence), and (c) development cooperation (where the exercise of EU competence does not preclude action by Member States). These factors mean that the risk of competence creep,¹¹ often arising in other external agreements, is diminished.

¹¹ In this case competence creep could arise from the EU claiming exclusive competence it does not have or exercising alone competence which is shared with Member States, and which they could otherwise exercise.

5.4 The Minister for Asia and Pacific (Alok Sharma) welcomes the Agreement and considers it to be, “a precursor to an EU–Malaysia Free Trade Agreement (FTA) which would provide a platform for enhancing the UK’s trade and investment relationship with Malaysia”.

5.5 The Agreement and the Government Explanatory Memorandum raise two areas on which we seek further information from the Government.

5.6 The first concerns Brexit. The Minister welcomes the Agreement and notes that any subsequent EU–Malaysia Free Trade Agreement would provide a platform for enhancing the UK’s trade and investment relationship with Malaysia. How would the Government seek to retain the advantages of the Partnership and Cooperation Agreement once the UK has withdrawn from the EU? Has the Government considered the possibility of taking steps to ensure that the PCA continues to apply between the UK and Malaysia post-Brexit?

5.7 The second concerns the possible applicability of the UK opt-in in the light of the Government’s usual approach that this applies where the content of an international agreement falls within the subject matter covered by Title V of Part Three TFEU (concerning the Area of Freedom, Security and Justice).¹² This Agreement includes provisions on migration (and in particular obligations in respect of re-admission), co-ordination to combat illicit drugs (including through the justice sector), and cooperation against organised crime and corruption.¹³ As the Minister’s Explanatory Memorandum makes no mention of the UK opt-in, we should be grateful if he would confirm that the Government does not consider the UK opt-in to be engaged and the reasons why not.

5.8 In the meantime, we retain the proposals under scrutiny. We consider that these proposals are likely to be of interest to the Foreign Affairs Committee in the light of its work on the implications of leaving the EU for the UK’s role in the world and we accordingly draw them to the attention of that Committee.

Full details of the documents

(a) Joint Proposal for a Council Decision on the signing, on behalf of the European Union, of the Framework Agreement on Partnership and Cooperation between the European Union and the Government of Malaysia: (38015), 11644/16 + ADD 1, JOIN(16) 37; (b) Joint Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Framework Agreement on Partnership and Cooperation between the European Union and the Government of Malaysia: (38016), 11645/16 + ADD 1, JOIN(16) 38.

Background

5.9 The explanatory memorandum from the European Commission includes the following explanation of the background to the Agreement:

¹² The committee does not agree with this approach. It considers the UK opt-in is only engaged when the measure has a Title V legal base.

¹³ Articles 20, 22 and 23 of the Agreement.

“In November 2004, the Council authorised the Commission to negotiate individual Framework Agreements on Partnership and Cooperation (PCA) with Thailand, Indonesia, Singapore, the Philippines, Malaysia and Brunei. Negotiations with Malaysia started in February 2011 following an agreement to launch the negotiations in October 2010 by Commission President Barroso and Prime Minister Najib Razak. The negotiations were concluded following the 11th round of negotiations on 12 December 2015. Both sides initialled the PCA in Putrajaya on 6 April 2016.”

5.10 The European Commission explains that the PCA is the first-ever bilateral agreement between the EU and Malaysia and points out that it contains “legally-binding commitments which are central to the EU’s foreign policy, including provisions on human rights, non-proliferation, counter-terrorism, the International Criminal Court, migration and taxation”.

5.11 The European Commission states that the PCA “broadens considerably the scope for mutual engagement in the economic and trade domain as well as justice and home affairs”, and that it strengthens cooperation across a wide spectrum of policy fields. It adds that:

“Politically, the PCA with Malaysia marks an important step towards strengthening the EU’s role in South-East Asia, based on shared universal values such as democracy and human rights. It paves the way for enhancing political, regional and global cooperation between two like-minded partners. The implementation of the PCA will entail practical benefits for both sides, forming a basis for the promotion of the EU’s broader political and economic interests.”

The Agreement

5.12 The stated aim of the Agreement is to “establish a strengthened partnership between the Parties and to deepen and enhance cooperation on issues of mutual interest, reflecting shared values and common principles”.

5.13 Cooperation under the Agreement “shall be implemented by means of the Parties’ respective laws, rules, regulations and policies”. The proper functioning and implementation of the Agreement will be ensured by the establishment of a Joint Committee, composed of representatives of the Parties at an appropriate high level.

5.14 Either Party may put forward any proposals for the expansion of the scope of cooperation or amendment to any provision of the Agreement. The Agreement is valid for five years, and then automatically extended for further successive periods of one year. Either Party may terminate the Agreement by giving notice in writing. The termination would take effect six months later.

5.15 The scope of the Agreement covers a wide range of policy areas, which are grouped into the following categories:

- bilateral, regional and international cooperation;
- international peace, security and stability;

- trade and investment;
- justice and security (including cooperation on managing migration);
- other sectors (including human rights, financial services, economic policy, governance of taxation, industrial policy, tourism, the information society, cyber security and media); and
- science, technology and innovation (including cooperation on promoting sustainable development and addressing the challenges of climate change).

5.16 The specific provisions are different for each policy area, but many are based on commitments to:

- exchange information;
- share experience and exchange best practices;
- promote international cooperation and support wider international objectives and agreements; and
- develop common rules and standards.

5.17 Some provisions also include more specific commitments, for example:

- migration—a commitment that each EU Member State will readmit any of its nationals illegally present on the territory of Malaysia;
- financial services—an agreement to strengthen cooperation with a view to achieving closer rules and standards in the financial sector;
- industry—encouraging joint investments and joint ventures to improve the competitiveness of SMEs;
- science—promoting strategic research partnerships in the fields of science, technology and innovation; and
- transport—promoting technical and regulatory convergence in aviation safety and regulation.

Minister’s Explanatory Memorandum of 1 September 2016

5.18 The Minister for Europe and the Americas, (Sir Alan Duncan), sets out the Government’s approach to the Agreement in the following terms:

“The Agreement with Malaysia marks an important step towards strengthening the EU’s role in South–East Asia, based on shared universal values such as democracy and human rights. It paves the way for enhancing political, regional and global cooperation between two like-minded partners. The implementation of the PCA will entail practical benefits for both sides, forming a basis for the promotion of the EU’s broader political and economic interests.

“The Agreement establishes a Joint Committee that will monitor the development of the bilateral relationship between the Parties. The Agreement includes a non-execution clause that provides for the possibility of suspending the application of the Agreement in case of violation of essential elements.

“The Agreement is a precursor to an EU–Malaysia Free Trade Agreement (FTA) which would provide a platform for enhancing the UK’s trade and investment relationship with Malaysia.”

Previous Committee Reports

None.

6 Tax evasion and avoidance, money laundering, terrorist financing

Committee's assessment	Politically important
<u>Committee's decision</u>	(a) Clear from scrutiny; (b) and (c) not cleared from scrutiny, further information requested
Document details	(a) Commission Communication concerning <i>tax evasion and avoidance</i> ; (b) Proposed Council Directive about access to anti-money-laundering information by tax authorities; (c) Proposed Directive about prevention of the use of the financial system for the purposes of money laundering or terrorist financing
Legal base	(a) —; (b) Articles 113 and 115 TFEU, special legislative procedure, unanimity; (c) Articles 50 and 114 TFEU, ordinary legislative procedure, QMV
Department	HM Treasury
Document Numbers	(a) (37924), 10977/16, COM(16) 451; (b) (37925), 10978/16, COM(16) 452; (c) (37927), 10678/16 + ADDs 1–2, COM(16) 450

Summary and Committee's conclusions

6.1 In recent years the EU has introduced legislative and non-legislative measures concerned with money laundering, terrorist financing and tax evasion and avoidance.

6.2 The Commission Communication, document (a), on further measures to enhance transparency and tackle tax evasion and avoidance at the EU level, builds on the proposals set out in its January 2016 Anti-Tax Avoidance Package. It first sets out the main recent developments and measures on avoidance and evasion at the EU and international level. The Commission identifies a number of areas for possible further action in the light of the “Panama papers” under five general headings: strengthening the link between the Fourth Anti-Money Laundering Directive and Tax Transparency rules; improving information exchange on beneficial ownership; increasing oversight of enablers and promoters of aggressive tax planning; promoting higher tax good governance standards worldwide; and improving the protection of whistle-blowers.

6.3 The Commission proposes a Directive, document (b), to amend the Directive on Administration Cooperation to enable access to anti-money laundering and counter-terrorist financing information by tax authorities. The purpose is to facilitate the effective implementation of the OECD/G20's new Global Standard for Automatic Exchange of Financial Account Information in Tax Matters.

6.4 The Commission also proposes, in response to terror attacks in Europe and the leak of the Panama Papers, a Directive, document (c), to amend the Fourth Anti-Money Laundering Directive. The aim is countering financing of terrorism and increasing

transparency of financial transactions and corporate entities. The Directive would also make consequential changes to the relevant company law rules under the First Company Law Directive.

6.5 On the Commission Communication the Government, while telling us that it is supportive of proportionate proposals that enhance tax transparency, in particular at the global level and welcomes in principle the increase in transparency towards the public to help enhance scrutiny where appropriate, says that:

- it will examine the Commission proposals taking full account of respective competences, the role of the Council of Ministers and the potential impact of particular elements, including on wider international action;
- it is committed to tackling remaining challenges in the fight against tax avoidance and evasion; but
- any tax measures should be agreed unanimously by the Council as tax is a Member State competence.

6.6 Regarding the proposed Directive to amend the Directive on Administrative Cooperation, the Government tells us that it would help the UK to reap the revenue benefits it expects to receive from better implementation of the new Global Standard. As for the proposed Directive to amend the Fourth Anti-Money Laundering Directive, the Government tells us of its support for five amendments in the proposal, saying that they provide clarity which would help in the implementation and enforcement of the provisions of the Fourth Anti-Money Laundering Directive. However, it describes concerns about the three other aspects of the proposal, which it intends to address in negotiation of the proposal. The Government also expresses reservations about the findings of the Commission's impact assessment of the proposal, noting in particular some financial implications.

6.7 While we clear the Commission Communication from scrutiny, we are holding the two proposed Directives under scrutiny pending further information from the Government. We wish to hear about progress in negotiation of the proposals, particularly in relation the concerns the Government has mentioned to us. We also wish to hear about any decision as to expediting transposition of the proposals.

Full details of the documents

(a) Commission Communication on *further measures to enhance transparency and the fight against tax evasion and avoidance*: (37924), [10977/16](#), COM(16) 451; (b) Proposed Council Directive amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities: (37925), [10978/16](#), COM(16) 452; (c) Proposed Directive amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC: (37927), [10678/16](#) + ADDs 1–2, COM(16) 450.

Background

6.8 In recent years the EU has introduced legislative and non-legislative measures concerned with money laundering, terrorist financing and tax evasion and avoidance. These include the Directive (EU) 2015/849, the Fourth Anti-Money Laundering Directive, and Directive 2011/16/EU, the Directive on Administrative Cooperation, which, as amended by Directive 2014/107/EU, implements the new Global Standard for Automatic Exchange of Financial Account Information in Tax Matters.¹⁴

The documents

6.9 The Commission Communication, document (a), on further measures to enhance transparency and tackle tax evasion and avoidance at the EU level, builds on the proposals set out in its January 2016 Anti-Tax Avoidance Package¹⁵ and is, in part, a response to concerns raised by the recent media links related to Panama.

6.10 The Commission sets out the main recent developments and measures on avoidance and evasion at the EU and international level. These include:

Transparency proposals

- from 2017 all Member States will automatically exchange information on their cross-border tax rulings on a systematic basis;
- in March 2016, all Member States agreed to automatically share country-by-country reports of multinationals' activities for tax purposes;

Increased public transparency

- under Directive 2013/36/EU, the Capital Requirements Directive, financial institutions must publicly disclose key information on their activities, taxes, profits and public subsidies on a country-by-country basis;
- any multinational present in the EU and with a turnover of more than €750 million (£639 million) would have to publish a specified set of tax-related data publicly disclosed online under a Directive proposed in April 2016;¹⁶

Increased transparency on individual accounts

- since January 2016, under the Administrative Cooperation Directive, Member States are obliged to automatically exchange information on income and capital held by individuals abroad;
- under the Fourth Anti-Money Laundering Directive, Member States are required to create central registers of beneficial ownership information by the end of 2016;

14 See <http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters-9789264216525-en.htm>.

15 (37480), 5636/16 + ADD 1: see Twenty-fifth Report HC 342-xxiv (2015-16), [chapter 7](#) (9 March 2016).

16 (37663), 7949/16 + ADDs 1-2: see Thirty-third Report HC 342-xxxii (2015-16), [chapter 11](#) (11 May 2016).

Anti-avoidance and external strategy

- the Commission’s June 2015 Action Plan for Fair and Effective Taxation,¹⁷ proposing a series of measures to modernise corporate taxation in the EU, including a revised proposal for a Common Consolidated Corporate Tax Base, which it intends to present by end of 2016; and
- the Commission’s Anti-Tax Avoidance Package,¹⁸ which was agreed in June 2016 and included proposed legal measures to tackle aggressive tax planning and an External Strategy to promote tax good governance.

6.11 The Commission identifies a number of areas for possible further action in the light of the “Panama papers” under five general headings:

Strengthening the link between the Fourth Anti-Money Laundering Directive and Tax Transparency rules

- proposed amendments to the Fourth Anti-Money Laundering Directive, as in document (c);¹⁹
- proposed amendments to the Directive on Administrative Cooperation, as in document (b), which would reinforce cooperation between EU anti-money laundering and EU tax transparency rules²⁰;

Improving information exchange on beneficial ownership

- the Commission notes that all Member States have agreed to participate in a pilot project to exchange information on the ultimate beneficial owners of companies and trusts;
- it has started to examine the most appropriate framework for the automatic exchange of beneficial ownership information at the EU level and will present a first analysis of the issue to Member States in the autumn of 2016, with appropriate next steps to follow;

Increasing oversight of enablers and promoters of aggressive tax planning

- in the autumn of 2016, the Commission will launch a public consultation to gather feedback on the most appropriate approach to increase oversight and deploy effective disincentives for promoters and enablers of aggressive tax planning;
- it will work closely with the OECD and other international partners on a global approach to greater transparency going beyond the recommendation of the OECD/G20’s BEPS (Base erosion and profit shifting) Action Point 12;²¹

17 (36940), 9949/15 + ADDs 1-2: see First Report HC 342-i (2015-16), [chapter 80](#) (21 July 2015).

18 *Op cit.*

19 See below.

20 See below.

21 See <http://www.oecd.org/ctp/beps-2015-final-reports.htm>.

Promoting higher tax good governance standards worldwide

- the EU supports the OECD's efforts to implement higher tax good governance standards through the inclusive framework for implementation of BEPS and the work on monitoring tax transparency by the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes;²²
- the Commission is finalising a pre-assessment of all third countries that pose a risk to Member States' tax bases and will present the results of this analysis to the Code of Conduct Group (Business Taxation)²³ and will work closely with the OECD to develop an international list of non-cooperative jurisdictions; and

Improve the protection of whistle-blowers

- to strengthen the protection of whistle-blowers, the Commission is assessing the scope for further action at the EU level, whilst respecting the principle of subsidiarity.

6.12 The Commission proposes a Directive, document (b), to amend the Directive on Administration Cooperation to enable access to anti-money laundering and counter-terrorist financing information by tax authorities. The purpose is to facilitate the effective implementation of the Global Standard for Automatic Exchange of Financial Account Information in Tax Matters, as brought into EU law through Directive 2014/107/EU. This proposal is closely linked to the changes that would be made to the Fourth Anti-Money Laundering Directive, as in document (c), with both proposals to be introduced to the same timetable.

6.13 The Commission, in response to terror attacks in Europe and the leak of the Panama Papers, proposes a Directive, document (c), to amend the Fourth Anti-Money Laundering Directive. The aim is countering financing of terrorism and increasing transparency of financial transactions and corporate entities. The Commission also proposed consequential changes to the relevant company law rules under Directive 2009/101/EC, the First Company Law Directive.

6.14 The counter-terrorist financing proposals include:

- bringing virtual currencies into the anti-money laundering/counter-terrorist financing regime by designating virtual currency exchange platforms and custodian wallet providers as obliged entities;
- reducing the threshold at which Customer Due Diligence must be applied to non-reloadable prepaid instruments from €250 (£213) to €150 (£128) and removing the exemption from Customer Due Diligence requirements for the online use of prepaid instruments;

22 See <http://www.oecd.org/tax/transparency/>.

23 See <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group/>.

- clarifying that Financial Intelligence Units (FIUs) are given a power in the Fourth Anti-Money Laundering Directive to request information concerning money laundering or terrorist financing from an obliged entity, even if that particular entity has not filed a suspicious transaction report;
- enabling FIUs and competent authorities to identify the holders and beneficial owners of bank and payment accounts—Member States would have to set up automated centralised mechanisms in the form of a central register holding the necessary data on individuals and firms or a central data retrieval system; and
- harmonising the EU’s approach to third-country jurisdictions with strategic deficiencies in their anti-money laundering/counter-terrorist financing regimes—obliged entities must apply the appropriate Enhanced Due Diligence measures and mitigation measures when working with natural or legal persons established in those jurisdictions.

