



The primary purpose of the House of Lords European Union Select Committee is to scrutinise EU law in draft before the Government take a position on it in the EU Council of Ministers. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published where appropriate.

This edition includes correspondence from 1 October 2017 – 31 December 2017

## EU EXTERNAL AFFAIRS SUB-COMMITTEE

### CONTENTS

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS LAUNCHING THE EUROPEAN DEFENCE FUND (10164/17) .....	5
PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE EUROPEAN DEFENCE INDUSTRIAL DEVELOPMENT PROGRAMME AIMING AT SUPPORTING THE COMPETITIVENESS AND INNOVATIVE CAPACITY OF THE EU DEFENCE INDUSTRY (10589/17) .....	5
REFLECTION PAPER ON THE FUTURE OF EUROPEAN DEFENCE (10165/17) .....	5
REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL FOURTH PROGRESS REPORT ON THE PARTNERSHIP FRAMEWORK WITH THIRD COUNTRIES UNDER THE EUROPEAN AGENDA ON MIGRATION.....	6
JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ELEMENTS FOR AN EU STRATEGY ON AFGHANISTAN (11482/17) ..	8
REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL FIFTH PROGRESS REPORT ON THE PARTNERSHIP FRAMEWORK WITH THIRD COUNTRIES UNDER THE EUROPEAN AGENDA ON MIGRATION (12026/17) .....	8
RECOMMENDATION FOR A COUNCIL DECISION AUTHORISING THE OPENING OF NEGOTIATIONS FOR A CONVENTION ESTABLISHING A MULTILATERAL COURT FOR THE SETTLEMENT OF INVESTMENT DISPUTES (12131/17) .....	11
RECOMMENDATION FOR A COUNCIL DECISION AUTHORISING THE OPENING OF NEGOTIATIONS FOR A FREE TRADE AGREEMENT WITH NEW ZEALAND (12165/17).....	14

RECOMMENDATION FOR A COUNCIL DECISION AUTHORISING THE OPENING OF NEGOTIATIONS FOR A FREE TRADE AGREEMENT WITH AUSTRALIA (12168/17).....	14
COMMUNICATION FROM THE COMMISSION WELCOMING FOREIGN DIRECT INVESTMENT WHILE PROTECTING ESSENTIAL INTERESTS (12217/17) .....	16
PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A FRAMEWORK FOR SCREENING OF FOREIGN DIRECT INVESTMENTS INTO THE EUROPEAN UNION (12137/17).....	16
COMMUNICATION FROM THE COMMISSION TO THE COUNCIL EUROPEAN DEVELOPMENT FUND (EDF): FORECASTS OF COMMITMENTS, PAYMENTS AND CONTRIBUTIONS FROM MEMBER STATES FOR 2017, 2018, 2019 AND NON-BINDING FORECAST FOR THE YEARS 2020-2021 (13579/17) .....	20
PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) 2016/1036 ON PROTECTION AGAINST DUMPED IMPORTS FROM COUNTRIES NOT MEMBERS OF THE EUROPEAN UNION AND REGULATION (EU) 2016/1037 ON PROTECTION AGAINST SUBSIDISED IMPORTS FROM COUNTRIES NOT MEMBERS OF THE EUROPEAN UNION (14249/16) .....	22
COUNCIL DECISION AUTHORISING THE OPENING OF NEGOTIATIONS WITH THE GLOBAL GREEN GROWTH INSTITUTE FOR AN AGREEMENT ON THE MEMBERSHIP OF THE EUROPEAN UNION (14875/17) .....	26
JOINT REPORT TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS. REPORT ON THE IMPLEMENTATION OF THE EUROPEAN NEIGHBOURHOOD POLICY REVIEW (9435/17) .....	27
FCO SCRUTINY.....	27
NEGOTIATIONS ON THE ADAPTION OF PROTOCOLS TO THE ASSOCIATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE KINGDOM OF MOROCCO .....	27
COUNCIL DECISION TO ESTABLISH AND LAUNCH THE EU ADVISORY MISSION (EUAM) IN IRAQ; AND COUNCIL DECISION TO ALLOW THE EU TO BEGIN NEGOTIATIONS WITH GOVERNMENT OF IRAQ ON A STATUS OF MISSION AGREEMENT (SOMA).....	28
FUTURE CUSTOMS ARRANGEMENTS – A FUTURE PARTNERSHIP PAPER .....	29
EU FOREIGN AFFAIRS COUNCIL 10 NOVEMBER 2017.....	29
COUNCIL REGULATION (EU) 2017/2062 OF 13 NOVEMBER 2017 AMENDING REGULATION (EU) 2017/1509 CONCERNING RESTRICTIVE MEASURES AGAINST THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA.....	30
NEGOTIATIONS FOR A MODERNISED EU-CHILE ASSOCIATION AGREEMENT .....	30
ESTABLISHMENT OF PERMANENT STRUCTURED COOPERATION (PESCO) ..	31

FOREIGN AFFAIRS COUNCIL (TRADE) 10-13 DECEMBER 2017 – PRE-COUNCIL WRITTEN MINISTERIAL STATEMENT .....	32
WRITTEN MINISTERIAL STATEMENT GENERAL AFFAIRS COUNCIL, 12 DECEMBER 2017.....	33
COUNCIL DECISION AUTHORIZING THE EUROPEAN COMMISSION TO NEGOTIATE INSTRUMENTS ON THE ENFORCEMENT OF INTERNATIONAL COMMERCIAL SETTLEMENT AGREEMENTS RESULTING FROM CONCILIATION IN THE FRAMEWORK OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) .....	33
OTNYR CFSP REPORT – OUR PRIORITIES IN 2017 .....	35
OTNYR COUNCIL DECISION AMENDING DECISION (CFSP) 2015/778 ON A EUROPEAN UNION MILITARY OPERATION IN THE SOUTHERN CENTRAL MEDITERRANEAN (EUNAVFOR MED OPERATION SOPHIA).....	36
OTNYR COUNCIL DECISION ON THE EUROPEAN UNION ADVISORY MISSION IN SUPPORT OF SECURITY SECTOR REFORM IN IRAQ (EUAM IRAQ) .....	36
OTNYR COUNCIL DECISION TO AUTHORISE THE HIGH REPRESENTATIVE TO OPEN NEGOTIATIONS WITH IRAQ FOR AN AGREEMENT ON THE STATUS OF THE EUROPEAN UNION ADVISORY MISSION IN IRAQ (EUAM IRAQ) .....	36
OTNYR COUNCIL DECISION AMENDING DECISION (CFSP) 2015/1763 CONCERNING RESTRICTIVE MEASURES IN VIEW OF THE SITUATION IN BURUNDI.....	37
OTNYR COUNCIL DECISION AMENDING DECISION 2010/573/CFSP CONCERNING RESTRICTIVE MEASURES AGAINST THE LEADERSHIP OF THE TRANSNISTRIAN REGION OF THE REPUBLIC OF MOLDOVA.....	39
OTNYR COUNCIL DECISION AMENDING DECISION 2014/486/CFSP ON THE EUROPEAN UNION ADVISORY MISSION FOR CIVILIAN SECURITY SECTOR REFORM UKRAINE (EUAM UKRAINE).....	42
COUNCIL DECISION AMENDING DECISION 2010/452/CFSP ON THE EUROPEAN UNION MONITORING MISSION IN GEORGIA, EUMM GEORGIA	43
COUNCIL DECISION AMENDING DECISION (CFSP) 2010/788 CONCERNING RESTRICTIVE MEASURES IN VIEW OF THE SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO .....	43
GOVERNMENT RESPONSE TO COMMITTEE REPORT – BREXIT: TRADE IN GOODS.....	43
INQUIRY ON COOPERATION ON CSDP AFTER BREXIT .....	45
COUNCIL DECISION (CFSP) 2017/1342 OF 17 JULY 2017 AMENDING AND EXTENDING DECISION 2013/233/CFSP ON THE EUROPEAN UNION INTEGRATED BORDER MANAGEMENT ASSISTANCE MISSION IN LIBYA (EUBAM LIBYA) .....	45

COUNCIL DECISION (CFSP) 2017/1194 OF 4 JULY 2017 AMENDING DECISION 2013/354/CFSP ON THE EUROPEAN UNION POLICE MISSION FOR THE PALESTINIAN TERRITORIES (EUPOL COPPS).....	47
COUNCIL DECISION (CFSP) 2017/1193 OF 4 JULY 2017 AMENDING JOINT ACTION 2005/889/CFSP ON ESTABLISHING A EUROPEAN UNION BORDER ASSISTANCE MISSION FOR THE RAFAH CROSSING POINT (EUBAM RAFAH)	47
COUNCIL DECISION (CFSP) 2017/1425 OF 4 AUGUST 2017 ON A EUROPEAN UNION STABILISATION ACTION IN MOPTI AND SEGOU .....	47
OVERSEAS TERRITORIES AND THE EUROPEAN UNION COMMITTEE.....	48

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS LAUNCHING THE EUROPEAN DEFENCE FUND  
(10164/17)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL ESTABLISHING THE EUROPEAN DEFENCE INDUSTRIAL DEVELOPMENT  
PROGRAMME AIMING AT SUPPORTING THE COMPETITIVENESS AND INNOVATIVE  
CAPACITY OF THE EU DEFENCE INDUSTRY (10589/17)

REFLECTION PAPER ON THE FUTURE OF EUROPEAN DEFENCE (10165/17)

**Letter from the Rt Hon the Earl Howe PC, Minister of State in the House of Lords,  
Ministry of Defence**

Thank you for your letter of 15 September letter, sent by Baroness Verma on your behalf. You asked follow up questions regarding the content of Explanatory Memorandums 10164/17, 10589/17 and 10165/17 which were submitted on 13<sup>th</sup> July 2017.