6.15 The transparency proposals include:

- amending the First Company Law Directive to provide public access to a limited set of information on the beneficial owners of companies and legal entities;
- reducing the criterion for identifying beneficial ownership from a 25% shareholding to 10% with respect to passive non-financial entities, which are deemed to pose a high risk of money laundering or terrorist financing;
- requiring Member States to establish central registers with the beneficial ownership information of trusts and other types of legal arrangements having a structure or function similar to trusts (for example, Treuhand (in Germany), fiducie (in France), fideicomiso (in Spain) and similar legal arrangements)—trusts and other legal arrangements are to be registered in the Member State where they are administered;
- providing FIUs and competent authorities with unrestricted access to beneficial ownership information on trusts and trust-like arrangements, with obliged entities also having access when undertaking Customer Due Diligence;
- giving persons with a legitimate interest access to limited information, that is information for trusts that comprise property that is held by, or on behalf of, a person engaged in the business of managing trusts or acting as a trustee with a view to gaining profit—the Commission argues that trusts in this final category are comparable in their activities to companies and should be subjected to similar disclosure and transparency requirements;
- requiring obliged entities to perform Customer Due Diligence to the beneficial owners of existing customers, and not solely to new customers; and
- interconnecting national beneficial ownership registers.

6.16 The Commission also proposes clarification of several provisions of the Fourth Anti-Money Laundering Directive, including:

- harmonising the term “competent authorities”;
- excluding closed loop cards²⁴ from the meaning of electronic money for the purposes of the Directive, in recognition of the low risk they pose; and
- updating the anti-money laundering/counter-terrorist financing framework to take full account of electronic means of identity verification and, in particular, Regulation 910/2014, the eIDAS Regulation, on electronic identification and trust services for electronic transactions in the internal market.

6.17 The transposition deadline for the Fourth Anti-Money Laundering Directive is 26 June 2017. However, this amending Directive would bring this forward to 1 January 2017, the transposition date for the proposed Directive itself.

The Government’s view

6.18 In the three Explanatory Memoranda for these documents the Government repeats the now familiar comment, in the context of the outcome of the EU referendum, that until the UK exits the EU the Government will continue to negotiate, implement and apply EU legislation.

6.19 In her Explanatory Memorandum of 7 September 2016 on the Commission Communication, document (a), the Financial Secretary to the Treasury (Jane Ellison) says that:

- the Government is supportive of proportionate proposals that enhance tax transparency, in particular at the global level;
- it also welcomes in principle the increase in transparency towards the public to help enhance scrutiny where appropriate;
- it will examine the proposals in the Communication carefully taking full account of respective competences, the role of the Council of Ministers and the potential impact of particular elements, including on wider international action;
- it is committed to tackling remaining challenges in the fight against tax avoidance and evasion; but
- it acknowledges that any tax measures should be agreed unanimously by the Council as tax is a Member State competence.

24 A closed loop card is credit card or gift card that a consumer can only use to make purchases from a single company.

6.20 The Minister comments further that:

- the Government will carefully consider the proposed amendments to the Fourth Anti-Money Laundering Directive and Directive on Administrative Cooperation, documents (b) and (c), including both the benefits and burdens, and will discuss this in the Council with other Member States;
- it welcomes the Commission’s work to help inform the development of a global framework for the automatic exchange of beneficial ownership—it will be important that this work, as with the earlier work on the Global Standard for Automatic Exchange of Financial Account Information in Tax Matters,²⁵ supports the development and implementation of global solutions given the global nature of illicit finance;
- it welcomes the Commission’s commitment to tackling aggressive tax planning, an area where the UK has taken a number of actions domestically including through the Diverted Profits Tax;
- as for going beyond the BEPS recommendations, action taken must be proportionate and must be agreed by the Council before being finalised—in considering proposals the Government will be mindful of the importance of EU initiatives supporting effective global action;
- the Government is supportive of appropriate action to tackle non-cooperative jurisdictions, however any agreed criteria and associated counter measures must be discussed and agreed by the Council, as stated in Council conclusions of the Commission’s Communication on an External Strategy for Effective Taxation and the Commission Recommendation on the implementation of measures against tax treaty abuse in May 2016;²⁶ and
- it welcomes the Commission’s work on examining the protection of whistle-blowers on tax matters while stressing that any action taken must respect Member State competence and the subsidiarity principle.

6.21 In her Explanatory Memorandum of 12 September 2016 on proposed Directive to amend the Directive on Administration Cooperation, document (b), she notes that the intention is to facilitate effective implementation of the amending Directive 2014/107/EU, which implements the Global Standard for Automatic Exchange of Financial Account information in Tax Matters. The Minister comments that:

- the proposal would allow HM Revenue and Customs greater access to data that is valuable for its functions and would help the UK realise the expected yield from Directive 2014/107/EU;
- the proposal would support successful implementation of the exchange of information under the Global Standard, which is expected to bring substantial benefits to the UK in terms of recovery of unpaid tax; and

25 *Op cit.*

26 (37481), 5637/16 + ADD 1, (37494), 5640/16: see Thirty-third Report HC 342-xxxii (2015-16), [chapter 10](#) (11 May 2016) and Twenty-fifth Report HC 342-xxiv (2015-16), [chapter 7](#) (9 March 2016).

- estimates of the overall impact of the new global standard were set out in the Policy Costings document produced alongside the March 2013 Budget.²⁷

6.22 In his Explanatory Memorandum of 5 September 2016 on the proposal to amend the Fourth Anti-Money Laundering Directive, document (c), the Economic Secretary to the Treasury (Simon Kirby) comments that:

- the Government welcomes the proposals, particularly for public registers of company beneficial ownership;
- it has led the way in this area—its Register of Persons with Significant Control went live in June 2016 and is accessible by the public free of charge, making it the first such register in the G20;
- the Government also welcomes the proposal to clarify particular provisions of the Directive, including clarifying that trusts and other legal arrangements must be registered where they are administered, explicitly defining the term “competent authorities”, excluding closed loop cards from the Directive and updating the anti-money laundering/counter-terrorist financing framework to take full account of the eIDAS Regulation and electronic means of identity verification; and
- these proposals provide clarity which would help in the implementation and enforcement of the provisions of the Directive.

6.23 However, the Minister also expresses reservations about the some aspects of the proposed amending Directive. First he says that:

- the Government has concerns about the proposal to reduce the registration threshold from 25% shareholding to 10% for some companies;
- this is a significant divergence from current conditions of becoming a Person with Significant Control, which include holding more than 25% in shares or voting rights;
- reducing the threshold would increase the number of persons on the register and the costs to businesses; and
- it could also create a mismatch of the Person with Significant Control thresholds on the register, for example, in a complex structure with several layers of companies, there could be some companies that meet the 25% threshold and others that meet the 10% threshold.

6.24 The Minister says next that:

- the Government has concerns about the requirement to register the beneficial owners of all trusts and trust-like legal arrangements and to make this information widely accessible;

27 See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413895/Policy_Costings_18_00.pdf.

- whilst the Commission argues that some trusts operate in a similar way to companies and should be treated in a comparable way, the private and family-oriented nature of most trusts raises privacy concerns; and
- the Government will seek to ensure that the provisions on trusts are deliverable, proportionate and risk-based.

6.25 The third Government concern the Minister describes is about the requirement to introduce automated centralised mechanisms which allow the identification of any natural or legal person holding or controlling payment or bank accounts, on which he says that:

- this is a significant change to the current system in the UK whereby the FIU accesses information on bank and payment accounts via credit reference agencies (CRAs) and through established contacts with account providers;
- the requirement to introduce a central data retrieval system would be likely to be less onerous than the alternative option of compelling all financial institutions to report data on all bank accounts to a centralised mechanism;
- there might also be impacts on the UK's CRAs; and
- the Government will seek to ensure that these provisions are deliverable, proportionate and risk-based and that options for allowing the UK's existing system to continue are examined closely.

6.26 The Minister comments on the Commission's impact assessment and the financial implications of the proposed amending Directive, saying that:

- this does not provide quantitative estimates of the costs to businesses or individuals of all of the proposals;
- in particular, there does not appear to have been a quantitative assessment of the impacts of the beneficial ownership proposals for trusts, either in terms of the number of individuals and trusts who would be affected or the administrative burdens associated with these changes;
- discussion of the impact of the proposed measures on pre-paid instruments also lacks detail;
- while some figures are offered for the potential costs of Customer Due Diligence on issuers, these do not take into account the costs of developing online systems for those issuers that currently do not have them or the difficulties that might be experienced in Member States that lack robust frameworks for online Customer Due Diligence;
- the main costs of the proposal relate to provisions on bank account information and beneficial ownership;
- the impact assessment estimates the costs of setting up both a central register of bank account information, as well as an automated data retrieval system;

- it probably underestimates, however, the costs to both Government and firms;
- it estimates that a central register of bank account information, would carry one-off costs as a result of the need to acquire hardware, software and labour, ranging from €170,000 (£145,000) to €1,000,000 (£852,000), as well as recurring costs of maintaining and updating the tool, estimated to be between €3,000 (£2,600) and €600,000 (£511,000) annually;
- it notes that one Member State has already set up an automated data retrieval system, which carried one-off costs of €1,200,000 (£1,022,000) and recurring costs of €480,000 (£409,000) per year, but says that this sample is too small to draw any hypothetical conclusions about the costs of setting up such a system in other countries;
- the beneficial ownership measures also have financial implications—the Government is currently setting up a register of trusts with tax consequences, which will cover around 170,000 trusts at a cost of approximately £10 million; and
- broadening the scope of this register to include all 1.5 to 2 million trusts in the UK would increase these costs.

Previous Committee Reports

None.

7 Financial services and the Capital Markets Union

Committee’s assessment	Politically important
Committee’s decision	Not cleared from scrutiny; further information requested
Document details	Proposed Regulation concerning venture capital funds and social entrepreneurship funds
Legal base	Article 114 TFEU, ordinary legislative procedure, QMV
Department	HM Treasury
Document Numbers	(37956), 11303/16 + ADDs 1–2, COM(16) 461

Summary and Committee’s conclusions

7.1 In the context of building the Capital Markets Union the Commission has proposed a Regulation to amend the Regulations governing European Venture Capital Funds and European Social Entrepreneurship Funds. The Commission says that the aim of reforming the Regulations is to increase uptake of these funds. It notes that the two frameworks have had some success, with a number of funds being established and intending to market mostly cross-border. However, the Commission proposes three main amendments to the Regulations, designed to increase the uptake of these fund structures: expanding the number of managers who are able to offer these funds, expanding European Venture Capital Fund eligible assets beyond the existing definition, and making some changes to fee structures and registration processes to decrease costs for managers.

7.2 The Government tells us that it strongly welcomes this Commission initiative. It will seek an outcome that allows more businesses to benefit from the non-banking source of financing which European Venture Capital Funds provide, while incentivising more managers to market both types of funds across borders. It will also seek to have as much of the proposed technical standards for “sufficient own-funds” as possible specified in the body of the proposed Regulation.

7.3 We note that the Government expects an “ambitious timeline” for this Regulation, which we take to mean it may be adopted in the near future. While we see no problems with this proposed Regulation we retain the document under scrutiny, pending information from the Government on progress in discussion of the proposal, particularly in relation to its perceived advantages not being diminished during negotiation.

Full details of the documents

Proposed Regulation amending Regulation (EU) No. 345/2013 on European venture capital funds and Regulation (EU) No. 346/2013 on European social entrepreneurship funds: (37956), [11303/16](#) + ADDs 1–2, COM(16) 461.

Background

7.4 Regulation (EU) No. 345/2013 on European Venture Capital Funds (EuVECA) and Regulation (EU) No. 346/2013 on European Social Entrepreneurship Funds (EuSEF) were introduced in 2013 to bring together EU-wide investors with unlisted SMEs and social undertakings and to increase non-bank finance within the economy. EuVECA and EuSEF allow fund managers to market these funds across the EU to investors able to commit a minimum of €100,000 (£76,190).

7.5 In September 2015 the Commission published an action plan for the first steps in building the Capital Markets Union. It detailed a range of about 20 reforms that the Commission would be developing and pursuing over the next four years. These reforms were to be a combination of legislative and non-legislative actions across a range of policy areas related to EU capital markets.²⁸

The document

7.6 As part of the Capital Markets Union project, the Commission proposes amendment to the EuVECA and EuSEF Regulations to support investment in SMEs and entrepreneurial businesses. The Commission says that the aim of reforming EuVECA and EuSEF is to increase uptake of the funds. The two frameworks have had some success, with a number of funds which have been established and intend to market mostly cross-border. However, the Commission suggests that revision of EuVECA and EuSEF will encourage take-up of these funds to boost the venture capital market as quickly as possible.

7.7 The Commission proposes three main amendments to the Regulations, designed to increase the uptake of these fund structures: expanding the number of managers who are able to offer these funds, expanding EuVECA eligible assets beyond the existing definition, and making some changes to fee structures and registration processes to decrease costs for managers.

Managers able to opt into EuVECA and EuSEF

7.8 Under the current Regulations, only small managers, with assets under management of €500 million (£380.95 million), are eligible to opt into the EuVECA and EuSEF Regulations. Managers with more than €500 million (£380.95 million) assets under management are required to be authorised under Directive 2011/61/EU, the Alternative Investment Fund Managers Directive (AIFMD),²⁹ but are not able to market funds under EuVECA and EuSEF. The Commission proposes allowing large managers authorised under AIFMD to market funds under EuVECA and EuSEF in the same way as small managers, by opting into the Regulations.

Eligible assets for investment under EuVECA

7.9 Under the current EuVECA Regulation, managers are only able to invest in companies which fulfil strict criteria for investment, namely unlisted companies with less than 250 employees and an annual turnover less than €50 million (£38.095 million) or an annual balance sheet of less than €43 million (£32.762 million). The Commission proposes:

28 (37134), 12263/15: see Seventh Report HC 342-vii (2015–16), [chapter 3](#) (28 October 2015).

29 Large managers are authorised under Article 6 of Directive 2011/61/EU.

- redefinition of eligible companies with the small mid-caps definition used in other EU programmes, which is up to 499 employees;
- including investment in companies listed on SME growth markets, as defined in the Markets in Financial Instruments Directive, Directive 2014/65/EU; and
- allowing follow-on investment in companies even if the company grows and stops fulfilling the criteria for the initial investment.

Requirements for sufficient own-funds

7.10 The proposal includes provisions relating to capital buffer requirements. Both Regulations require managers to hold “sufficient own-funds” to be able to properly discharge their obligations on an on-going basis, but neither the amount nor the methodology for the own-funds calculation are prescribed. It is up to individual Member States to determine the methodology and to charge what they consider appropriate. Such differences in national rules raise direct and indirect costs for EuVECA and EuSEF funds when marketed across borders. The Commission proposes requiring the European Securities and Markets Authority (ESMA) to develop Regulatory Technical Standards on methodologies for determining the amounts of sufficient own funds, in order to ensure a consistent approach to own-funds across all Member States.

Streamlining the registration process for managers

7.11 In order to streamline the registration process the Commission proposes:

- establishing that the competent authority of the home Member State must inform the manager whether they have been registered no later than two months after they have provided all the required information;
- avoiding duplicate registration processes under EuVECA or EuSEF and AIFMD;
- laying down the conditions for the registration of EuVECA and EuSEF funds by large managers authorised under AIFMD;
- providing fees and other charges may not be imposed by competent authorities of host Member States in relation to cross-border marketing of EuVECA and EuSEF funds; and
- extending the cross-border notifications between national supervisory bodies to AIFMD-authorised managers marketing EuVECA or EuSEF funds.

Technical changes

7.12 The Commission proposes:

- ensuring that the ESMA database includes information concerning all managers of EuVECA and EuSEF funds and the funds that they market;

- modifying a date by which Member States should notify rules applicable to breaches of the EuVECA and EuSEF Regulations, including breaches by AIFMD authorised managers marketing an EuVECA or EuSEF fund;
- ensuring enforcement of the EuVECA and EuSEF Regulations with respect to AIFMD-authorised managers marketing an EuVECA or EuSEF fund; and
- altering the date of the required reviews of EuVECA and EuSEF to four years after the Regulations' entry into application.

The Government's view

7.13 In his Explanatory Memorandum of 2 September 2016 the Economic Secretary to the Treasury (Simon Kirby) says that:

- the Government strongly welcomes the Commission's policy initiative, alongside the wider Capital Markets Union Initiative;
- these measures highlight the positive role that the Union can play in developing more proportionate, effective and risk-sensitive regulatory frameworks; and
- these proposals and others like them will free up capital for investment into SMEs and social causes, boosting jobs, growth and investment across the EU.

7.14 The Minister notes that:

- industry stakeholders have indicated that the take up of these fund structures has been low since their introduction, and that further action needs to be taken to increase the attractiveness of the EuVECA and EuSEF frameworks;
- changes to the legislation may have a positive effect on the EU venture capital industry, which remains a much smaller market than the USA's venture capital market; and
- the average size of a EU venture capital fund is only half the size of an equivalent fund in the USA, and around 90% of EU venture capital investment is concentrated in only eight Member States.

7.15 The Minister tells us that:

- the Government will seek an outcome that both allows more businesses to benefit from the non-banking source of financing which EuVECA provides, while incentivising more managers to market EuVECA and EuSEF funds across borders;
- it supports the changes to the definition of eligible companies for EuVECA investment—introduction of larger unlisted undertakings and SMEs in

growth markets would both ensure that a wider range of businesses can benefit from venture capital funding across the EU and provide investors with a wider range of options when selecting their investment portfolio;

- the Government supports changes to the Regulations to streamline registration processes which otherwise create unnecessary financial burden on firms, and which would focus on ensuring simplicity and proportionality of approach for firms; and
- in relation to directing ESMA to develop Regulatory Technical Standards for sufficient own-funds, and providing the Commission powers to adopt them, the Government will seek to include as much detail as possible in the proposed Regulation, but acknowledges the desire from industry to receive further technical advice from ESMA where appropriate.