These questions were on the European Defence Fund (EDF), and the European Defence Industrial Development Programme (EDIDP) in particular. You will know that the EDIDP is a draft Regulation that is currently being negotiated. The aspiration is that it will be endorsed by Ministers from EU Member States before the end of the year; with the Council endorsed version of the Regulation ideally then being approved by the European Parliament sometime in Spring 2018. With a number of the Regulation Articles still in discussion I am constrained by what I can say now, but I hope this response provides you with sufficient information to clear the documents from scrutiny. The Government will of course provide you with further updates as the matter develops.

First, you highlighted our previously raised concerns about the balance of responsibilities between Member States and the Commission in the EDF. More specifically you asked 'What is the Government's position on the role the Commission should play in the EDF?'

HMG's view is that the Commission should play the role of financing and coordinating the EDF, with Member States making the decisions on the capability priorities, or work programme, and the selection of projects to be funded. Already the Commission have given some appreciation of these roles, confirming in the negotiations that in practice it will be the nations who decide the capability priorities. However, we would like to see this brought out much more clearly in the Regulation, and we are for example recommending the establishment of a group of defence experts that must endorse the work programme by consensus before it then goes to the EDIDP Programme Committee, which would be governed by Qualified Majority Voting.

Secondly you highlighted a concern raised in the EM about the EDIDP being restricted to EU only undertakings. Specifically you queried 'What would be the UK Government's criteria to define EU undertakings, or in which ways should the EDIDP be opened up to ensure sufficient investment?'

Unsurprisingly this has proved to be one of the most contentious elements in the existing draft Regulation. The Commission's proposal to define it as undertakings that are more than 50% owned by EU Member States or EU nationals has met resistance from a number of Member States but there is also a concern over ensuring that funding and/or technology developed does not get into the hands of potential adversaries. This is still being negotiated, but we believe that at best undertakings which directly receive EU funding will have to demonstrate a substantial industrial and managerial presence in the EU.

Thirdly, you referred to the risk that the UK may face exclusion from EDIDP funding after Brexit, as it would most likely be limited to EU Member States. You also referred to the previous iteration of the draft Regulation which we cited as 'overly protectionist and unrealistic'. You asked what amendments would we like to see to these rules and how can we ensure the UK can apply for EDIDP after Brexit, should we wish to do so.

Much of the debate on third country involvement is also linked to the issues above. On the one hand, there is a desire by some that EU money only goes to EU businesses alongside the objective to specifically develop the EU industrial base. On the other hand there is recognition that this is impractical in a global market, would undermine the provision of the best capabilities for Europe's armed forces and would challenge broader defence relationships.

To some extent we hope this could be resolved by a distinction between the direct company beneficiaries, who will actually receive the Commission's funding through a grant agreement, and the rest of the supply chain. It is possible that only the former will have to be in the EU, while the latter could be elsewhere, including the UK.

This leads to your final question, where you referred to the Government's *Foreign policy, defence and development: a future partnership paper*, and of our view that the level of future co-operation between the UK and the EU is subject to negotiations and that it would be in both sides' interest to 'have a positive relationship on the EDF'. Specifically you asked 'what might such a positive relationship look like from the UK Government's perspective?'

From our perspective, a positive UK-EU relationship on the EDF would mean ensuring that the EDF supports our participation in collaborative European defence research and capability development; does not draw barriers between the UK defence industry and the European mainland; and does not unnecessarily duplicate NATO capability.

9 October 2017

#### **Letter from the Chairman to the Rt Hon Earl Howe, Minister of State**

Thank you for your letter of 9 October regarding the above documents. This was considered by the External Affairs Sub-Committee on 19 October 2017. Your response did not meet the agreed Government response time of 10 working days, and we would like to emphasise to you the importance we attach to a timely approach to scrutiny.

Your letter states that, with regard to the European Commission's definition of EU undertakings, "we believe that at best undertakings which directly receive EU funding will have to demonstrate a substantial industrial and managerial presence in the EU." What is the Government's definition of a 'substantial presence'?

We have decided to continue to hold the document under scrutiny. We look forward to your response within the usual 10 working days.

20 October 2017

#### **REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL FOURTH PROGRESS REPORT ON THE PARTNERSHIP FRAMEWORK WITH THIRD COUNTRIES UNDER THE EUROPEAN AGENDA ON MIGRATION**

#### **Letter from the Chairman, to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas, Foreign and Commonwealth Office**

Thank you for your letter dated 29 September regarding the above document. This was considered by the External Affairs Sub-Committee on 12 October 2017.

We were pleased with the level of detail and assessment in your letter, which resolved all but one of our questions to our satisfaction. We request that you provide a further response on this issue as below.

In response to the sixth question in our letter of 15 September 2017, your letter lists activities and funding, but does not provide your assessment of the EU's regional approach at Libya's southern border so far, and what results have been achieved. We appreciate that this activity may be at an early stage, but would welcome your response to this question.

We have decided to continue to hold the item under scrutiny. We look forward to your response within the usual 10 working days.

*13 October 2017*

**Letter from Sir Alan Duncan MP, Minister for Europe and the Americas**

Thank you for your letter of 13 October requesting the Government's assessment of the EU's regional approach at Libya's southern border and with neighbouring countries, and what has been achieved.

The situation in Libya makes the implementation of migration programmes challenging, especially on the southern border. The UK believes that an inclusive political deal, negotiated within the framework of the Libyan Political Agreement (LPA), is the best way of stabilising the country and achieving our migration and wider objectives. On the 28 July 2017, the EU Emergency Trust Fund for Africa (EUTF) adopted a €46 million programme to support integrated migration and border management in Libya, which includes thorough assessment of the current situation on the southern Libyan border before undertaking projects. The EUTF's developing monitoring and evaluation framework includes the recently-approved Technical Cooperation Facility, one component of which will scale up results-oriented monitoring, including third party monitoring in areas with limited humanitarian access: this has particular application for southern Libya. The Government will continue to monitor the progress of EUTF implementation, including through our formal role on the EUTF's Operational Committee, monitoring and assessing the next phase of projects.

Given the difficulties of operating within Libya at present, we believe that intervening before migrants reach Libya is an important means of reducing flows and protecting migrants. The EU is focusing in particular on Common Security and Defence Policy (CSDP) activities in the Sahel; the implementation of EUTF projects with cross-border dimensions; and cooperation with the G5 Sahel, the regional security coordination framework of Burkina Faso, Chad, Mali, Mauritania, and Niger. Although it is too early to assess the impact of these activities, there are some encouraging signs.

The expanded presence of EUCAP Sahel Niger, the security capacity-building CSDP civilian mission, is providing better intelligence on cross-border flows and identifying local authorities' needs in northern Niger. Assisted Voluntary Return (AVR) schemes funded by the EUTF have enabled more than 8,000 migrants to return home from Libya and Niger this year (through September 2017). The EU has also pledged up to €50 million to support the G5 Sahel Joint Force, the joint military force of the five Sahel states, which aims, as part of its role, to improve border management and tackle cross-border organised immigration crime and trafficking. We will continue to encourage coordinated regional activity as part of the EU's comprehensive approach to tackling illegal migration.

*27 October 2017*

**Letter from the Chairman to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

Thank you for your letter dated 27 October regarding the above document. This was considered by the External Affairs Sub-Committee on 16 November 2017.

We appreciate the additional information you provided in your letter. We are now content to release the item from scrutiny. There is no need to respond to this letter.

*16 November 2017*

JOINT COMMUNICATION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL  
ELEMENTS FOR AN EU STRATEGY ON AFGHANISTAN (11482/17)

**Letter from the Chairman, to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas, Foreign and Commonwealth Office**

Thank you for your letter dated 29 September regarding the above document. This was considered by the External Affairs Sub-Committee on 12 October 2017.

We appreciate the additional information you provided in your letter, which resolved all but two of our questions to our satisfaction. We are now content to clear this item from scrutiny, but request that you provide a further response on these issues as below.

First, in the context of developing a joint programming approach between the EU and interested Member States, your letter refers to specific examples of cooperation the UK wishes to continue with the EU after Brexit, as provided in the Government's position paper, *Foreign policy, defence and development: a future partnership paper*. The development of a joint programming approach was included in the Foreign Affairs Council conclusions of 12 May 2016 and of 18 July 2016. Could you please explain what role the UK has played in this and what progress has been made so far?

Second, we asked about whether the EU has the right tools to support Afghanistan on its path to self-reliance. Your letter states that "the EU is an effective and important development partner to the government and people of Afghanistan." Does this mean that the UK Government is of the view that the EU has the right tools at hand to support Afghanistan on its path towards self-reliance? If not, what further tools would be needed?

We look forward to your response within the usual 10 working days.

13 October 2017

**Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

Thank you for your letter of 13 October. I am replying to your request for further detail on joint programming between the EU and interested Member States, and EU support to Afghanistan.

The UK debated the Foreign Affairs Council conclusions of 12 May and 18 July 2016 along with other EU Member States. The conclusions endorsed the principle that Joint Programming "must be voluntary, flexible, inclusive and tailored to the country context." The UK does not currently have any joint programming in Afghanistan with the EU, but our programming is complementary and we would expect this to continue. For example, the Afghanistan Reconstruction Trust Fund, to which the UK is a major contributor, is coordinated closely with the EU's State Building Contract. In the humanitarian sector, the UK coordinates funding with other donors, including the EU Commission's Humanitarian Aid and Civil Protection department (ECHO), to ensure that we do not duplicate efforts.

You asked whether the UK Government is of the view that the EU has the right tools to support Afghanistan on its path towards self-reliance. Along with the US, the UK, Germany and Japan, the EU is one of the five largest donors to Afghanistan. Taking into consideration the challenging operating environment for donors in Afghanistan, we are of the view that the EU has an appropriate balance of funding, human resources and programmatic approaches to support Afghanistan's development.