7.16 Turning to the financial implications of the proposal the Minister says that:

- there are no direct implications for the UK exchequer or for the EU budget;
- with respect to impacted asset managers, the Government agrees with the Commission's assessment that approximately €40,500 (£30,857) cost savings per year for all funds marketed across the EEA, and a total of €32 million (£24.38 million) cost savings for all new EuVECA funds over five years; and
- there are currently approximately 34 registered EuVECAs across the EU.

Previous Committee Reports

None.

8 Establishing a European Border and Coast Guard

Committee’s assessment	Legally and politically important
<u>Committee’s decision</u>	Not cleared from scrutiny; further information requested; drawn to the attention of the Home Affairs Committee
Document details	Proposal for a Regulation on the European Border and Coast Guard
Legal base	Article 77(2)(b) and (d) TFEU, ordinary legislative procedure, QMV
Department	Home Office
Document Numbers	(37403), 15398/15 + ADD 1, COM(15) 671

Summary and Committee’s conclusions

8.1 The EU has struggled to cope with unprecedented pressures at parts of its external border. The Commission’s proposal for a European Border and Coast Guard forms part of an array of measures to respond to the pressures generated by the migration and refugee crisis. It is intended to ensure more effective management of the EU’s external land, sea and air borders and a high level of security within the EU, whilst safeguarding freedom of movement within the Schengen free movement area. The Commission considers that strengthening security at the EU’s external borders, following recent terrorist attacks, is “essential to restoring public confidence” and that “a decisive step towards an integrated management system” is necessary, based on the principles of solidarity and shared responsibility.³⁰

8.2 The proposed Regulation would significantly enhance the role of the EU’s External Borders Agency, Frontex, which would become the European Border and Coast Guard Agency (“the Agency”). Its main purpose would be to ensure “an efficient, high and uniform level” of control at the EU’s external borders by establishing an overarching strategy for European integrated border management. The strategy would be implemented collaboratively by the Agency itself and national authorities responsible for border management.³¹

8.3 The Commission published the proposed Regulation last December. EU leaders urged the Council to agree a position before the end of the Dutch Presidency (in June 2016), with a view to concluding negotiations with the European Parliament and setting up a functioning European Border and Coast Guard during the summer.³² The Government informed us in May that the Council had established its negotiating position and was

30 See p.2 of the [Commission Communication, A European Border and Coast Guard and effective management of Europe’s external borders](#), considered in our Twentieth Report agreed on 20 January 2016 and listed at the end of this chapter. Article 80 TFEU provides that EU asylum and immigration policies “shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States”.

31 See p.4 of the Commission’s explanatory memorandum accompanying the proposed Regulation and Article 3 of the proposal.

32 See the [Conclusions](#) agreed by the European Council in December 2015.

on track to agree a compromise text with the European Parliament by the end of June. Our earlier Reports listed at the end of this chapter provide a detailed overview of the Commission proposal and the Government’s approach.

8.4 The proposed Regulation builds on aspects of the Schengen free movement rules in which the UK does not participate. The UK is therefore not entitled to take part in its adoption and will not be bound by its provisions. The proposed Regulation does, however, include provisions on operational cooperation with the UK, as a non-participating EU Member State, which are similar to those currently in place with Frontex.

8.5 In his latest update, the Immigration Minister (Mr Robert Goodwill) confirms that the Council and European Parliament agreed a compromise text in June which the European Parliament approved on 6 July. He explains that the Presidency is finalising the text before presenting it to the Council for formal adoption. He expects the new Agency to be operational “by the autumn”. The Minister briefly touches on the scope for UK cooperation with the Agency while the UK remains a member of the EU and in the period following the UK’s formal withdrawal from the EU (Brexit).

8.6 **The press release issued by the European Parliament notes that the compromise text on the Regulation establishing the European Border and Coast Guard was agreed with the Council “at breath-taking speed”.³³ The Commissioner for Migration, Home Affairs and Citizenship (Dimitris Avramopoulos) has described the role of the European Border and Coast Guard in the following terms:**

“The European Border and Coast Guard will ensure a truly collective European management of our borders, based on the principle that security of our common EU external borders is a responsibility shared amongst all EU countries. There should no longer be shortages of staff or equipment for operations at our external borders. The external border of one Member State is the external border of all Member States. The new Agency will support, monitor and, when necessary, reinforce the national border guards, focusing primarily on early detection and prevention of weaknesses in the management of the external borders.

“Whilst Member States will keep their sovereignty and national border guards will remain the key actors for managing their borders, the European Border and Coast Guard will work as a safety net: In exceptional situations, when a Member State is unable to cope with the situation on its own, the European Border and Coast Guard will be able to step in, drawing on a pool of resources provided by the Member States. The formal steps necessary to finalise the adoption now need to be taken swiftly by the European Parliament and the Council. It is important that the European Border and Coast Guard can start delivering as soon as possible.”³⁴

8.7 We note that the Presidency is finalising the text to be presented to the Council for formal adoption in the autumn but that intensive preparations are already underway to ensure that the European Border and Coast Guard Agency will be up and running

33 See the [EP’s press release](#) of 22 June 2016.

34 See the [European Commission Statement](#) of 6 July 2016.

as soon as possible. We ask the Minister to provide us with a copy of the final text accompanied by an analysis of the provisions dealing with the Agency’s cooperation with the UK while it remains a member of the EU and those dealing with the Agency’s cooperation with third (non-EU) countries which will apply after the UK leaves the EU. The analysis should explain how the basis and scope for the UK to cooperate with the Agency will differ before and after the UK’s withdrawal from the EU.

8.8 Pending further information, the proposed Regulation remains under scrutiny. We draw this chapter to the attention of the Home Affairs Committee.

Full details of the documents

Proposal for a Regulation on the European Border and Coast Guard and repealing Regulation (EC) No. 2007/2004, Regulation (EC) No. 863/2007 and Council Decision 2005/267/EC: (37403), [15398/15](#) + ADD 1, COM(15) 671.

The Minister’s letter of 19 August 2016

8.9 The Minister confirms that, following agreement with the Council on a compromise text, the European Parliament voted to approve it at its plenary session on 6 July, with one amendment. He adds:

“The dossier will now pass back to the Council and a revised final text will be drafted by the Presidency for adoption.”

8.10 He notes that discussions to facilitate the early implementation of the proposed Regulation have taken place at recent EU Justice and Home Affairs Council meetings and he expects the new Agency to be operational “by the autumn”. Although the UK will not be bound by the Regulation, as it builds on elements of the Schengen rule book which do not apply to the UK, the Minister explains that the text “carries over the provisions from the existing Frontex Regulation which allow UK staff to participate in Frontex operations with the agreement of the Management Board on a case by case basis”. He continues:

“The UK sees cooperation with Frontex and the new Agency as an important part of our work with European partners to tackle the migration crisis and improve the security of the EU’s external border. We remain committed to ensuring this cooperation is effective and in preparation for the UK’s withdrawal from the EU, my officials are considering the UK’s position in respect of our future cooperation with the new Agency.”

Previous Committee Reports

Sixth Report HC 71-iv (2016–17), [chapter 7](#) (15 June 2016), Twenty-eighth Report HC 342-xxviii (2015–16), [chapter 11](#) (13 April 2016), Twenty-fifth Report HC 342-xxiv (2015–16), [chapter 10](#) (9 March 2016) and Twentieth Report HC 342-xix (2015–16), [chapter 10](#) (20 January 2016).

9 Public procurement of EU institutions

Committee’s assessment	Politically important
Committee’s decision	Cleared from scrutiny; further information requested
Document details	Court of Auditors’ Special Report No. 17/2016 - <i>The EU institutions can do more to facilitate access to their public procurement</i>
Legal base	—
Department	Cabinet Office
Document Number	(37953), —

Summary and Committee’s conclusions

9.1 Although the EU’s 2014 public procurement Directives do not legally bind the EU institutions, the institutions have their own broadly aligned procurement rules which were recently revised in 2015. This is quite a significant procurement market (amounting to €4 billion just for the four biggest EU institutions in 2014) and we assume that it will be important for the Government to ensure that this and the wider EU procurement access remains open to UK businesses post Brexit.³⁵ We now report how the EU Court of Auditors has made some recommendations in its Special Report³⁶ to improve how the EU institutions can facilitate wider, fairer and more competitive access to their public procurement.

9.2 We note some of these recommendations have not been fully accepted by two of the four institutions on which the Report focusses: the Commission and the European Parliament (EP). The other two, the Council and the European Central Bank (ECB), accepted or agreed in principle with the following recommendations:

- a) In order to facilitate the monitoring of the accessibility of their procurement activities, all EU institutions should collect and analyse data both on the initial number of requests to participate and offers received and the number of offers which were taken into account for the final award decision;
- b) For the upcoming 2016 revision of the EU Financial Regulation the Commission should consolidate all relevant provisions into a single rulebook for public procurement. Participation of small and medium-sized enterprises (SMEs) should be explicitly encouraged;
- c) The EU institutions should proactively use preliminary market consultations wherever appropriate with a view to preparing the procurement and informing economic operators of their procurement plans;

35 Equally, we also assume that for “value for money” purposes, it may be important to facilitate EU access to the UK domestic procurement market.

36 Prepared under Article 287(4).

- d) The EU institutions should divide contracts into lots wherever possible to increase participation in their procurement procedures;
- e) The EU institutions should create a common electronic one-stop shop for their procurement activities allowing economic operators to find all relevant information in a single online location and to interact with the EU institutions through this website;
- f) The Commission should propose a mechanism for a rapid review of complaints from economic operators who consider that they have been unfairly treated. Such a review should take place before economic operators may turn to the EU Ombudsman or to the EU Courts;
- g) To allow effective ex post monitoring of their procurement activities the EU institutions should set up a single public repository of information related to their procurement contracts which could be developed as part of TED e-Tendering;
- h) The European Anti-Fraud Office OLAF should produce reports and statistics on the different types of allegations under investigation and the outcome of these investigations; and
- i) The EU institutions should use peer reviews for mutual learning and exchange of best practice.

9.3 The main point of resistance by the Commission and EP was that the recommendations need to be assessed for cost effectiveness, as they could result in administrative burdens. Amongst other objections, the Commission does not accept that SME participation should be explicitly encouraged. It also rejected the recommendation that it undertake a review of the complaints procedure as the Financial Regulation already provides for unsuccessful tenderers to be informed of the detailed reasons for rejections and of the available means of redress (Ombudsman complaint and EU judicial review).

9.4 The new Minister for the Cabinet Office and Paymaster General (Ben Gummer) says that the UK Government and the devolved administrations broadly welcome the recommendations.

9.5 We welcome the Minister to his new post and thank him for his Explanatory Memorandum (EM). As this is a non-legislative document with no immediate implications for the UK, we are content to clear it from scrutiny.

9.6 However, we draw it to the attention of the House because not all the recommendations of the Court of Auditors have been accepted by the Commission and European Parliament. We would be interested to learn the Government's view of the justifications for resisting recommendations relied on by the two institutions, set out in paragraph 16 of the Minister's EM given that the Minister seems to only welcome those recommendations which align with UK policy on procurement.

9.7 We would be also be grateful if the Minister could confirm, in due course, whether the significant procurement markets of both the EU institutions themselves and across the EU more widely will continue to be open to UK businesses post Brexit. In this respect, we note that:

- a) **In the case of the former, the current position is that businesses established in non-EU countries may only participate in EU institutional “calls for tenders” if that country has signed and ratified a relevant international agreement in the field of public procurement with the EU, including the Multilateral Agreement on Government Procurement (GPA) concluded within the World Trade Organisation. Although the UK signed and ratified the original 1994 GPA in its own right, this does not appear to be the case for the revised 2014 GPA which was concluded by the EU on behalf of its 28 Member States;³⁷ and**
- b) **Third country businesses can only benefit from the regime of the 2014 EU public procurement directives, if they are established as subsidiaries in the EU. Even then, any rights they have are aligned with GPA thresholds.**

Full details of the documents

Court of Auditors’ Special Report No 17/2016—*The EU institutions can do more to facilitate access to their public procurement*: (37953), —.

The Government’s view

9.8 The Minister simply states that:

“The UK Government and the devolved administrations welcome the recommendations that align with their policies of encouraging competition for public contracts to allow procurers to seek value for money, reducing burdens for SMEs and increasing the transparency of processes.”

Previous Committee Reports

None.

37 This is the situation indicated by the WTO website accessible [here](#). We note that following quotation from a Briefing Paper written by the UK Trading Policy Observatory (Sussex University) dated July 2016 [The WTO—A Safety Net for a post Brexit UK Trade Policy](#): An under-appreciated issue is that the UK is covered by the GPA only through its membership of the EU: the EU ratified the GPA on behalf of its members but the UK has not, so far, done so individually. If the UK does not ratify/accede the interim, its exit from the EU will undermine its rights of access to all GPA members’ procurement markets. It will also remove any obligation on the UK to allow foreign suppliers to tender for its procurement contracts, which would severely reduce competition and create serious value-for-money challenges. Yet, until it has left the EU, the UK will not formally have the standing to deal with the GPA”.

10 Implementation of Effort Share Decision (No. 406/2009/EC)

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Commission Report on <i>evaluating the implementation of Decision No. 406/2009/EC pursuant to its Article 14</i>
Legal base	—
Department	Business, Energy and Industrial Strategy
Document Numbers	(37990), 11482/16 + ADD 1, COM(16) 483

Summary and Committee's conclusions

10.1 The target in the EU climate and energy package of a 20% reduction in greenhouse gas emissions by 2020 (compared with 1990 levels) is delivered through reductions in its Emissions Trading System (ETS), and in the non-traded sector, which includes most of those not included in the ETS, such as transport (other than aviation and international maritime shipping), building, agriculture and waste.

10.2 The Effort Share Decision (No. 406/2009/EC) is the mechanism for delivering the latter reductions, and establishes greenhouse gas targets for each Member State from 2013 to 2020, with the objective of delivering these in a fair and cost-effective manner, depending on relative wealth. This document fulfils a requirement in Article 14 of the Decision that the Commission should submit by 31 October 2016 a report on its implementation, and it assesses the measure's relevance, effectiveness, efficiency, coherence, EU value added and impact on competition, based on its implementation to date.

10.3 It finds that the objectives of the Decision remain relevant, with the European Council in October 2014 having confirmed its importance and the need for it to continue to 2030, based on the model of the 2013-2020 legislation. It notes the strong consensus amongst stakeholders on the need for such an instrument after 2020, and that its relevance is further confirmed by the Paris Agreement on climate change in December 2015. It also says that the Decision remains coherent with other EU climate and energy policies.

10.4 **As this document deals with an important area, we are drawing it to the attention of the House, but it does not raise any issues requiring further consideration, and we are therefore clearing it.**

Full details of the documents

Commission Report on *evaluating the implementation of Decision No. 406/2009/EC pursuant to its Article 14*: (37990), [11482/16](#) + ADD 1, COM(16) 483.

Background

10.5 The EU climate and energy package set three key targets for 2020—a 20% reduction in greenhouse gas emissions (from 1990 levels); that 20% of EU energy should come from renewables; and a 20% improvement in energy efficiency. The first of these targets is delivered through reductions in the EU Emissions Trading System (ETS), and through reductions in the non-traded sector, which includes most of those not included in the EU ETS, such as transport (other than aviation and international maritime shipping), building, agriculture and waste.

10.6 The Effort Share Decision (No. 4062009/EC) is the mechanism for delivering the latter reductions, and establishes greenhouse gas targets for each Member State from 2013 to 2020, with the objective of delivering the necessary reductions in emissions in a fair and cost-effective manner. In particular, Member States' targets for 2020 were set on the basis of their relative wealth, and range from a 20% reduction (compared to 2005 levels) for the richest Member States to a 20% increase for the least wealthy, with the UK being given a target of -16%.

The current document

10.7 This document fulfils a requirement in Article 14 of the Decision that the Commission should submit to the European Parliament and Council by 31 October 2016 a report on its implementation, and it accordingly assesses its relevance, effectiveness, efficiency, coherence, EU value added and impact on competition, based on its implementation to date, and using evidence from reported emissions and emission trends, adopted policies and measures, and questionnaires and structured interviews. It also draws on the results of a public consultation conducted during the preparation of follow-on legislation for the period 2021–2030.

10.8 The report finds that the objectives of the Decision remain relevant, with the European Council in October 2014 having confirmed its importance and continuation to 2030, based on the model of the 2013–2020 legislation. It notes the strong consensus amongst stakeholders in the public consultation on the need for such an instrument after 2020, and that its relevance is further confirmed by the Paris Agreement on climate change in December 2015. It also says that the Decision remains coherent with other EU climate and energy policies.

10.9 The report goes on to conclude that the targets in the Decision are likely to have stimulated, or accelerated, new national policies and measures promoting reductions in greenhouse gas emissions, but adds that, as it is still in an early stage of implementation, there is insufficient evidence to quantify its overall impact at this stage, with evidence on the direct costs of national policies implemented in response to the Decision being very limited. However, the report finds that the Decision has resulted in limited additional administrative burden on Member States, although there may be opportunities for decreasing costs through simplified or less frequent compliance controls.

10.10 The report concludes that the Decision is an example of EU action adding value, with those Member State stakeholders which gave a view being agreed that it has raised awareness of mitigation options and contributed to establishing new national institutional and legal frameworks. It also improved coordination on greenhouse gas mitigation across the sectors covered by it, and between national and regional or local governments.

The Government's view

10.11 In his Explanatory Memorandum of 24 August 2016, the Minister of State at the Department for Business, Energy and Industrial Strategy (Joseph Johnson) comments that the UK is on track to meet its 16% reduction target (which is in line with its third carbon budget), but says that the document does not have policy implications for the current period up to 2020. However, he considers that its conclusions provide useful context for the negotiations of the proposed Effort Share Regulation,³⁸ covering the period 2021–2030, which the Commission has recently published, and which will be the subject of a separate Explanatory Memorandum.