27 October 2017

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
EUROPEAN COUNCIL AND THE COUNCIL FIFTH PROGRESS REPORT ON THE



PARTNERSHIP FRAMEWORK WITH THIRD COUNTRIES UNDER THE EUROPEAN  
AGENDA ON MIGRATION (12026/17)

**Letter from the Chairman, to the Rt Hon Sir Alan Duncan MP, Minister for Europe and  
the Americas, Foreign and Commonwealth Office**

Thank you for your Explanatory Memorandum (EM) dated 21 September regarding the above document. This was considered by the External Affairs Sub-Committee on 19 October 2017.

Your EM, though largely detailed, raises a number of questions, to which we would be grateful for your response.

First, your EM mentions the development of a bilateral three-year, £75 million Central Mediterranean programme “to provide humanitarian assistance, facilitate voluntary returns, and also build the capacity of transit countries”, which was announced by the Prime Minister at the June European Council. We request further information about (1) the current shape of the programme, (2) what its focus areas will be, and (3) when the programme’s implementation will begin.

Second, your EM states that for the UK, “work on the Refugee Compact in Ethiopia is a particular priority and part of the pilot Comprehensive Refugee Response Framework (CRRF) being run by the UNHCR with UK support.” Please provide us with further information about the CRRF and the nature of the UK’s support to the framework.

Third, regarding incentives to enhance cooperation with third countries on returns, your EM contains the rather opaque statement that “we also agree that informal practical arrangements for returns cooperation can be effective alternatives to formal negotiated agreements.” Please provide us with an example of such informal practical arrangements and their outcome.

Fourth, the report refers to the training of the Libyan Coastguard through the SEAHORSE Mediterranean Project, EUNAVFOR Med Operation Sophia, and Italian bilateral activity. What is your assessment of any improvement in the treatment of migrants by the Libyan Coastguard as a result of this training?

Fifth, the report mentions the ongoing work in Libya on the protection of migrants and refugees and “protection monitoring” by the United Nations High Commissioner for Refugees in detention centres located in Benghazi. In which ways is the UK Government monitoring the situation of migrants and refugees in Libya, and what is it doing to protect them?

Sixth, the report states that “since the Fourth Progress Report, arrivals along the Western Mediterranean route have shown an upward trend, with the total number of arrivals to Spain in 2017 up to 16 August reaching 13 826, which represents an increase of 115 % compared to the same period in 2016 (6 409 arrivals)”. Your EM states that “it does not look as if there is particular displacement from the Central Route to the Western route: we continue to monitor this.” We request the Government to provide an update to the Committee every six months on the numbers of arrivals via the Western, Central, and Eastern Mediterranean routes, and on the Government’s assessment thereof.

We look forward to your response within the usual 10 working days.

*20 October 2017*

**Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

You asked about the Department for International Development (DFID)’s new £75 million Safety, Support and Solutions Programme for Refugees and Migrants. The funding - £78 million in total as it includes £3 million for tackling modern slavery – will be allocated over the period 2017-2020. The programme aims to make migration safer and more orderly and provide critical humanitarian support, resulting in fewer deaths and less suffering along migration routes towards Europe. Primarily, support will be focused on African transit routes towards the central Mediterranean; this includes countries such as Mali, Burkina Faso, Niger and Libya.

The programme will retain a degree of flexibility to allow prioritisation of emerging needs, but the initial focus will include:

- Providing lifesaving information, food, clean water and medical care, including to those making dangerous desert crossings;
- Supporting those who want to return home by facilitating travel and helping with reintegration in communities of origin;
- Supporting governments on transit routes to improve the management of migration and make it safer.
- Funding innovative initiatives in key source countries aimed at tackling the drivers of unsafe migration.
- Providing flexible funding for unexpected humanitarian needs.

DFID is currently working with prospective partners to finalise the detail of the programme design. The aim is to sign programme agreements and make initial payments before the end of the year.

The Comprehensive Refugee Response Framework (CRRF) was annexed to the New York Declaration for Refugees and Migrants agreed at the United Nations General Assembly (UNGA) in 2016 and sets out a new approach to large movements of refugees. The aim is to provide long-term, sustainable solutions that help to build the self-reliance of refugees, including through access to jobs and education; ease pressures on countries that welcome and host refugees; expand access to resettlement in third countries; and support conditions that mean refugees can return to their home countries in safety and dignity. The CRRF has been rolled out in Tanzania, Uganda, Ethiopia, Djibouti, Kenya and with Somali refugees in the region, as well as in Guatemala, El Salvador, Panama, Honduras, Costa Rica and Mexico.

The UK strongly supports the aims of the CRRF and is offering political, technical and policy support in a number of the countries where it is being rolled out. We expect the CRRF to form the basis of the Global Compact on Refugees (GCR) set for adoption in 2018. UK support is already driving exactly the sort of long-term response to refugees' needs that it envisages - including through job compacts to provide tens of thousands of refugees with the opportunity to work in countries such as Jordan and Ethiopia. We are closely engaged with the development of the GCR, most recently including through cross-Government representation at the 'thematic' consultations organised by the Office of the United Nations High Commissioner for Refugees (UNHCR) in July and October.