Previous Committee Reports

None.

38 (37993), 11483/16: see Chapter 11 of this Report.

11 Transition to a low-carbon economy

Committee's assessment	Politically important
<u>Committee's decision</u>	(a) and (c) Cleared from scrutiny; (b) Cleared from scrutiny, but relevant to the debate recommended on the future of the EU Emissions Trading System; drawn to the attention of the Energy and Climate Change Committee
Document details	(a) Commission Communication: <i>Accelerating Europe's transition to a low-carbon economy</i> ; (b) Proposal for a Regulation on binding annual greenhouse gas emissions reductions by Member States from 2021 to 2030 for a resilient Energy Union and to meet commitments under the Paris Agreement and amending Regulation No. 525/2013 on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change; (c) Proposal for a Regulation on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry into the 2030 climate and energy framework and amending Regulation No. 525/2013 on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change
Legal base	(a) —; (b) and (c) Article 192(1) TFEU; ordinary legislative procedure; QMV
Department	Business, Energy and Industrial Strategy
Document Numbers	(a) (37994), 11522/16, COM(16) 500; (b) (37993), 11483/16 + ADDs 1–3, COM(16) 482; (c) (37991), 11494/16 + ADDs 1–3, COM(16) 479

Summary and Committee's conclusions

11.1 In October 2014, the European Council agreed the EU's 2030 policy framework for climate and energy, including a binding target to reduce economy-wide greenhouse gas emissions by at least 40%, compared with 1990. At the same time, it also agreed that this should be achieved through a 43% reduction (compared with 2005 levels) in those sectors covered by the EU Emissions Trading System (ETS), and by a corresponding 30% reduction in the non-traded sector (NTS).

11.2 In order to achieve this, the Commission put forward in July 2015 a legislative proposal³⁹ for reform of the ETS, and it has now produced a further proposal (document (b)), aimed at delivering emission reductions in the NTS through the setting of binding targets for each Member State for 2030, based on the model of the existing Effort Share Decision (406/2009/EC) which set corresponding targets for 2020. This is accompanied

39 (37003), 11065/15: Fourth Report HC 342-iv (2015–16), [chapter 1](#) (16 September 2015).

by a Commission Communication (document (a)), and a proposal (document (c)) on the inclusion of Land Use, Land Use Change and Forestry (LULUCF) in the EU's climate framework after 2020.

11.3 The Government says that, although the UK and EU targets have different accounting rules and flexibilities, the UK's domestic obligations under carbon budgets are expected to be more stringent than those under the Effort Sharing Regulation. As a result, these proposals are likely to have relatively limited additional policy implications for the UK, but will be taken into account when its approach to meeting its targets for reducing greenhouse gas emissions is set out in an emissions reduction plan. In the meantime, the UK will participate in the negotiations on the two measures, which are due to start this month.

11.4 As the documents cover an important policy area, we think it right to draw them to the attention of the House and the Energy and Climate Change Committee, but, as they do not appear to raise any significant policy issues and moreover are unlikely to come into effect until after the UK has left the EU, we see no need to hold them under scrutiny. However, as the proposal at document (b) setting binding emission limits from 2021 to 2030 for the non-traded sector complements the earlier proposal for revisions to the EU Emissions Trading System, we think it is relevant to the debate which we recommended on 16 September 2015 should be held in European Committee A on the latter document.

Full details of the documents

(a) Commission Communication: *Accelerating Europe's transition to a low-carbon economy*: (37994), 11522/16, COM(16) 500; (b) Proposal for a Regulation of the European Parliament and of the Council on binding annual greenhouse gas emissions reductions by Member States from 2021 to 2030 for a resilient Energy Union and to meet commitments under the Paris Agreement and amending Regulation No. 525/2013 of the European Parliament and the Council on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change: (37993), 11483/16 + ADDs 1–3, COM(16) 482; (c) Proposal for a Regulation of the European Parliament and of the Council on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry into the 2030 climate and energy framework and amending Regulation No. 525/2013 of the European Parliament and Council on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change: (37991), 11494/16 + ADDs 1–3, COM(16) 479.

Background

11.5 In October 2014, the European Council agreed the EU's 2030 policy framework for climate and energy, including a commitment to a binding target involving a domestic reduction of at least 40% in economy-wide greenhouse gas emissions, compared with 1990—a target which also formed the basis of the EU's contribution to the Paris Agreement on climate change in December 2015. At the same time, the European Council agreed that the overall EU target for 2030 should be achieved through a 43% reduction (compared with 2005 levels) in those sectors—notably energy and heavy industry—covered by the

EU Emissions Trading System (EU ETS), and by a corresponding 30% reduction in the non-traded sector (NTS), which includes transport (except aviation and international maritime shipping), buildings, agriculture and waste.

11.6 In order to achieve this, the Commission put forward in July 2015 a legislative proposal for reform of the EU ETS, on which negotiations are continuing (and which is also the subject of an outstanding recommendation, which we made on 16 September 2015, that it should be debated in European Committee A). It has now produced a further proposal (document (b)), aimed at delivering emission reductions in the NTS through the setting of binding emission reduction targets for each Member State for 2030, based on the model of the existing Effort Share Decision (406/2009/EC) which set targets for 2020. This is accompanied by a Commission Communication (document (a)), and a proposal (document (c)) on the inclusion of Land Use, Land Use Change and Forestry (LULUCF) in the EU's climate framework after 2020.

Document (a): Commission Communication

11.7 The Communication sets out principles of the regulatory framework in this area, as well as information on those EU tools and enabling measures which will help Member States decrease their emissions. These include the Circular Economy Package; the EU ETS; and Carbon Market Union initiative; financial instruments (such as the European Fund for Strategic Investments and EU Cohesion Policy); and the new Skills Agenda for Europe. It has also put forward recently an Action Plan on low-emission mobility⁴⁰ (on which we are reporting separately), and will present by the end of 2016 initiatives to complete the delivery of the EU's Energy Union Strategy, including an integrated strategy for research, innovation and competitiveness.

Document (b): Effort Share Regulation

11.8 This proposal lays down 2030 targets for each Member State, and the approach for determining annually binding emissions limits, for the NTS in the period 2021 to 2030, based on a linear trajectory between a Member State's average emissions for 2016–18 and its 2030 target. As agreed by the European Council in October 2014, Member State reduction targets for 2030 range from 0% to 40% (compared with 2005), and are calculated on the basis of per capita GDP, with an adjustment for cost-effectiveness for Member States above the average figure. As a consequence, the UK has been set a 2030 target of a 37% reduction on 2005 levels, which is the sixth greatest emission reduction target (equal to France and 1% less than Germany).

11.9 Member States are allowed the same flexibilities as in the current Decision to reach their annual emissions limits. These include the ability to borrow up to 5% of its annual emission allocation for the following year; to bank any excess in its annual allocation to a subsequent year; and to transfer part of its annual allocation to another Member State, which may use the quantity concerned to comply with the Regulation. In addition, there are two new flexibilities—one allowing for a limited use of net removals from certain LULUCF categories, to account for Member State compliance towards its target if needed,

40 (37982), 11333/16: see Chapter 17 of this Report.

subject to a limit of 280 million tonnes⁴¹ in the total level of offsets allowed across the EU, and the other allowing a number of eligible Member States⁴² additional emissions in non-EU ETS sectors in exchange for cancellation of EU ETS allowances.

11.10 Finally, the proposal reduces the frequency of compliance checks from annually to every five years, with the first expected in 2027 for the period 2021 to 2025; includes some amendments to the existing Mechanism for Monitoring and Reporting; and includes a review of all elements of the regulation to determine whether they remain fit for purpose, with the first of these to be performed in 2024, and every five years thereafter.

Document (c): LULUCF Regulation

11.11 The objective of this proposal is to determine how the LULUCF sector will be included in the EU climate policy framework from 2021, after its emissions will cease to be regulated by the Kyoto Protocol.

11.12 The proposal places a commitment on each Member State to continue to account for emissions from this sector, and establishes rules for accounting and verifying compliance, including a requirement on Member States to ensure that their LULUCF sector⁴³ generates no net emissions over the course of each compliance period (2021–25 and 2026–30). It also sets out an accounting framework for the sector, aimed at establishing the accuracy, completeness, consistency, comparability and transparency of the data used to account for LULUCF emissions, which is largely similar to the current approach under the Kyoto Protocol, but includes some changes to reduce the administrative burden on Member States, and to make sure the data is robust.

11.13 The proposal reconfirms the requirement on Member States to report their relevant greenhouse gas emissions annually, and sets out a timeline for compliance checks, which will be conducted twice over the commitment period. Member States will also continue to report biennially their projections and policies and measures implemented to ensure compliance with their targets. As with the Effort Share Regulation, the proposal includes a review, the first in 2024 and then every five years thereafter: and it also provides for transfers in surplus allowances between Member States, and for a Member State to bank a surplus from the 2021–25 accounting period to the subsequent period.

The Government's view

11.14 In his Explanatory Memorandum of 24 August 2016, the Minister of State at the Department for Business, Energy and Industrial Strategy (Joseph Johnson) says that, although the UK and EU targets have different accounting rules and flexibilities, the UK's domestic obligations under carbon budgets are expected to be more stringent than those under the Effort Sharing Regulation. As a result, these proposals are likely to have relatively limited additional policy implications for the UK, but will be taken into account when its approach to meeting its targets for reducing greenhouse gas emissions is set out in

41 This limit is divided between Member States on the basis of their share of agriculture non-carbon dioxide emissions in the non-ETS sectors, and Member States with a greater share of agriculture can use a higher proportion of credits. Under this approach the UK can use a maximum of 17.8 million tonnes.

42 Austria, Belgium, Denmark, Finland, Ireland, Luxembourg, Malta, Netherlands and Sweden.

43 This includes land converted to, or from, forestry; and managed cropland, grassland, and forest land.

an emissions reduction plan. In the meantime, the UK will participate in the negotiations on the these two measures, which will start in September this year, in order to secure the best deal for the UK.

Previous Committee Reports

None.

12 School milk and fruit schemes

Committee's assessment	Legally and politically important
Committee's decision	Cleared from scrutiny (decision reported on 9 March 2016)
Document details	(a) Proposed Regulation regarding aid schemes for the supply of fruit and vegetables, bananas and milk in educational establishments; (b) Proposed Regulation regarding the fixing of certain aids and refunds related to the common organisation of the markets in agricultural products; (c) Impact Assessment accompanying proposed Regulation regarding the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments; (d) Summary of the Impact Assessment accompanying proposed Regulation regarding the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments
Legal base	(a) Articles 42 and 43(2) TFEU; ordinary legislative procedure; QMV; (b) Article 43(3); QMV; (c) and (d) —
Department	Environment, Food and Rural Affairs
Document Numbers	(a) (35785), 5958/14, COM(14) 32; (b) (35786), 6054/14, COM(14) 31; (c) (35787), 6059/14 + ADDs 1–2, SWD(14) 28; (d) (35788), 6062/14, SWD(14) 29

Summary and Committee's conclusions

12.1 Over the last couple of years or so, we and our predecessors have reported to the House on a number of occasions a proposal put forward by the Commission in January 2014 to establish a common legal and financial framework for the EU School Milk and Fruit Schemes (which aim to increase consumption of these products in the short term, whilst having an educational influence on eating habits in the long term).

12.2 In our most recent Report on 9 March 2016, we noted that, although a text which was satisfactory from a policy point of view had been agreed, there was an unresolved issue as to whether the legal base should be Article 43(2) TFEU, as proposed by the Commission, and involving joint adoption by the Council and European Parliament, or (as the Council Legal Service had advised) Article 43(3), under which competence would lie solely with the Council. We further noted that, in the relevant vote, the UK had merely abstained, rather than voting against (as two other Member States had done), and that, in our Report of 13 January 2016, we had asked the Government to explain that decision, and to say whether it intended to challenge the legal basis in the Court of Justice.

12.3 We observed that the Government had pointed out that the UK had already formally intervened in support of Germany in a connected CJEU case addressing the use of Article 43(3) under the CAP, and that it had said that it would consider the need for any further action on the school schemes, once the UK had presented its arguments before the Court

in the current case. In view of this, we said that we were content to clear these documents, but we asked the Government to inform us once it had made a decision whether or not to challenge the legal base.

12.4 The Government now tells us it will not challenge the legal base. Having already cleared these documents, we are simply drawing the Minister’s reply to the attention of the House.

Full details of the documents

(a) Proposed Regulation amending Regulation (EU) No. 1308/2013 and Regulation (EU) No. 1306/2013 as regards aid schemes for the supply of fruit and vegetables, bananas and milk in educational establishments: (35785), [5958/14](#), COM(14) 32; (b) Proposed Council Regulation amending Regulation (EU) No. 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products: (35786), [6054/14](#), COM(14) 31; (c) Commission Staff Working Document: Impact Assessment accompanying proposed Regulation amending Regulation (EU) No. 1308/2013 and Regulation (EU) No. 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments: (35787), [6059/14](#) + ADDs 1–2, SWD(14) 28; (d) Commission Staff Working Document: Summary of the Impact Assessment accompanying proposed Regulation amending Regulation (EU) No. 1308/2013 and Regulation (EU) No. 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments: (35788), [6062/14](#), SWD(14) 29.

Minister’s letter of 4 August 2016

12.5 We have now received a letter of 4 August 2016 from the Minister of State at the Department for Environment, Food and Rural Affairs (George Eustice) in which he says:

“In the light of the EU Referendum decision, we have considered carefully whether to pursue a legal challenge regarding the new school scheme. Legally, the vote to leave the EU makes no difference. For the time being, the UK continues to be under an obligation to implement EU law. Therefore, it remains open to us to challenge any legal provision we believe to be invalid (for example, because an incorrect legal base has been used). Practically, however, we feel that it is not appropriate to commit substantial time and resources to a matter which does not have consequences relevant to the UK’s eventual position outside the EU. The typical length of proceedings before the Union Courts is at least 2 years.

“As we negotiate our exit from the European Union, we have an unparalleled opportunity to develop a new approach across our range of policies, and to make sure that they are delivering for the UK. We will continue to participate in the existing EU school milk scheme, which runs until 31 July 2017. The new scheme will not apply until 1 August 2017 so we have time to consider our future arrangements and to work with industry and other stakeholders.”

Previous Committee Reports

Thirty-Ninth Report HC 83-xxxvi (2013–14), [chapter 3](#) (12 March 2014); Eleventh Report HC 342-xi (2015–16), [chapter 5](#) (2 December 2015); Eighteenth Report HC 342-xvii (2015–16), [chapter 5](#) (13 January 2016); and Twenty-fifth Report HC 342-xxiv, chapter 15 (9 March 2016).

13 Management of external fishing fleets

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Proposal for a Regulation on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No. 1006/2008
Legal base	Article 42(2) TFEU; ordinary legislative procedure; QMV
Department	Environment, Food and Rural Affairs
Document Numbers	(37392), 15262/15 + ADDs 1–2, COM(15) 636

Summary and Committee's conclusions

13.1 Because the reform of the CFP agreed in 2013 sought, among other things, to emphasise the need for coherence between its internal and external dimensions, the Commission put forward in December 2015 this proposed Regulation governing the management of the external fleet (i.e. those fishing outside EU waters), which would clarify and simplify the current provisions, notably in terms of responsibilities at EU, national and operator level, whilst at the same time bringing the arrangements into line with those in the basic Control Regulation ((EC) No. 1224/2009).

13.2 The Government recognises the need both to clarify existing provisions and to achieve greater consistency between these and other relevant enforcement Regulations, and it has noted that the number of UK vessels which would be directly affected is small. However, it added that it would be seeking to ensure that the proposals do not place a disproportionate burden on the UK fishing administrations, and to clarify a number of specific provisions. In view of this, we decided in our Report of 24 February 2016 to hold the document under scrutiny until these concerns had been satisfactorily resolved.

13.3 We have now received from the Government a letter which indicates that the approach adopted by the June 2016 Agriculture and Fisheries Council addresses these concerns satisfactorily, and is one which the UK can support. In view of this, we are content to clear the proposal.

Full details of the documents

Proposal for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No. 1006/2008: (37392), [15262/15](#) + ADDs 1–2, COM(15) 636.

Background

13.4 Effective enforcement is a key element of the CFP, and currently rests on three main legislative pillars—Council Regulation (EC) No. 1224/2009 (the basic Control Regulation);

Council Regulation (EC) No. 1005/2008 (which establishes a system to deal with illegal, unreported and unregulated fishing); and Council Regulation (EC) No. 1006/2008 (the Fishing Authorisations Regulation, which deals with the authorisation of EU distant water vessels outside EU waters and the licensing of fishing vessels of third countries operating inside EU waters).

13.5 In particular, the last of these lays down the procedure under which EU vessels may apply for authorisation to fish in accordance with bilateral fishing agreements or the provisions of regional fisheries management organisations; sets out the eligibility criteria and the obligations of fishing vessel operators and the Member States as regards the reporting of catches and fishing effort; and specifies the circumstances under which a fishery may be closed and an authorisation suspended. It also lays down the corresponding provisions applicable to the fishing activities of third country vessels in EU waters.

13.6 However, as the reform of the CFP agreed in 2013 emphasised the need for coherence between its internal and external dimensions, the Commission put forward in December 2015 this proposed Regulation, which would repeal Council Regulation (EC) No. 1006/2008, and clarify and simplify the current provisions, notably in terms of responsibilities at EU, national and operator level, thus bringing the arrangements into line with those in Council Regulation (EC) No. 1224/2009.

13.7 As we noted in our Report of 24 February 2016, in addition to improving the consistency between the new Regulation and other Regulations enforcing the CFP, the proposal would address certain specific aspects, including the scope of the regime, the role of Member States, and the provision of electronic data. Our Report also noted the Government's view that the present Fishing Authorisations Regulation was too complex; that, although the new Regulation aimed at greater consistency, it should not duplicate existing provisions; and that there needed to be simplification of the legal framework to provide a level playing field for EU external fleet.

13.8 However, it also said that the UK interest in this proposal was relatively limited, as it has only a small external waters fleet (though it did observe that the monitoring of the few vessels concerned could place a disproportionate burden on the UK fisheries administrations, and that the proposals would need to be considered carefully to ensure that they did not impose any unnecessary new burdens). We therefore decided to hold the document under scrutiny, pending further information on this last point.

Minister's letter of 25 July 2016

13.9 We have now received a letter of 25 July 2016 from the Minister of State at the Department for Environment, Food and Rural Affairs (George Eustice) which says that a General Approach was agreed at the Agriculture and Fisheries Council on 27–28 June, with which the UK was content (although it abstained from voting, as the document was still under scrutiny in both Houses). He says that, along with other Member States, the UK welcomed the enlarged scope of the measure, and supported the aim of filling gaps in the current regime and streamlining the existing rules: in addition, it has ensured that any additional administrative burdens will be minimised as the same rules on infringements as those currently in force will apply. He adds that the Government is generally content that the burden on enforcement authorities will be manageable, as long as a reasonable timetable is provided to enable the various database systems to be aligned.

Previous Committee Reports

Twenty-fourth Report HC 342-xxiii (2015–16), [chapter 3](#) (24 February 2016).

14 Member States' application of EU Law in 2015

Committee's assessment	Legally important
Committee's decision	Cleared from scrutiny
Document details	Commission Report on <i>Monitoring the application of EU law 2015</i>
Legal base	—
Department	Exiting the EU
Document Numbers	(38001), 11569/16 + ADDs 1–3 , COM(16) 463

Summary and Committee's conclusions

14.1 This thirty-third annual report is a factual account of the Commission's monitoring of the application of EU law during 2015. Failure to correctly implement EU law by Member States is significant because it can prevent EU citizens and businesses from fully exercising their rights under EU law and impair the functioning of the single market.

14.2 The Commission, as guardian of the EU Treaties, monitors the compliance of Member States with EU law and can use its powers under Articles 258–60 TFEU to address an infringement. The first step is to discuss the problem informally with a Member State (under the EU Pilot mechanism)⁴⁴ but if the Member State does not then address the problem quickly and effectively, the Commission may decide to launch formal infringement proceedings before the Court of Justice (CJEU). If the Member State then fails to comply with the CJEU's judgment, the Commission may apply for financial penalties to be imposed.⁴⁵

14.3 The report shows a continuing trend of an overall decrease in the number of formal infringement procedures over the last five years, attributable to the success of the EU Pilot and improvement overall in enforcement activity in many areas. However, there are areas where there appears to be either a deteriorating situation or where improvement has stalled: agriculture and rural development, competition, energy, migration and home affairs, mobility and transport.⁴⁶

14.4 In relation to the UK, the report concludes that new complaints “rose marginally in 2015” but remained well below their 2013 peak. Also for new EU pilot files, open infringement cases and new infringements for late transposition a new “five year low” had been achieved, reflecting an ongoing downwards trend.⁴⁷

44 See [EU Pilot](#) on the Commission website.

45 Financial penalties can also be imposed directly where a Member State has failed to notify the Commission that it has implemented a Directive (see Article 260(3) TFEU).

46 This is based on our assessment of the conclusions in Staff Working document (Part 1, Addendum1): *Policy Areas*.

47 See pp.185–191 of Staff Working Document (Part II, Addendum 3): *Member States*.

14.5 The Government now comments on the report and considers that the picture for the UK is broadly positive, despite a number of complicated ongoing and potential cases. We note the nature of these new infringement cases and proceedings opened against the UK in 2015 in paragraphs 14.20–14.21 below.

14.6 We welcome the Minister to his new post and thank him for his Explanatory Memorandum. We report this document to the House for the useful information it contains. We note that the report provides some evidence of a general, statistical, improvement in implementation of most areas of EU law, with a deterioration and lack of progress in others.

14.7 We also note the overall positive position of the UK and are reassured by the Government’s approach: that until Brexit, the UK will continue to implement and apply EU law. We also continue to support any Government efforts to minimise, in ongoing negotiations, the regulatory burden of EU law.

14.8 The Court of Justice has had full jurisdiction since 1 December 2014 to enforce pre-Lisbon EU laws on police and judicial co-operation against participating Member States. We told the Government in our last Report on the 2014 annual report that we would be monitoring how vigorously the Commission would be pursuing non-implementation of those measures. Given how important some of this legislation will be to combating security threats to Member States, we would expect the Government to notify us of any such implementation problems in the course of related scrutiny, especially where the measures concerned are those that the UK opted to re-join.

14.9 We now clear this document from scrutiny and look forward to the Minister’s next Explanatory Memorandum when the new Communication on the targeted enforcement of EU law is published as promised by the Commission.

Full details of the document

Commission Report *on Monitoring the application of European Union law 2015 Annual Report*: (38001), [11569/16](#) +ADDS 1–3, COM(16) 463.

The current document

14.10 The report highlights developments in particular priority policy areas and focuses on three different aspects of enforcement action: late transposition of EU law, the EU Pilot as an informal mechanism for resolving compliance difficulties and formal infringement proceedings before the CJEU.

Enforcement in priority policy areas

14.11 The report highlights the main developments in enforcement activity in the Commission’s priority areas. Particular areas of enforcement in 2015 were asylum and migration, following the migration crisis; judicial and police co-operation (where, the Commission says that full compliance with EU law is essential to combat security threats); competitiveness including the digital single market; energy union and climate change; economic and monetary union and justice and fundamental rights.

Tackling late transposition of legislation

14.12 This remains a priority for the Commission. It launched 543 late transposition infringement procedures against Member States in 2015, compared to 585 in 2014. However, the number of directives that needed transposing also fell to 56 in 2015 from 67 in 2014.

14.13 In all, 518 late transposition infringement cases under Article 260(3) were still open at the end of 2015, which represents a 19% increase on the 421 cases at the end of 2014.

14.14 Of these, the UK had 16 new late transposition infringements opened against it under Article 260(3) TFEU in 2015, the joint-eighth lowest in the EU. This represents an improvement from 2014, when the UK was tenth highest in the EU for open cases. Of the 16 new cases opened against the UK, the following areas ranked highest: internal market (5); mobility and transport (4); financial stability and services (3); and other areas (4). The Member States ranking highest for late transposition under Article 260(3) in 2015 were: Cyprus (38); Greece (32) and Slovenia (29).

14.15 The four policy areas in which the most late transpositions cases were opened in 2015 against Member States were: Financial stability and services (125); Environment (88); Mobility and Transport (96); Internal market (56); and 180 in other areas.

Pilot cases

14.16 The Commission opened 881 new EU pilot cases in 2015 in relation to matters including the internal market; justice and consumers; environment; taxation and customs; mobility and transport. This was an overall fall of approximately 30% on 2014. 969 EU pilot cases were processed in 2015, out of these 726 were closed by the Commission because the Member States gave satisfactory answers, giving a resolution rate of 75%. The remaining 243 cases were closed when the Commission rejected the answers; of these 243, 201 were followed up by infringement procedures. At the end of 2015, 1,260 EU pilot cases were still open. The Member States with the most cases were Italy (111), Spain (78) and Poland (74).

14.17 In 2015, 33 new EU pilot cases were opened against the UK which was a decrease from 49 in 2014. The areas in which the cases were opened were justice and consumers (4); environment (5); mobility and transport (4); internal market (4); taxation and customs (5); other areas (11).

Infringement procedures

14.18 The Commission launched 742 new infringement procedures in 2015. The main policy areas were internal market; environment; mobility and transport; financial stability and services. There remained 1,368 cases open at the end of 2015. While there was a very slight increase from 1,347 in 2014 to 1,368 in 2015, the overall trend was still a decrease from a peak in 2011 of 1,775. The Commission closed 474 cases after sending a letter of formal notice; 183 cases were closed after sending reasoned opinions and 12 were closed after deciding to refer the case to the CJEU but before the application had been formally submitted. Another 13 cases were withdrawn from the CJEU before it had handed down its ruling.

14.19 In 2015 the CJEU gave 25 judgments, of which 18 (82%) were in favour of the Commission. The Member States with the highest number of judgments were four against Poland and two each against Belgium, Bulgaria, France, Germany, Greece and Luxembourg (all of these were in the Commission's favour). Slovakia had two judgments, both in its favour and the UK had one of two judgments in its favour. At the end of 2015, 85 infringement cases remained open after a CJEU ruling as the Commission still considered the Member States as having not complied with the judgments under Article 258 TFEU.

14.20 The Commission launched 22 new infringement cases against the UK in 2015 in the following policy areas: mobility and transport (6); internal market (5); environment (3); financial services and stability (3); and other areas (5). The Commission lists these and other ongoing infringement cases against the UK as follows:

- late and incomplete transposition of the Oil Stocks Directive;
- failure to ensure energy performance certificates are displayed in buildings frequently visited by the public, as required by the Energy Performance of Buildings Directive;
- bad application of the Habitats Directive as regards designating special areas of conservation and establishing the necessary conservation measures;
- non-compliant transposition of the Water Framework Directive;
- failure to communicate all national measures transposing the first amendment of the Financial Conglomerates Directive. This aims to remedy gaps in supplementary supervision revealed during the financial crisis;
- failure to implement functional airspace blocks effectively. Under the 'single European sky' legislation, national air traffic control organisations should work together in nine regional airspace blocks to increase efficiency, cut costs and reduce emissions; and
- non-conformity with the Excise Duty Directive on alcohol and alcoholic beverages. UK excise duty legislation covering producers of small quantities of cider for sale does not permit Member States to apply favourable treatment to such producers.

14.21 The Commission referred two cases against the UK to the CJEU under Article 258 TFEU. They concern:

- exceedance of the emission limit value for nitrogen oxides at the Aberthaw coalfired power station in Wales, in breach of the Large Combustion Plants Directive; and
- poor urban waste water collection and treatment in a number of agglomerations.

The Government's view

14.22 In an Explanatory Memorandum of 12 August 2016, the Minister of State for Exiting the European Union (Mr David Jones), provides a helpful account of the report outlined at paragraphs 14.11–14.19.

14.23 After stating the usual post-Referendum position that the UK will continue to negotiate, implement and apply EU law until its formal exit from the EU, the Minister comments:

“The Government notes the results of this report. Overall the picture for the UK is positive. New complaints against the UK rose marginally (189 new cases in 2015 compared to 187 new cases in 2014) but remained significantly below their 2013 peak. New EU pilots opened against the UK have continued to drop for the fifth year running. This drop has been significant with a 33% drop in new pilots against the UK in 2015. The total number of new pilots against the UK was 33 in 2015, much lower than the 69 opened in 2011. There has also been a reduction in the number of total open EU pilots against the UK (57 at the end of 2015 compared to 67 at the end of 2014).

“The Government is pleased that the number of open infringement cases against the UK has continued its downward trend. There were 48 open infringement cases against the UK at the end of 2015 compared to 54 at the end of 2014. The number of open infringement cases against the UK at the end of 2015 was significantly lower than its peak of 76 in 2011.

“The UKs resolution rate also compares favourably against previous years. Although the average UK response time has risen to 83 days the UK resolution rate is 81% (6% higher than the EU average). The Government also acknowledges that there remain a number of complicated ongoing and potential cases against the UK.”

Previous Committee Reports

None, but see (37017), 10987/15: Third Report HC 342-iii, [chapter 37](#) (2015–16) 9 September 2015; (36470), 14875/14: Twentieth Report HC 219-xix (2014–15), [chapter 18](#) (19 November 2014).

15 Blood and Human Tissues Directives

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Health Committee
Document details	(a) Commission Report on <i>the implementation of Directives 2002/98/EC, 2004/33/EC, 2005/61/EC and 2005/62/EC setting standards of quality and safety for human blood and blood components</i> ; (b) Commission Report on <i>the implementation of Directives 2004/23/EC, 2006/17/EC and 2006/86/EC setting standards of quality and safety for human tissues and cells</i>
Legal base	—
Department	Health
Document Numbers	(a) (37709), 8235/16 + ADDs 1–2, COM(16) 224; (b) (37738), 8233/16 + ADDs 1–2, COM(16) 223

Summary and Committee's conclusions

15.1 Blood products and human tissues are imported into, and exported from, the UK. Such exchanges within the EU are regulated by EU rules on quality and safety. These rules also apply to blood and tissue donation within a Member State, stipulating licensing and compliance arrangements.

15.2 Following the Committee's second consideration of these Reports on the progress of implementing the rules, the Parliamentary Under-Secretary of State for Health, (Lord Prior of Brampton), has responded to the Committee's Brexit-related queries, which are set out below.

15.3 The Minister indicates that any proposed changes that might have legislative or operational implications for UK policy in these areas will be considered carefully and discussed with the devolved administrations and regulatory authorities.

15.4 The Minister's response does not address the questions that we raised about the UK's approach to blood and tissues safety post-Brexit. While we remain interested in these questions, we appreciate the difficulties in responding at a time when there is a great deal of uncertainty about the UK's relationship with the EU post-Brexit.

15.5 We have no further queries at this stage and we now release these Reports from scrutiny. We draw this latest Chapter to the attention of the Health Committee in the light of that Committee's work on the implications of Brexit for the health sector. We do not require a response from the Government.

Full details of the documents

(a) Commission Report on *the implementation of Directives 2002/98/EC, 2004/33/EC, 2005/61/EC and 2005/62/EC setting standards of quality and safety for human blood and blood components*: (37709), [8235/16](#) + ADDs 1–2, COM(16) 224; (b) Commission Report on *the implementation of Directives 2004/23/EC, 2006/17/EC and 2006/86/EC setting standards of quality and safety for human tissues and cells*: (37738), [8233/16](#) + ADDs 1–2, COM(16) 223.

Background and Content

15.6 In document (a), the European Commission reported on Member States’ implementation of EU blood safety and quality legislation—in force since 2002—and on their efforts to encourage voluntary and unpaid blood donations. In document (b), the Commission detailed Member States’ implementation of the EU Directives—in force since 2004—designed to ensure high quality and safe practice in the way that tissues and cells, such as bone, skin, corneas, heart valves etc. as well as stem cells, gametes (sperm and eggs) and embryos, are donated, procured, tested, stored, processed and distributed.

15.7 The Commission concluded in both Reports that there has been adequate implementation of EU legislation but that there are some gaps and difficulties. In both instances, the Commission will consider the need for a further in-depth evaluation in order to assess the relevance, effectiveness, efficiency, coherence and added value of the Directives. Further details were set out in our Report of 25 May.⁴⁸

15.8 At our meeting of 25 May, we asked for more details about the volumes of imports into, and exports from, the UK and about the Government’s view on the issues highlighted by the Commission. The then Minister responded on 8 July, including the requested information about volumes of imports and exports. Full details of her response were set out in our Report of 20 July.⁴⁹

15.9 We considered the then Minister’s response to be comprehensive and we had no further queries on the substance of the Reports. We observed that her response reflected positively on the EU legislation in place and the impact it has had in the UK. She emphasised the UK’s strong engagement in Brussels on these matters. In that light, we asked about the implications of the UK’s decision to leave the EU and posed the following questions:

- Should the UK continue to import and export blood products, tissues and cells, how would the safety of such transfers be ensured once the UK has withdrawn from the European Union?
- Would the UK seek to continue to participate in these rules and, if so, how will that best be achieved?
- What would be the impact of divergent domestic and EU laws?

48 Third Report HC 71-ii (2016–17), [chapter 5](#) (25 May 2016).

49 Ninth Report HC 71-vii (2016–17), [chapter 5](#) (20 July 2016).

Minister's letter of 5 September 2016

15.10 The Minister responded to us in the following terms:

“Whilst the UK remains a full member of the EU, EU legislation will of course continue to be in place and all obligations of EU membership will apply. The safety and quality of our blood and tissue and cells programmes must be assured and any proposed changes that might have legislative or operational implications for the UK will be considered carefully and discussed with the devolved administrations and regulatory authorities.”

Previous Committee Reports

Ninth Report HC 71–vii (2016–17), [chapter 5](#) (20 July 2016); Third Report HC 71–ii (2016–17), [chapter 5](#) (25 May 2016).

16 EU international cooperation and development

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Commission Staff Working Document on <i>EU International Cooperation and Development: First report on selected results (July 2013–June 2014)</i> .
Legal base	—
Department	International Development
Document Numbers	(37992), 11468/16, SWD(16) 255

Summary and Committee's conclusions

16.1 The EU and its Member States provide over half the world's official development assistance. In March 2015 a Commission Communication sought to launch an EU results framework for its international cooperation and development activities. As we noted in our Report of 21 July 2015, this set out a standardised set of indicators against which the results of the relevant programmes will be reported, thereby allowing these to be aggregated so as to give a set of development results for the EU as a whole. We also noted that, whilst the Government had strongly welcomed this development, it had said that the Commission's attention should now turn to implementation in a full and comprehensive manner, and that it should start reporting on results.

16.2 This Commission Staff Working Document is the first report based on the new EU Results Framework, providing a snapshot of results against a selected number of completed programmes in a large number of partner countries, and serving as a baseline for judging progress in subsequent reports.

16.3 The Government notes that the report fulfils EU commitments to improve accountability, and, although it does not contain any decisions or new proposals, or have any policy implications, nevertheless describes it as a significant move towards greater transparency and clearer focus on results and performance. It also notes that a second results report, due out this autumn, demonstrates a continued commitment, and that work has started in parallel to develop an IT system which will facilitate future reporting. In addition, a review of the EU Results Framework is planned for the second half of 2016, once Sustainable Development Goals indicators have been agreed by the international community.