Regarding returns incentives with third-countries, there is not one approach that suits all receiving countries and there are a number of strategies and tools at our disposal. For example, the UK carries out returns without a formal negotiated agreement to a wide range of countries, including Ghana and Jamaica – both significant receiving countries. In both cases, the Home Office has a close working relationship with the High Commission in London, and relevant government ministries in their respective capitals, that allows for travel documentation to be provided to support the return of immigration offenders and also the use of charter flights. In 2016, 355 voluntary returns and 136 enforced returns were conducted to Ghana, and 240 voluntary returns and 250 enforced returns were conducted to Jamaica. The Home Office keeps this arrangement under active review with the support of the Foreign and Commonwealth Office.

EUNAVFOR Med Operation SOPHIA began training the Libyan Navy and Coastguard (LNCG) in November 2016. Training has been completed under Package 1 (training on board EU Member States vessels in International Waters) and is continuing under Package 2 (training in Italy, Spain, Malta, and Greece). This training aims to equip the LNCG with the skills required to manage more effectively their maritime border whilst respecting human rights. Human rights and gender awareness are fully embedded into the training modules. The modules target the full range of ranks in order to embed the training across the whole of the LNCG. Seahorse has provided some additional training through EU civilian coastguards.

According to Op SOPHIA Headquarters, it is too early to assess the full impact of the training; only a portion of the LNCG have been trained. However, we have found that the trainees are keen to learn and develop best practice. Under the current Mandate, the Operation has been tasked with establishing a monitoring mechanism that will provide greater clarity and assurance of the migrant smuggling situation in Libya. Our Embassy and the EU regularly raise relevant issues around people smuggling with the Libyan authorities.

The UK Government is closely monitoring the migration situation in Libya, through visits from staff based in the region and from London, and through working closely with partner organisations, as well as the Libyan institutions and the EU and other states' delegations in Libya. For example, we have a

Humanitarian Adviser based in Tunis, who is in continuous contact with the International Organisation for Migration (IOM), UNHCR, and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA). Given the difficulties of operating in Libya, we continue to work towards an inclusive political deal negotiated within the framework of the Libyan Political Agreement (LPA), which is the best way to stabilise the country and allow us to make progress on migration.

UK government programming has provided life-saving assistance, improved conditions in detention centres, provided 1,400 individuals with Assisted Voluntary Return (AVR), and protected migrants' rights. Since 2015, the UK has allocated more than £18.5 million in Libya, which has provided more than 20,000 emergency interventions such as healthcare, psychosocial support, hygiene kits, and safe shelter.

2 November 2017

## RECOMMENDATION FOR A COUNCIL DECISION AUTHORISING THE OPENING OF NEGOTIATIONS FOR A CONVENTION ESTABLISHING A MULTILATERAL COURT FOR THE SETTLEMENT OF INVESTMENT DISPUTES (12131/17)

### **Letter from the Chairman, to the Rt Hon Greg Hands MP, Minister of State for Trade Policy, Department for International Trade**

Thank you for your Explanatory Memorandum (EM) of 5 October regarding the above documents. They were considered by the External Affairs Sub-Committee on 26 October 2017. The 'Policy Implications' section of your EM lacks detail, which leads us to raise a number of questions as below.

First, your EM states that the Government "supports the principle of ensuring investor-state arbitration delivers fair dispute outcomes, is transparent and maintains high ethical standards", and that the Government will want "to ensure that any new mechanism improves the existing investment dispute settlement framework and does so in a cost effective manner." This wording is somewhat vague, and seems to imply that the proposed mechanism does not improve the current system in a cost effective manner. Is this the case? If so, which specific suggestions for improvement would the Government have?

Second, does the Government consider UNCITRAL to be the right forum for the setting up of the proposed Court?

Third, which 16 countries would be Contracting Parties to the Court in addition to the EU and its Member States?

Fourth, what is the Government's assessment of the impact assessment the EU has conducted as part of its preparations for this draft negotiating mandate?

Fifth, your EM states that the Commission is seeking to have the Decision adopted by the Council by the end of 2017 and that "any negotiations on this topic would be expected to take a number of years before agreement is reached". What is the UK's commitment to the process of establishing the Court before it leaves the EU? Would the UK wish to be a member of the Court after having left the EU? What role might the Court have regarding the UK's future relationship with the EU?

Sixth, the UK's membership of UNCITRAL will expire in 2019. Does this have any impact on the UK's possible membership of the Court?

Seventh, what impact, if any, would the Court have on the UK's existing legal mechanisms, including the UK Supreme Court?

We have decided to retain the documents under scrutiny. We look forward to your response in the usual 10 working days.

26 October 2017

### **Letter from the Rt Hon Greg Hands MP, Minister of State for Trade Policy**

Thank you for the letter, dated 26<sup>th</sup> October 2017, which Baroness Verma sent on your behalf. Please find below responses to the questions you posed, therein, on the Explanatory Memorandum (EM) submitted for your consideration on 5<sup>th</sup> October.