16.4 Given the welcome we gave earlier this year to the Commission Communication launching an EU results framework for international cooperation and development, we are drawing to the attention of the House this first report produced under it.

Full details of the documents

Commission Staff Working Document on *EU International Cooperation and Development: First report on selected results (July 2013–June 2014)*: (37992), 11468/16, SWD(16) 255.

Background

16.5 In December 2013, the Commission produced a Staff Working Document⁵⁰ aimed at paving the way for an EU Development and Cooperation Results Framework, and this was followed in March 2015 by a further such Document,⁵¹ which sought to launch that Framework. As we noted in our Report of 21 July 2015, the latter document laid out a standardised set of indicators against which the results of EU development cooperation programmes will be reported at various levels,⁵² thereby allowing the results from different programmes to be aggregated, so as to give a set of development results for the EU as a whole, increase transparency and accountability, and in the process identify at a strategic level which programmes are most effective in generating results.

16.6 We also noted that, whilst the Government had strongly welcomed the publication of the details of the Results Framework as an important first step, it had said that the Commission's attention should now turn to implementation in a full and comprehensive manner, and that it should start reporting results. We therefore asked the Government to write to us after the first set of results had been published, giving its views on the outcome and the lessons this held for future work in this area.

The current document

16.7 This Commission Staff Working Document is the first report based on the new Framework, providing a snapshot of results against a selected number of completed programmes and serving as a baseline for judging progress in subsequent reports. It follows the structure of the results framework published in March 2015, with three levels showing respectively development progress in more than 70 partner countries; results from projects and programmes funded through the Development Cooperation Directorate General (EuropeAid), with data covering projects which ended between mid-2013 and mid-2014; and information on organisational performance, based on internal management systems.

16.8 The report focuses on programmes with a value greater than €750,000, which represent some 90–95% of the total financial amount of projects. It also notes that, given the reporting period, there are certain key priority areas under the EU's current work, such as the root causes of migration, which are not as prominent in the report, but where there are still important results which feed into the current priorities. The report also makes clear that the results included have been calculated using a contribution approach of the kind used by other multilaterals, meaning that, where a project has been financed by the EU jointly with other funders, the overall results of the collective effort are reported. (Data has been obtained from international statistical sources such as United Nations'

50 (35735), 17709/13: see Thirty-seventh Report HC 83-xxxiv (2013–14), [chapter 6](#) (26 February 2014) and Forty-seventh report HC 83-xlii (2013–14), [chapter 1](#) (30 April 2014).

51 (36775), 7604/15: see First Report HC 342-i (2015–16) [chapter 16](#) (21 July 2015).

52 Level 1 (Development progress in partner countries); Level 2 (Outputs of development programmes); Level 3 (Organisational efficiency and effectiveness in delivering programmes).

agencies, the World Bank, the International Monetary Fund and others, and is mostly based on that from 2013, which is the latest available for the predefined indicators when the report was compiled.)

The Government's view

16.9 In his Explanatory Memorandum of 11 August 2016, the Minister of State at the Department for International Development (Rory Stewart) notes that the report fulfils the EU commitments to improve accountability, and does not contain any decisions or new proposals, or have any policy implications. Nevertheless, he describes it as a significant move towards greater transparency and clearer focus on results and performance—something which has been a reform priority for the UK, and where it has been instrumental in its development.

16.10 He says that the UK welcomes the report and the use of the results framework, which sets out a useful overview of the activities undertaken and demonstrates the significant scale and geographical reach of EU aid, the value of which will be increasingly apparent and become further embedded in its international cooperation and development activities. However, he adds that, whilst the report is a welcome addition to EU reporting, the UK will continue to press for further evolution of the results framework itself, there being areas where it would like to see improvement—for example, as year-on-year results are included, there should be some analysis of trends and ongoing programmes should also be reflected.

16.11 The Minister also notes that a second results report, due out this autumn as part of the EuropeAid Annual report, demonstrates a continued commitment to results reporting, and that work has started in parallel to develop an IT system which will facilitate future results reporting from on-going projects. In addition, a review of the EU Results Framework is planned for the second half of 2016, once Sustainable Development Goals indicators have been agreed by the international community.

16.12 Finally, the Minister notes that we previously questioned the lack of urgency in getting to the first report stage, and he recognises that the delay in producing the first report was frustrating. However, he points out that data collection for the second report (based on 2015 results) was completed on time, and will appear as part of the forthcoming EuropeAid Annual Report, meaning that the Commission has effectively caught up. He also comments that the EU has put in place a more advanced results framework than other multilaterals currently produce, and that, over time, it should be expected to produce reporting to rival that of others who have been reporting results in this way for some time. In the meantime, he says that the UK remains committed to constructive dialogue with colleagues in Brussels and in country missions to ensure continued improvement in results reporting, anticipating a stronger focus on results in future reports and for this to be reflected in the programme delivery and policy formulation.

Previous Committee Reports

None.

17 Strategy for Low-Emission Mobility

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Transport Committee
Document details	Commission Communication: <i>A European Strategy for Low-Emission Mobility</i>
Legal base	—
Department	Transport
Document Numbers	(37982), 11333/16 + ADDs 1–2, COM(16) 501

Summary and Committee's conclusions

17.1 Since transport accounts for almost one quarter of Europe's greenhouse gas emissions, and is the main cause of air pollution in cities, the Commission sees a need for an irreversible shift to low-emission mobility, whilst noting also the accelerating pace of the global shift in this direction, and the changes which have already taken place within the EU.

17.2 It has accordingly sought in this Communication to introduce a strategy for speeding up that transition, based on three broad priorities—optimising the transport system and improving its efficiency; scaling up the use of low-emission alternative energy sources; and moving towards zero-emission vehicles—and setting out an overarching approach together with the areas in which options should be explored (including how initiatives in related fields might be linked and synergies achieved).

17.3 The Government welcomes the Commission's recognition of the importance of low-emission mobility and, in principle, welcomes proposals which will improve air quality, and reduce impact of transport on human health and on the natural environment. It says that it will consider the policy implications of individual proposals when they are issued, but, in the meantime, has set out its current position on the Commission's broad priorities and other areas falling out of this Strategy.

17.4 This is a wide-ranging strategy covering an area of considerable economic and environmental importance, and, although it is not clear what its impact will be on the UK in the light of the recent referendum vote, we think it right to draw it to the attention of the House and of the Transport Committee. Having said that, the document essentially provides a broad framework for future action, and, as the Government has pointed out, more specific attention can be given to individual items as and when the Commission comes forward with detailed proposals. We are therefore content to clear it.

Full details of the documents

Commission Communication: *A European Strategy for Low-Emission Mobility*: (37982), [11333/16](#) + ADDs 1–2, COM(16) 501.

Background

17.5 According to the Commission, transport accounts for almost one quarter of Europe's greenhouse gas emissions, as well as being the main cause of air pollution in cities, and it sees this as requiring an irreversible shift to low-emission mobility in order to achieve a broader move to the low-carbon circular economy needed to maintain competitiveness whilst catering for the mobility needs of people and goods. It also notes the accelerating pace of the global shift in this direction, and the changes which have already taken place within the EU.

17.6 It has now sought in this Communication to introduce a strategy for speeding up that transition, setting out an overarching approach together with the areas in which options should be explored (including how initiatives in related fields might be linked and synergies achieved).

The current document

17.7 The Strategy has three broad priorities:

- to optimise the transport system and improve its efficiency;
- to scale up the use of low-emission alternative energy sources; and
- to move towards zero-emission vehicles.

Optimising the transport system and improving its efficiency

17.8 The Commission notes that, because of new technologies, business models and mobility patterns, the way mobility is organised is changing, with it being increasingly driven by demand, leading to a more optimal use of transport resources. It believes that data, clearer price signals and a multimodal transport system support this approach, and therefore have a key role to play.

Digital Mobility

17.9 The Strategy notes the potential of digital technologies, especially Cooperative Intelligent Transport Systems (C-ITS), to improve mobility, efficiency and safety, and says that the Commission intends to publish a Master Plan promoting the rapid deployment of C-ITS technologies.

Fair and efficient pricing in transport

17.10 The Strategy notes the importance of correct price signals and externalities to incentivise energy-efficient transport. It says that, as regards road transport, the Commission believes that distance-based road pricing best reflects the polluter/user pays principle, and that its planned package of roads initiatives will include proposals to revise the existing Eurovignette and European Electronic Tolling Service Directives, an analysis having suggested that improvement in their functioning could reduce carbon dioxide emissions from the road sector by up to 1.7%.

Promoting multi-modality

17.11 The Strategy identifies measures supporting multi-modal integration as encouraging shifts towards lower emission methods of transport, such as inland waterways, short sea shipping and rail, citing as an example recent measures in the Fourth Railway Package to make rail more attractive to passengers and freight. It says that the Commission's future plans include amendment of the Combined Transport Directive and action to allow further development of domestic bus and coach services, and it notes that increased digitalisation has made it possible for mobility distribution models, such as Mobility as a Service (MaaS), to improve passenger experience.

Scaling up the use of low-emission alternative energy sources

17.12 The Strategy notes that transport in the EU depends on oil for about 94% of its energy needs, which is much higher than any other sector, and leaves it heavily dependent on imports. It further notes the need to accelerate the current transition to alternative energy sources, and the opportunity this provides for the EU to develop leadership in new products, such as advanced biofuels.

17.13 The Strategy also indicates areas where the Commission intends to act in the future, including revision of current legislation. In particular, it points out:

- the possibility of obliging fuel suppliers to provide a certain share of renewable energy, for example through a blending mandate⁵³ or obligation to reduce the greenhouse gas impact of the energy supplied;
- the limited future for food-based biofuels, with the withdrawal of financial support after 2020, and their gradual replacement by more advanced biofuels (where it will be necessary to assess investment needs, and their competitive position with other fuels, in the absence of support);
- the extent to which the prospects for low-emission alternative energy differ according to the method of transport, with the widest range of options currently available being for passenger cars and vans, but with advanced biofuels being particularly important in the medium term for aviation, as well as for lorries and coaches;
- the need for specific infrastructure outside the current refuelling system—such as a wide availability of electric re-charging points, and natural gas and hydrogen refilling stations—and for a methodology allowing fuel price comparisons; and
- the importance of standardisation and inter-operability in such areas as charging plugs, where the EU also takes part in international work.

Moving towards zero-emission vehicles

17.14 The Commission says that a shift to low-emission energy needs to be complemented by policies supporting efficiency and innovation in vehicles, further improvements in combustion engines, and greater attention than hitherto being paid to lorries, buses and

53 A requirement for fuel to contain certain renewable components within the blend.

coaches. It also highlights the need for improvements in vehicle testing to regain consumer trust, and the role of a new type-approval framework in strengthening independent testing, market surveillance and enforcement in Europe.

Post-2020 strategy on vehicle efficiency for cars and vans

17.15 The Commission is considering post 2020 carbon dioxide standards for cars and vans, and is currently assessing their costs and benefits, competitiveness impacts and industrial policy developments across the EU and globally. It stresses the importance of customer awareness of electric and fuel cell vehicles, and the role of tax incentives (where it comments on the extent to which Member States still apply a range of contradictory measures, such as fossil fuel subsidies, which discourage low-emission mobility, and the need to review these).

Post-2020 strategy for lorries, buses and coaches

17.16 The Commission notes that lorries, buses and coaches account for about one quarter of carbon dioxide emissions from road transport, which are set to increase between 2010 and 2030. It also points out that, whilst these have been subject to similar air pollution standards as cars and vans, they are not subject to EU fuel efficiency standards or to a carbon dioxide monitoring scheme, and that, as a first step, it is working on proposals for the certification of emissions and fuel consumption and for the monitoring and reporting of certified data. It also proposes to introduce new regulatory measures to control carbon dioxide emissions from heavy duty vehicles, in order to prevent the EU lagging behind other parts of the world, such as the US, China, Japan and Canada, which have already introduced such standards. Finally, it highlights the role which public procurement undertaken by municipal and local authorities can play, and says that it is considering broadening the scope of the Clean Vehicles Directive (2009/33/EC), which requires public procurement of road vehicles to take account of environmental impacts, and introducing more robust compliance requirements and procurement targets.

Related EU policy areas

17.17 The Commission also notes that a number of its current and planned horizontal initiatives will support the transition to low-emission mobility. These include:

- the Energy Union Strategy, including the planned initiative on Electricity Market Design which aims to reward consumers who manage their electricity consumption in a “smart” way;
- the planned EU Research, Innovation and Competitiveness Strategy for the Energy Union, aimed at bringing together three interconnected strands—energy technologies, transport and industry—with €6.4 billion having been allocated to transport research and innovation under the Horizon 2020 programme, and further programmes having been set up to address transport decarbonisation, including support for the development of light and heavy duty electric vehicles and fuel cells, the promotion of low carbon transport for cities, and the promotion of the uptake of liquefied natural gas for heavy duty vehicles;

- the Digital Single Market Strategy, including digitising industry, the free flow of data and standardisation policy initiatives to ensure development and uptake of the new technologies;
- implementation of the New Skills Agenda to ensure that employees have the necessary skills; and
- maximising the impact of available finance and financial instruments, with EU financing through the Connecting Europe Facility (CEF) and the European Structural and Investment Funds (ESIF), which have allocated €24.04 billion and €70 billion respectively to be spent on developing transport infrastructure between 2014 and 2020, and the use of the CEF and Trans-European Transport Network (TEN-T) to mobilise private finance.
- The Strategy also notes and supports the global action being taken by the International Civil Aviation Organisation (ICAO) on international aviation emissions and by the International Maritime Organisation (IMO) on those from international shipping.

The Government's view

17.18 In his Explanatory Memorandum of 15 August 2016, the Transport Minister for Aviation, International Trade and Europe (Lord (Tariq) Ahmad of Wimbledon) says that the Government welcomes the Commission's recognition of the importance of low-emission mobility and, in principle, welcomes proposals which will improve air quality, and reduce impact of transport on human health and on the natural environment.

17.19 He says that there are no immediate policy implications arising from the Strategy, and that the Government will consider those of individual proposals when they are issued, but, in the meantime, he describes its current position on the Commission's broad priorities and other areas falling out of this Strategy as follows:

- as regards *optimising the transport system and improving its efficiency*, the Government supports the work of the EU on the deployment of Cooperative Intelligent Transport Systems (C-ITS), where the UK has been working closely with the Commission on the initial stages of the proposed master plan for deployment, and is already actively involved in this area: the UK also recognises the need for vehicles to travel seamlessly from country to country, and has partnered with European counterparts to ensure interlinkages;
- on the *scaling up the use of low-emission alternative energy sources*, most of today's biofuels are produced from crops grown on agricultural land, but there are concerns that some do not deliver greenhouse gas savings where their production displaces other crops onto previously uncultivated land: in recognition of this problem, a recent Directive (2015/1513), included a cap on crop based biofuels and the option to set a sub-target to support advanced biofuels, but there is no specific indication of what the Commission's planned further legislation might contain beyond the possibility of a

renewable blending mandate or an obligation to reduce greenhouse gas emissions impacts to support alternative fuels such as advanced biofuels and synthetic fuels; and

- in the case of *moves towards zero-emission vehicles*, the Government supports the views outlined by the Strategy, and has set a goal that all cars and vans should be zero emission vehicles by 2050, with expenditure of more than £600 million during this Parliament on supporting the early market: the Government broadly supports the delivery of further improvements in vehicle efficiency and EU measures reducing carbon dioxide emissions from cars and vans which help to support the introduction of zero emission vehicles to the mass-market, as well as the development of new regulatory measures for corresponding reductions from heavy duty vehicles (lorries, buses and coaches), although it recognises the current difficulties in measuring and verifying emissions for these vehicles.

17.20 The Minister also makes two further points. First, although the Strategy cites the Combined Transport Directive as a contributor to reducing greenhouse gas emissions, the considerable growth reported in combined transport is not all directly attributable to that measure. Secondly, with regard to research and development and competitiveness, the UK has maintained strong support for industry innovation and RandD, and created a wide range of high quality, relevant projects to drive forward technologies for ultra-low emission vehicles to build UK capability and supply chains.

Previous Committee Reports

None.

18 The European External Action Service's management of its buildings around the world

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	European Court of Auditors' Special Report No. 7/2016: The European External Action Service's management of its buildings around the world
Legal base	—
Department	Foreign and Commonwealth Office
Document Number	(37723), —

Summary and Committee's conclusions

18.1 The European External Action Service (EEAS) coordinates the EU's foreign and security policy. It provides office buildings for EU staff and residences for Heads of Delegation in around 140 EU Delegations around the world. EEAS expenditure on Delegation buildings in 2014 amounted to €165 million (£136 million), out of a total budget of €530 million (£438 million).

18.2 The European Court of Auditors found that, while Delegation buildings generally met needs, in some cases they did not provide best value for money because they exceeded the specified space limits, the EEAS owned buildings it no longer used, and some charges levied upon organisations hosted in shared premises were not sufficient to recover all costs. It made a series of recommendations with which the Government agreed and which the EEAS largely accepted.

18.3 The Committee asked the Government to write to us after discussion in Council to explain how the EEAS' capacity to manage its portfolio effectively is to be enhanced.

18.4 In response, the Minister for Europe and the Americas (Sir Alan Duncan) explains how the Government has engaged in discussions on the Special Report in Brussels. He reports that the UK strengthened language in the Council Conclusions (of 27 June)⁵⁴ urging the EEAS to build its expertise in property management along with pursuing efforts to sell or to rent out unoccupied owned buildings to avoid the related maintenance or security costs.

18.5 We are re-assured by the Minister's response. We now clear the European Court of Auditors' Special Report from scrutiny and require no further response.