*First, your EM states that the Government “supports the principle of ensuring investor-state arbitration delivers fair dispute outcomes, is transparent and maintains high ethical standards”, and that the Government will want “to ensure that any new mechanism improves the existing investment dispute settlement framework and does so in a cost effective manner.” This wording is somewhat vague, and seems to imply that the proposed mechanism does not improve the current system in a cost effective manner. Is this the case? If so, which specific suggestions for improvement would the Government have?*

The Commission proposal is, at this stage, a draft negotiating mandate for negotiations on a multilateral investment court (MIC). Details on the operation and functionality of a MIC will unfold as negotiations progress. The current ad hoc model of investor-state arbitration has no fixed costs and the government will wish to assess details pertaining to the MIC’s operation as they develop, with specific focus on how an institutional framework could add value, whilst also considering cost implications.

Second, does the Government consider UNCITRAL to be the right forum for the setting up of the proposed Court?

UNCITRAL is the core legal body of the United Nations in the field of international trade law. It has a long-standing recognised role of promoting the modernisation and harmonisation of rules on international business. It is responsible for a number of key instruments in international arbitration including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the UNCITRAL Arbitration Rules. It will be important for any negotiations on a MIC to take place in a setting where states and stakeholders will be fully engaged. UNCITRAL brings together 60 member states, though all UN members can participate, as well as a range of registered non-governmental organisations. How any resulting court may be set up in the future, and UNCITRAL’s role in this, would be a matter for the forthcoming negotiations.

Third, which 16 countries would be Contracting Parties to the Court in addition to the EU and its Member States?

The 16 third countries referenced by the Commission in its Impact Assessment are used as an indicative figure to aid in the estimation of costs. As the proposal is at an early stage it would be premature to assess whether third countries may wish to ultimately sign up to a MIC, with many countries reserving their position until the proposal becomes more developed.

Fourth, what is the Government’s assessment of the impact assessment the EU has conducted as part of its preparations for this draft negotiating mandate?

The impact assessment appears to be robust, based on advice from the DIT Analyst team. The cost estimates of different scenarios contained within the annex are based on empirical evidence and assume limited ISDS cases in the future. The simulation of the allocation of costs is determined by a formula based heavily on GDP, taking into account differing levels of development of possible future contracting Parties.

Fifth, your EM states that the Commission is seeking to have the Decision adopted by the Council by the end of 2017 and that “any negotiations on this topic would be expected to take a number of years before agreement is reached”. What is the UK’s commitment to the process of establishing the Court before it leaves the EU? Would the UK wish to be a member of the Court after having left the EU? What role might the Court have regarding the UK’s future relationship with the EU?

The government supports the principle of ensuring investor-state arbitration is transparent, maintains high ethical standards and delivers fair dispute outcomes. Given that multilateral negotiations will necessitate broad engagement it would be expected that future negotiations will take a number of years to complete. Whilst the EM refers to the EU’s proposed negotiating mandate, should a MIC be established it would be an international and independent institution, not an EU body. The Commission’s proposal relates only to the opening of negotiations and would not obligate the UK to sign up to a MIC in the future. Discussions on a MIC remain at an early stage and the UK will therefore want to examine the details of this draft proposal carefully as they develop.

Sixth, the UK’s membership of UNCITRAL will expire in 2019. Does this have any impact on the UK’s possible membership of the Court?

The Commission has proposed only that UNCITRAL host negotiations on a MIC. The MIC, as proposed, would be an independent international arbitration mechanism to which States would become

contracting parties on an opt-in basis. Membership of UNCITRAL itself would not impact membership of a future MIC.

Seventh, what impact, if any, would the Court have on the UK's existing legal mechanisms, including the UK Supreme Court?

Investor-state dispute settlement tribunals do not have the ability to change UK law or overturn judgments of UK courts. The MIC proposal is for a procedural alternative to investor-state arbitration, and makes no substantive changes to investment protections.

9 November 2017

### **Letter from the Chairman to the Rt Hon Greg Hands MP, Minister of State for Trade Policy**

Thank you for your letter dated 9 November regarding the above documents. This was considered by the External Affairs Sub-Committee on 16 November 2017.

We are now content to clear the documents from scrutiny. We do, however, have two outstanding questions, to which we would be grateful for your response.

First, your letter does not answer the question in our earlier letter of whether the Government considers UNCITRAL to be the right forum for the establishment of the proposed Court. We understand that the proposal will be subject to negotiation, but ask you to indicate the Government's preferred outcome.

Second, we would be grateful if you would confirm our understanding that, once it has left the EU, the UK would be able—if it so chose—to be a participant in the Court, and to use this as a forum for investor-state arbitration in its future trade agreements, including with the EU.

We look forward to your response within the usual 10 working days.

16 November 2017

### **Letter from the Rt Hon Greg Hands MP, Minister of State for Trade Policy**

Thank you for the letter, dated 16 November 2017. Please find below responses to the questions you posed, therein, on the Explanatory Memorandum (EM) submitted for your consideration on 5 October.