Full details of the documents

European Court of Auditors' Special Report No. 7/2016: The European External Action Service's management of its buildings around the world: (37723), —.

Background

18.6 The European Court of Auditors (ECA), via its Special Reports, carries out audits designed to assess how well EU funds have been managed so as to ensure economy, efficiency and effectiveness.

18.7 The Court of Auditors noted that, upon being created in January 2011, the European External Action Service (EEAS) took over responsibility for running EU Delegations around the world from the European Commission. The auditors found that, while Delegation buildings generally met needs, in some cases they did not provide best value for money because they exceeded the specified space limits, the EEAS owned buildings it no longer used, and some charges levied upon organisations hosted in shared premises were not sufficient to recover all costs.

18.8 The auditors made a number of recommendations designed to: improve cost recovery and verify and monitor market rental rates; improve planning and strengthen support for delegations; facilitate a more strategic approach to priorities for rentals, purchases, sales, modifications and maintenance in rolling medium-term plans; and reinforce headquarters' real-estate management expertise. These were accepted by the EEAS, though with some qualifications about the limitations on long-term planning and the paucity of staff engaged in this part of the EEAS' work. Further details on the Special Report were set out in our Report of 19 May.

18.9 When we considered the Special Report on 19 May, we expressed surprise at the lack of urgency expressed by the Government about ensuring the step change in EEAS real estate management that is plainly necessary. We therefore asked the Minister to write to us after discussion in Council explaining how the EEAS' capacity to manage its large portfolio is to be enhanced. In the meantime, we retained the Special Report under scrutiny.

Minister's letter of 25 July 2016

18.10 The Minister responded in the following terms:

“At the Budget Committee meetings in Brussels on 30 May and 2 June, the UK underlined serious concerns about the findings and implications of the report, supported the need for the EEAS to implement the ECA's recommendations and asked a number of questions about how the EEAS will strengthen its real estate expertise, and the management of its buildings.

“The EEAS explained that co-location is a strategic priority. It is working with the European Investment Bank, along with other EU Member States, on office sharing solutions. The EEAS has introduced a lifecycle management system to improve the management of its buildings. This will embed Cost Benefit Analysis into procedures for rent against purchase.

“The UK, together with other like-minded Member States, strengthened language in the Council Conclusions urging the EEAS to build its expertise in property management along with pursuing efforts to sell or to rent out unoccupied owned buildings to avoid the related maintenance or security costs.

“The Conclusions, adopted on 27 June 2016, ask the EEAS to follow-up on the implementation of the recommendations contained in the report and invite the Court of Auditors to report back on the progress achieved by the EEAS in the management of EU delegation buildings.

“The Conclusions also call on the EEAS, in line with the recommendations of the Court, to further develop a more strategic and rationalised approach and improve the planning in regard to its building policy that ensures efficient use of resources across the network. This includes proposals to mitigate the impact of the exchange rate fluctuations on its infrastructure spending.

“The European Court of Auditors follows-up on recommendations in its special reports at regular intervals. The UK will continue to monitor progress.”

Previous Committee Reports

First Report HC 71-i (2016–17), [chapter 3](#) (19 May 2016).

19 A Global Strategy for the EU's Foreign and Security Policy

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny; drawn to the attention of the Foreign Affairs Committee
Document details	EU High Representative for Foreign Affairs and Security Policy's Report: <i>A Global Strategy for the EU's Foreign and Security Policy</i>
Legal base	—
Department	Foreign and Commonwealth Office
Document Numbers	(37897), 10715/16, —

Summary and Committee's conclusions

19.1 The wider region beyond the EU has become more unstable and more insecure. Crises within and beyond the EU's borders are directly affecting the lives of EU citizens. The EU is expected to play a major role globally, including as a security provider. These were the reasons for a new EU Global Strategy as set out by the High Representative, Federica Mogherini, on 28 June.

19.2 The Strategy set out five broad areas for action:

- The Security of our Union (recommending boost to security and defence capabilities);
- State and Societal Resilience to our East and South;
- An Integrated Approach to Conflicts;
- Cooperative Regional Orders; and
- Global Governance for the 21st Century.

19.3 A final section described how this vision would be put into action. Action would include:

- urgent Member State investment in security and defence capabilities;
- diplomatic action fully grounded in the Lisbon Treaty; implementation of the Sustainable Development Goals; and
- coherence across EU external policies, between Member States and EU institutions, and between internal and external dimensions of policies.

19.4 At its first consideration of the document on 20 July, the Committee asked for details of the exchanges between the Foreign Secretary and the High Representative on the

follow-up to the Strategy at the 18–19 July Foreign Affairs Council, notably on plans for new, permanent EU military structures. We asked too for the Government’s views on the implications of the Global Strategy for a “post-Brexit” UK foreign policy.

19.5 In response, the Minister for Europe and the Americas (Sir Alan Duncan) asserted the UK’s commitment to continuing engagement with both the EU and NATO on security and defence issues. The UK will continue to resist institutional expansion and the creation of unnecessary structures. The exact nature of the long-term UK-EU security relationship will be the subject of negotiation but, according to the Minister, all Member States agree on the importance of the UK’s ongoing co-operation with the EU on security and defence.

19.6 We take note of this commitment to continued engagement with both the EU and NATO on security and defence matters. While the Minister’s response does little to shed any light on the detailed nature of the UK-EU foreign policy post-Brexit, we expect this issue to be a slow-burning one to which we and our colleagues on the Foreign Affairs Committee will devote time over the coming months. We expect implementation of the Global Strategy to begin shortly and that individual initiatives will come to us separately for scrutiny. We therefore release the Strategy from scrutiny and require no further correspondence on it.

19.7 We draw this chapter to the attention of the Foreign Affairs Committee, particularly in view of its inquiry into the *Implications of leaving the EU for the UK’s role in the world*.

Full details of the documents

EU High Representative for Foreign Affairs and Security Policy’s Report: *A Global Strategy for the EU’s Foreign and Security Policy*: (37897), [10715/16](#), —.

Background

19.8 The June 2016 European Council welcomed the presentation of the Global Strategy for the European Union’s Foreign and Security Policy, which seeks to provide the EU with a high-level strategic vision over the medium term, and invited the High Representative, the Commission and the Council to take the work forward. The strategy is the culmination of a strategic reflection process launched by the December 2013 European Council, which asked the High Representative to draw up the Strategy. Further details of the Strategy and its background were set out in our Report of 20 July.

19.9 The then Minister’s Explanatory Memorandum was supportive of the document. He emphasised the UK’s insistence that any specific policies emanating from the Strategy must follow the normal procedure, requiring negotiation and unanimity for agreement.

19.10 In our Report of 20 July, we drew attention to media reports that the UK would support plans for new, permanent EU military structures designed to act autonomously from NATO. We asked for clarification of exchanges on this issue between the Foreign Secretary and the High Representative at the Foreign Affairs Council on 18–19 July. We also requested the Minister’s views on the implications of the Global Strategy for a

“post-Brexit” UK foreign policy. We retained the document under scrutiny and drew the developments to the attention of the Foreign Affairs Committee, particularly in view of its inquiry into the *Implications of leaving the EU for the UK’s role in the world*.

Minister’s letter of 4 August 2016

19.11 The Minister set out the Government’s response in the following terms:

“The UK and EU will continue to face a number of shared threats and to share many common interests. At the Foreign Affairs Council on 18 July, the Foreign Secretary and his EU counterparts agreed that it remained important for the UK and EU to continue to cooperate on security issues, and that as the largest and most capable security provider in Europe, the UK has much to offer. As the Foreign Secretary and PM have both said, we are leaving the EU but we will not be turning our back on Europe.

“In line with this, we continue to have a stake and an interest in the EU Global Strategy and its implementation, now and in the future. While we remain a member of the EU, we will continue to engage with the Strategy and to shape its direction, including by leaving the door open to future UK participation where that would be mutually advantageous.

“Our EU partners are well aware of the UK’s long standing and principled position on new defence structures. We have always pressed for the EU’s CSDP to focus on practical improvements to deliver real-world impact, and have resisted institutional expansion and the creation of unnecessary structures. The Foreign Secretary said that we will continue to engage with the EU—first as a member, then as a partner—in line with this approach.

“Greater EU/NATO cooperation, and avoiding unnecessary duplication, remains an important issue both for the UK and for other EU and NATO Members. The Strategy itself highlights this as a key priority. We will continue to work with others to take this forward. The UK will continue to be a major player in European security and defence, as a leading member of NATO and a key partner of the EU. We will also continue to argue that Member States should invest more in defence, which should strengthen both the EU and NATO, and support wider European security.

“Whilst the exact nature of the long-term UK/EU security relationship will be the subject of negotiation, all EU Member States agree on the importance of the UK’s ongoing cooperation with the EU on security and defence.”

Previous Committee Reports

Ninth Report HC 71-vii (2016–17), [chapter 7](#) (20 July 2016).

20 Financial services: remuneration rules

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny
Document details	Commission Report about <i>the remuneration rules for financial services personnel</i>
Legal base	—
Department	HM Treasury
Document Numbers	(38006), 11583/16 + ADDs 1–2, COM(16) 510

Summary and Committee's conclusions

20.1 New capital requirements legislation in 2013 (known as CRDIV) strengthened the remuneration rules of credit institutions and investment firms, notably in relation to bonus caps. The legislation required the Commission to report an assessment of the efficiency, implementation and enforcement of the remuneration rules.

20.2 In this Report meeting that requirement the Commission's broad assessment of the remuneration rules is largely positive, finding that the rules have contributed to the overall objective of curbing excessive risk-taking and better aligning remuneration with performance, thereby contributing to enhanced financial stability. But it notes both that:

- due to the limited time the rules have been in place, there is insufficient evidence to draw conclusions about some matters, on which it will continue its monitoring; and
- some inadequacies have been revealed, for instance in relation to small investment firms, the relationship of the CRDIV legislation to that for investment undertakings outside its scope and proportionate application of the rules, for which it will assess further and consider proposals for corrective legislation.

20.3 The Government supported the requirement for a Commission assessment of the remuneration rules and notes this Report. It now supports the Commission's intentions in relation to small investment firms, investment undertakings outside the scope of CRDIV and proportionality. The Government will itself continue to monitor the implementation and effectiveness of the CRDIV remuneration rules.

20.4 While we do not wish to retain this document under scrutiny we draw it to the attention of the House for the preliminary information it contains about the strengthened remuneration rules for credit institutions.

Full details of the documents

Commission Report: *Assessment of the remuneration rules under Directive 2013/36/EU and Regulation (EU) No. 575/2013*: (38006), [11583/16](#) + ADDs 1–2, COM(16) 510.

Background

20.5 The Capital Requirements Directive IV (CRDIV) and Capital Requirements Regulation (CRR), together known as the CRDIV legislation strengthened the remuneration rules of credit institutions and investment firms. The rules apply to senior management, risk takers and other staff (for instance compliance staff). The rules include imposition of a 1:1 ratio of salary (fixed remuneration) to bonuses (variable remuneration) or, with the agreement of shareholders, a 1:2 ratio.

The document

20.6 The CRDIV legislation required the Commission to report an assessment of the efficiency, implementation and enforcement of the remuneration rules, in particular the impact of the maximum ratio between variable and fixed remuneration. The Commission now meets that requirement with this Report. Its broad assessment of the remuneration rules is largely positive, finding that the rules have contributed to the overall objective of curbing excessive risk-taking and better aligning remuneration with performance, thereby contributing to enhanced financial stability. However, the Commission also finds that:

- deferral and pay-out in instruments are not efficient in the case of small and non-complex firms and investment firms, and for staff with low levels of variable remuneration; and
- due to the limited time the rules have been in place, as well as the difficulty of measuring a concrete impact of the rules on the behaviour of individuals, in some places (for example, the maximum ratio of fixed to variable remuneration) the Commission has not been able to gather sufficient evidence to draw firm conclusions.

20.7 In relation to the obligation on Member States to transpose and apply the rules by the end of 2013 the Commission says that its investigation revealed two issues:

- most Member States have interpreted the principle of proportionality in such a way as to put in place thresholds or criteria under which the certain remuneration rules need not be applied, with these criteria not being in line with the text of the Directive; and
- some institutions had incorrectly classified fixed ‘role based allowances as fixed remuneration’.

20.8 The Commission discusses various aspects of application of the rules, acknowledging first that concerns have been raised over an increase in the number of identified staff (defined as those whose activities have a material impact on a firms risk profile), but says that the overall percentage is low (2.34% of all staff in 2014) and that there will be continued evaluation. The Commission also acknowledges that the rules, which were designed for banks, are not appropriate for investment firms, saying that:

- there is a lack of evidence to recommend changes at this time; and
- application of remuneration rules to investment firms may need to be revisited following its broader review of prudential rules for investment firms.

20.9 On the application of the rules at group level the Commission, notes that staff of certain types of investment funds, managers of undertakings for collective investment in transferable securities (UCITS) or of alternative investment funds (AIF), that are part of a CRD group only need to comply with CRDIV remuneration rules if these staff have a material impact on the risk profile of the CRD group to which they belong. However, the Commission acknowledges that UCITS and AIF managers that are part of CRD regulated groups expressed concerns that they would need to comply with CRD as well as sector specific legislation giving rise to an un-level playing field.

20.10 The Commission discusses the remuneration rules, as they currently stand, that have been in place since the adoption of CRD III on 1 January 2011, some of which have been strengthened by CRD IV. It gives a positive overall assessment of rules introduced by CRD III, for example, on governance related requirements, limitations on guaranteed variable remuneration and severance pay, deferral and pay out in instruments. The Commission also gives a positive assessment of malus and clawback tools, which allow firms to reduce or cancel variable remuneration, finding that they have proved a deterrent effect.⁵⁵ It notes that, in practice, their use remains low.

20.11 In relation to specific concerns about the need for proportionate application of the rules, the Commission finds that the application of some of the requirements, in particular on deferral and pay out in instruments, are particularly onerous on smaller and non-complex institutions and investments firms and in respect of staff with low levels of variable remuneration. It says that it will propose legislation to address this concern.

20.12 As for the maximum ratio between variable and fixed remuneration the Commission says that, due to the limited time the rules have been in place, there is insufficient evidence available to draw conclusions on the effect of the maximum ratio rule in the following areas:

- the impact on excessive risk-taking behaviour and misconduct;
- the impact on profitability and the ability of firms to manage fixed costs (although the Commission says that it is likely to have led to a shift in some individual cases);
- the impact on competitiveness;
- the impact of rules being extended to staff working for non-EEA subsidiaries; and
- whether the bonus cap has had the general impact of increasing fixed remuneration.

55 *Malus* means the adjustment of an award of variable remuneration before it has vested; *clawback* means the recovery of variable remuneration which has already been paid.

20.13 The Commission's Report is accompanied by two Staff Working Documents:

- a detailed assessment, which provides factual information on the impacts of the remuneration rules and covers in greater depth the arguments surrounding the rules; and
- an evaluation of the deferral and pay-out in instruments rules in relation to their relevance, effectiveness, efficiency, coherence, acceptability and added value—it was produced in relation to previous Commission findings that revealed certain shortcomings with regard to the proportionate application of the rules.

The Government's view

20.14 In his Explanatory Memorandum of 15 August 2016 the Economic Secretary to the Committee (Simon Kirby) says first, in the context of the outcome of the EU referendum and in now familiar terms, that until the UK exits the EU the Government will continue to negotiate, implement and apply EU legislation. He then says that:

- the Government supported the inclusion of a review clause in the CRDIV legislation and notes the Commission's analysis;
- it agrees with the findings on proportionality and supports the commitment to develop proposals on proportionality as part of the wider forthcoming review of CRDIV;
- the Government also supports the Commission's commitment to taking forward further analysis of the impact on investment firms and to revisiting the broader questions when further evidence and information is made available;
- it notes that the report, and outlined legislative follow-up, will not impact the way the UK currently regulates remuneration; and
- the Government will continue to monitor the evidence about the application of the bonus cap and any further assessment carried out by the Commission.

Previous Committee Reports

None.

21 Preventing radicalisation and violent extremism

Committee's assessment	Politically important
Committee's decision	Cleared from scrutiny (decision reported on 13 July); further information received; drawn to the attention of the Home Affairs Committee
Document details	Commission Communication: <i>supporting the prevention of radicalisation leading to violent extremism</i>
Legal base	—
Department	Home Office
Document Numbers	(37883), 10466/16, COM(16)379

Summary and Committee's conclusions

21.1 Terrorist attacks across Europe have reinforced the need to tackle radicalisation and the violent extremism which it can engender. Many of those suspected of involvement in the attacks were EU citizens, born, raised and radicalised in EU Member States. Recent estimates indicate that around 4,000 EU citizens have joined terrorist organisations in Syria, Iraq and other countries of conflict.⁵⁶ This Commission Communication is the latest in a series of documents setting out the strategic direction for policies dealing with internal security within the EU and measures to address the terrorist threat. Whilst recognising that Member States are “in the frontline” and bear primary responsibility for developing and implementing measures to prevent and counter radicalisation, the Commission identifies a range of “key actions” to support their efforts, improve coordination, develop EU-wide networks for the sharing of information and exchange of best practice, and mobilise EU funding.

21.2 We considered the Communication and the Explanatory Memorandum provided by the Government at our meeting on 7 July. Whilst cautioning against any encroachment on national security, which remains the “sole responsibility of each Member State” under the EU Treaties, the Government raised few objections to the actions proposed in the Communication. It recognised that action at EU level could “add value” by helping Member States to work together more effectively, mitigating the risk of gaps and inconsistencies which might arise from uncoordinated unilateral action. The Government welcomed the use of EU research funding to “expand the evidence base on radicalisation and de-radicalisation, and to produce concrete tools and policy analysis that are usable by Member States’ practitioners and policy makers”. It supported the work of the EU Internet Referral Unit (established within Europol) and efforts to strengthen young people’s resilience to radicalisation through the Erasmus+ programme, as well as wider international efforts to strengthen counter-terrorism laws and practices.

56 See p.3 of the Communication.

21.3 We expressed our disappointment that the Government had nothing to say on the outcome of the referendum on the UK's membership of the EU and the impact that the UK's withdrawal from the EU would have on the UK's ability to share sensitive law enforcement information with other EU Member States. We noted:

21.4 “The Minister says that he supports the Commission's call for ‘increased and more effective information sharing’ but does not indicate how this can be achieved post-Brexit. He does not comment on the Commission's intention to revise the Schengen Information System to increase its ‘added value for law enforcement and counter-terrorism purposes’. Nor does he offer any view on the role of Europol and the European Counter-terrorism Centre as ‘a central information hub in the fight against terrorism in the EU’, other than to caution against Europol developing into ‘an intelligence agency’.

21.5 “The UK's future relationship with Europol, including the European Counter-terrorism Centre and the Internet Referral Unit established within it, as well as the UK's ability to access information held in the Schengen Information System—previously described by the Minister as ‘a vital tool’ in tackling cross-border crime and terrorism—will be an important element of the UK's Brexit negotiations. We await an update from the Minister on the UK's future participation in Europol, following the Government's decision not to opt in, during the negotiating stage, to a new Regulation determining Europol's structure, operation and tasks. We ask the Minister to indicate, at the earliest opportunity, how the Government intends to manage its future relationship with Europol following Brexit and what scope there is for the UK to conclude bilateral agreements with the EU or with Member States individually on the exchange of law enforcement information.”

21.6 We cleared the Communication from scrutiny but asked the Government to respond as promptly as possible to our request for further information. In his response, the Minister for Security (Mr Ben Wallace) tells us that the Government will take a decision on whether or not to opt into the new Europol Regulation “in due course”. He notes the Prime Minister's commitment to continuing law enforcement cooperation with EU partners once the UK has left the EU and says that “how the UK shares information with the EU will also be a key consideration as part of the process of leaving the EU and establishing a new relationship”. He adds that it is “too early to speculate at this stage what future arrangements may look like”.

21.7 In his Statement to the House on 5 September, the Secretary of State for Exiting the European Union (Mr David Davis) made clear that security was one of the areas in which the Government would seek to “maintain or even strengthen” cooperation with EU partners. He added that the Government's aim would be to “preserve the relationship with the European Union on security matters as best we can” but declined to indicate whether the UK would remain within Europol.

21.8 The UK participates fully in Europol. It is unclear whether the UK will continue to be able to do so unless it opts into the new Europol Regulation which was adopted in May this year and will apply from 1 May 2017. Throughout the negotiations on the new Europol Regulation, the Government made clear that it intended to opt in once the Regulation had been adopted if it succeeded in securing its negotiating objectives. Despite requesting regular progress reports, the last update we received was last October. We remind the Minister that the new Europol Regulation remains under scrutiny. We expect the Government to provide a detailed assessment of the

arguments for and against opting into the Regulation while the UK remains a member of the EU. This assessment should explain whether it would be possible for the UK to continue to remain a full member of Europol, even if it decides not to opt into the new Regulation, by relying on its participation in an earlier 2009 Council Decision establishing Europol. The Government must make time available for a debate on the floor of the House before the Government formally notifies the Council Presidency of the UK’s opt-in decision.

21.9 The UK’s withdrawal from the EU is likely to have significant implications for the UK’s relationship with Europol and wider law enforcement cooperation with EU partners. It is one thing for the Government to assert that such cooperation will continue once the UK has left the EU; it is quite another to explain how that objective can be delivered. Whilst we appreciate that some time will be needed to work through the legal and political complexities involved in establishing a new framework for cooperation, we ask the Minister to share with us his analysis of the options available to the UK and the extent to which they are capable of ensuring a level of cooperation on internal security and counter-terrorism comparable to, or better than, that which is currently in place.

21.10 We draw this chapter to the attention of the Home Affairs Committee.

Full details of the documents

Commission Communication: *supporting the prevention of radicalisation leading to violent extremism*: (37883), [10466/16](#), COM(16) 379.

Background

21.11 Our earlier Reports (listed at the end of this chapter) provide a detailed overview of this and other related Communications published by the Commission since 2015, as well as the progress of negotiations on the new Europol Regulation, and summarise the Government’s position.

The Minister’s letter of 19 August 2016

21.12 The Minister recognises that “terrorism is an international problem that requires an international solution”. He continues:

“We are working closely with European partners, as with other international allies, to tackle the threat from Daesh and other terrorist groups that want to cause us harm and disrupt our way of life.

“This includes working with European partners on information sharing, tackling foreign fighter flows, law enforcement cooperation, tackling radicalisation and countering the narratives of terrorist groups.”

21.13 He notes that “cooperation with our European partners has not ceased since the result of the referendum was announced”, adding:

“The UK remains a full member of the EU, with all the rights and obligations that brings, and UK authorities have continued to cooperate with their counterparts in other EU Member States, including through Europol. The UK remains a full member of Europol, and because of our Justice and Home Affairs opt-in, we have the option to seek to opt in to Europol’s new legislative framework (commences 1 May 2017). This option remains open to us while we are a member of the EU. The Government will take a decision on whether to opt in to the new Europol Regulation in due course.”

21.14 Turning to the UK’s future relationship with Europol and the UK’s ability to access law enforcement information once the UK has left the EU, he comments:

“The Prime Minister has stated that law enforcement cooperation will continue when the UK is outside the EU.

“The issue of how the UK shares information with the EU will also be a key consideration as part of the process of leaving the EU and establishing a new relationship. Effective data-sharing with international partners will remain a UK priority and an area where we continue to play a leading global role. However it is too early to speculate at this stage what future arrangements may look like.”

Previous Committee Reports

Eighth Report HC 71-vi (2016–17), [chapter 20](#) (13 July 2016). Our earlier Reports on the Commission Communication, *The European Agenda on Security* and its follow-up Communication, *Delivering on the European Agenda on Security* are also relevant: Third Report HC 71-ii (2015–16), [chapter 29](#) (25 May 2016), Twenty-third Report HC 342-xxii (2015–16), [chapter 2](#) (10 February 2016) and First Report HC 342-i (2015–16), [chapter 6](#) (21 July 2015).

Extensive background on negotiations on the new Europol Regulation can be found in the following Reports: Seventh Report HC 342-vii (2015–16), [chapter 9](#) (28 October 2015); First Report HC 342-i (2015–16), [chapter 36](#) (21 July 2015); Thirty-sixth Report HC 219-xxxv (2014–15), [chapter 10](#) (11 March 2015); Twenty-seventh Report HC 219-xxvi (2014–15), [chapter 8](#) (17 December 2014); Twenty-third Report HC 219-xxii (2014–15), [chapter 1](#) (26 November 2014); Ninth Report HC 219-ix (2014–15), [chapter 16](#) (3 September 2014); Fifth Report HC 219-v (2014–15), [chapter 7](#) (2 July 2014); First Report HC 219-i (2014–15), [chapter 14](#), (4 June 2014); Thirty-third Report HC 83-xxx (2013–14), [chapter 9](#) (29 January 2014); Twenty-ninth Report HC 83-xxvi (2013–14), [chapter 11](#) (8 January 2014); Thirteenth Report HC 83-xiii (2013–14), [chapter 21](#) (4 September 2013); Eleventh Report [HC 83-xi](#) (2013–14) (10 July 2013); Seventh Report HC 83-vii (2013–14), [chapter 1](#) (26 June 2013); Third Report HC 83-iii (2013–14), [chapter 1](#) (21 May 2013).

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

Department for Business, Energy and Industrial Strategy

- (37912) Commission Report—Annual Report on *the Implementation of the EU-Korea Free Trade Agreement*.
10847/16
+ ADD 1
COM(16) 268
- (37950) European Court of Auditors' Special Report No. 16/2016—*EU education objectives: programmes aligned but shortcomings in performance measurement (pursuant to Article 287(4), second subparagraph, TFEU)*.
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—
- (37951) European Court of Auditors' Special Report No. 19/2016—*Implementing the EU budget through financial instruments—lessons to be learnt from the 2007–2013 programme period (pursuant to Article 287(4), second subparagraph, TFEU)*.
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—
- (37933) Commission Report on the *application of the pre-packaging legal framework: Directives 75/107/EEC, 76/211/EEC and 2007/45/EC*.
11046/16
+ ADD 1
COM(16) 438

Department for Environment, Food and Rural Affairs

- (36203) Commission Communication—*Towards a circular economy: A zero waste programme for Europe*.
11592/14
+ ADDs 1-3
COM(14) 398
- (38014) Commission Report—*Ex-post Evaluation on the European earth monitoring programme (GMES) and its Initial Operations (2011 to 2013)*.
11637/16
COM(16) 492
- (38030) Proposal for a Council Decision on the conclusion of an agreement between the European Union and Iceland on the protection of geographical indications for agricultural products and foodstuffs.
11781/16
+ ADD 1
COM(16) 523
- (38031) Proposal for a Council Decision on the signing of an agreement between the European Union and Iceland on the protection of geographical indications for agricultural products and foodstuffs.
11784/16
+ ADD 1
COM(16) 524

Department for Exiting the European Union

(38022) Commission Report on *the use of contract staff in 2014*.
11716/16
COM(16) 499

Department of Health

(38019) Commission Report—*Pharmacovigilance related activities of Member States and the European Medicines Agency concerning medicinal products for human use (2012–2014)*.
11680/16
+ ADD 1
COM(16) 498

Department for Work and Pensions

(37913) Commission Report: *Summary of the Annual Implementation Reports for the Operational Programmes Co-financed by the Fund for European Aid to the Most Deprived in 2014*.
10859/16
+ ADD 1
COM(16) 435

Foreign and Commonwealth Office

(35507) Proposal for a Regulation adapting to Article 290 and 291 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny.
15882/13
COM(13) 751

(37972) Proposal for a Regulation on certain procedures for applying the Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community and Kosovo.

(37974) Council Decision (CFSP) 2016/1182 of 18 July 2016 concerning the Staff Regulations of the European Union Institute for Security Studies.

(37975) Council Decision (CFSP) 2016/1173 of 18 July 2016 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo.

(37976) Council Regulation (EU) 2016/1165 of 18 July 2016 amending Regulation (EC) No. 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo.

(37977) Council Decision (CFSP) 2016/1172 of 18 July 2016 amending Decision 2012/392/CFSP on the European Union CSDP mission in Niger (EUCAP Sahel Niger).

(38017) Commission Report—*Twelfth Report on the implementation of Council Regulation (EC) No. 866/2004 of 29 April 2004 and the situation resulting from its application covering the period 1 January until 31 December 2015*.
11646/16
+ ADD 1
COM(16) 494

HM Revenue and Customs

- (37979) Commission Report—*Progress Report on the implementation of the EU*
11415/16 *Strategy and Action Plan for customs risk management.*
+ ADD 1
COM(16) 476
- (37980) Proposal for a Regulation amending Regulation (EU) No. 952/2013 laying
11418/16 down the Union Customs Code, as regards goods that have temporarily
COM(16) 477 left the customs territory of the Union by sea or air.

HM Treasury

- (36946) Commission Report—*Completing Europe's Economic and Monetary*
— *Union.*
—
- (37012) Proposal for a Council Regulation amending Council Regulation (EU) No.
11134/15 407/2010 establishing a European financial stabilisation mechanism.
COM(15) 372
- (37048) Council Decision giving notice to Greece to take measures for the deficit
11458/15 reduction judged necessary to remedy the situation of excessive deficit.
—
- (37049) Council Implementing Decision approving the macroeconomic adjustment
11459/15 programme of Greece.
—
- (37058) Commission Staff Working Document on *the assessment of the Social*
11502/15 *Impact of the new Stability Support Programme for Greece.*
SWD(15) 162
- (37215) Recommendation for a Council Recommendation on the establishment
13348/15 of National Competitiveness Boards within the Euro Area.
COM(15) 601
- (37216) Commission Communication—*A roadmap for moving towards a more*
13352/15 *consistent external representation of the euro area in international fora.*
COM(15) 602
- (37217) Commission Communication on *steps towards Completing Economic and*
13356/15 *Monetary Union.*
COM(15) 600
- (37218) Proposal for a Council Decision laying down measures in view of
13358/15 progressively establishing unified representation of the euro area in the
COM(15) 603 International Monetary Fund.

- (37234) Commission Decision of 21 October 2015 establishing an independent
13374/15 advisory European Fiscal Board.
C 2015 8000
- (37294) Commission Communication on *the assessment of action taken by the*
— *United Kingdom in response to the Council Recommendation of 19*
COM(15) 804 *June 2015 with a view to bringing an end to the situation of excessive*
government deficit.
- (37295) Commission Staff Working Document accompanying the Commission
— Communication on *the assessment of action taken by the United*
SWD(15) 615 *Kingdom in response to the Council Recommendation of 19 June 2015*
with a view to bringing an end to the situation of excessive government
deficit—Analysis of the budgetary situation in the United Kingdom.
- (37313) Commission Communication on *the 2016 Draft Budgetary Plans: Overall*
— *Assessment.*
—
- (37340) Commission Communication on *the Annual Growth Survey 2016*
14270/15 *Strengthening the recovery and fostering convergence.*
COM(15) 690
- (37341) Commission Report—*Alert Mechanism Report 2016 (prepared in*
14272/15 *accordance with Articles 3 and 4 of Regulations (EU) No. 1176/2011 on*
COM(15) 691 *the prevention and correction of macroeconomic imbalances).*
- (37342) Recommendation for a Council Recommendation on the economic policy
14291/15 of the euro area.
+ ADD 1
COM(15) 692
- (37344) Proposal for a Commission Joint Employment Report accompanying the
14694/15 Commission Communication on *the Annual Growth Survey 2016.*
COM(15) 700
- (37561) Commission Staff Working Document on *the 2016 United Kingdom*
6587/16 *Country Report including an In-Depth Review on the prevention and*
SWD(16) 96 *correction of macroeconomic imbalances.*
- (37645) Opinion of the European Central Bank of 6 April 2016 on a proposal
— for a Council Decision laying down measures in view of progressively
— establishing unified representation of the euro area in the International
Monetary Fund.
- (37673) Commission Communication on *the 2016 European Semester:*
— *Assessment of progress on structural reforms, prevention and correction*
COM(16) 95 *of macroeconomic imbalances, and results of in-depth reviews under*
Regulation (EU) No. 1176/2011.

- (37763)
9182/16
COM(16) 321
Commission Communication on *the 2016 European Semester: Country-specific recommendations*.
- (37792)
9145/16
COM(16) 348
Recommendation for a Council Recommendation on the 2016 national reform programme of the United Kingdom and delivering a Council opinion on the 2016 convergence programme of the United Kingdom.
- (37885)
10509/16
+ ADD 1
COM(16) 388
Proposal for a Regulation on establishing a Union programme to support specific activities enhancing the involvement of consumers and other financial services end-users in Union policy making in the field of financial services for the period of 2017–2020.
- (37996)
11536/16
COM(16) 455
Commission Report on *the use and benefits of longer-term refinancing operations and similar funding support measures provided by ESCB central banks to credit institutions*.
- (37997)
11537/16
COM(16) 430
Commission Report on *the appropriateness of Article 3(1) of Directive 2002/47/EC on financial collateral arrangements*.
- (38002)
11543/16
COM(16) 517
Recommendation for a Council Implementing Decision imposing a fine on Spain for failure to take effective action to address an excessive deficit.
- (38003)
11544/16
+ ADD 1
COM(16) 518
Recommendation for a Council Decision giving notice to Spain to take measures for the deficit reduction judged necessary in order to remedy the situation of excessive deficit.
- (38004)
11545/16
COM(16) 519
Recommendation for a Council Implementing Decision imposing a fine on Portugal for failure to take effective action to address an excessive deficit.
- (38005)
11546/16
+ ADD 1
COM(16) 520
Recommendation for a Council Decision giving notice to Portugal to take measures for the deficit reduction judged necessary in order to remedy the situation of excessive deficit.
- (38018)
11647/16
COM(16) 495
Commission Report—*Tenth Annual Report 2015 on the implementation of Community assistance under Council regulation (EC) No. 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community*.

Home Office

- (37653)
7665/16
COM(16) 197
Commission Communication—*Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*.

(37983) Commission Communication on *the state of play and the possible ways forward as regards the situation of non-reciprocity with certain third countries in the area of visa policy (Follow-up of the Communication of 12 April)*.
11430/16
COM(16) 481

(37998) Commission Communication—*Fifth report on relocation and resettlement*.
11541/16
+ ADDs 1–3
COM(16) 480

(37999) Commission Report based on Article 10 of Council Framework Decision 2008/841/JHA of 24 October 2008 on *the fight against organised crime*.
11549/16
COM(16) 448

Formal Minutes

Wednesday 14 September 2016

Members present:

Sir William Cash, in the Chair

Peter Grant

Mr Jacob Rees-Mogg

Kate Green

Graham Stringer

Kate Hoey

Kelly Tolhurst

Craig Mackinlay

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 5.5 read and agreed to.

Paragraph 5.6 read, amended and agreed to.

Paragraphs 5.7 to 22 read and agreed to.

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

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

[Adjourned till Wednesday 12 October 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*)

[Rt Hon Damian Green MP](#) (*Conservative, Ashford*)

[Kate Green MP](#) (*Labour, Stretford and Urmston*)

[Kate Hoey MP](#) (*Labour, Vauxhall*)

[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 members were also members of the Committee during the parliament:

Nia Griffith MP (*Labour, Llanelli*) and Kelvin Hopkins MP (*Labour, Luton North*)