*First, your letter does not answer the question in our earlier letter of whether the Government considers UNCITRAL to be the right forum for the establishment of the proposed Court. We understand that the proposal will be subject to negotiation, but ask you to indicate the Government's preferred outcome.*

The Government believes that UNCITRAL is well suited to host the negotiations. As has been noted in our previous correspondence, there is precedent for UNCITRAL holding discussions of this kind. The United Kingdom is a member of UNCITRAL, and it will be important that any future negotiations take place in such a forum where states and relevant stakeholders will be fully engaged.

*Second, we would be grateful if you would confirm our understanding that, once it has left the EU, the UK would be able—if it so chose—to be a participant in the Court, and to use this as a forum for investor-state arbitration in its future trade agreements, including with the EU.*

We would not want to prejudge negotiations at this stage, however the proposal outlines that States wishing to become a Contracting Party to a MIC would be able to do so on an opt-in basis. The proposal is for a Convention to establish an independent multilateral court. Membership of the EU is not a precursor for membership of a future MIC. After the UK has left the EU, the Government would be free to make a decision on whether or not to sign up to the Convention based on the best interests of the UK. The Government shall want to see how these negotiations progress to allow an understanding of how any resulting MIC might improve the existing ISDS framework in a cost effective manner.

#### Further Update

I also wanted to update you on two additional procedural points. In my Explanatory Memorandum (EM) dated 5 October 2017, under the section heading 'Voting Procedure' (paragraph 16), I set out that the Commission's proposal would be voted upon in Council using Qualified Majority Voting (QMV). This

was the procedure outlined by the Commission in its draft proposals. The Council Legal Service has subsequently clarified that in addition to a Council decision to be adopted by QMV, a decision of the Representatives of the Governments of the Member States meeting within the Council will be required. This decision is necessary to authorise the Commission to negotiate on behalf of the Member States in an area of shared competence (the recent Opinion of the Court of Justice of the European Union (Opinion 2/15) held, amongst other things, that investor-state dispute settlement is an area of shared competence). The Commission has not published the draft for this decision of the Member States' representatives, as it remains a live document.

Furthermore, I can now inform the committee that the updated legal basis for the Council Decision is Articles 207(4) and 218(3) and (4) of the Treaty on the Functioning of the EU.

29 November 2017

## RECOMMENDATION FOR A COUNCIL DECISION AUTHORISING THE OPENING OF NEGOTIATIONS FOR A FREE TRADE AGREEMENT WITH NEW ZEALAND (12165/17)

## RECOMMENDATION FOR A COUNCIL DECISION AUTHORISING THE OPENING OF NEGOTIATIONS FOR A FREE TRADE AGREEMENT WITH AUSTRALIA (12168/17)

### **Letter from the Chairman to the Rt Hon Greg Hands MP, Minister of State for Trade Policy, Department for International Trade**

Thank you for your Explanatory Memorandum of 3 October 2017, which was considered by the External Affairs Sub-Committee on 19 October 2017.

We very much welcome this active provision of advance information on the negotiating mandates for free trade agreements (FTAs) with New Zealand and Australia. We have a number of questions, as follows.

First, your Explanatory Memorandum notes that "the UK is expected to have exited the EU ahead of either FTA entering into force". In the light of this, does the Government intend to engage fully in the negotiations prior to its exit?

Second, the Commission sets out its assessment of the potential 'impact on sectoral competitiveness' of the two FTAs. Does the Government intend to produce a similar series of assessments as part of its negotiation of bilateral FTAs after Brexit?

Third, will the Government combine its consultation with UK stakeholders on the EU-Australia and EU-New Zealand FTAs with consultations for post-Brexit bilateral FTAs?

Fourth, what are the UK's principal sectoral interests in negotiating these FTAs, and future bilateral FTAs with New Zealand and Australia?

Fifth, will the UK seek to negotiate its bilateral FTAs with New Zealand and Australia in parallel?

Sixth, we note that in your paper, *Preparing for our future UK trade policy*, published on 9 October 2017, you commit to "continue to respect the role of Parliament ... in preparing for and giving effect to an independent UK trade policy". We request that you provide us with your commitment that Parliament will enjoy an equivalent or better level of transparency as enjoyed for the EU negotiations with New Zealand and Australia, with regard to the UK's FTA negotiations with all countries after Brexit.

We have decided to retain the documents under scrutiny. We look forward to your response in the usual 10 working days.

20 October 2017

### **Letter from the Rt Hon Greg Hands MP, Minister of State for Trade Policy**

Many thanks for your committee's response to the explanatory memoranda submitted by my department. This is the first time the Commission has published draft mandates for negotiations of free trade agreements (FTAs), so it is important that your committee has the chance to scrutinise these and

seek any further clarification. In response to your questions I am glad to be able to provide further advice as follows.

*First, your Explanatory Memorandum notes that “the UK is expected to have exited the EU ahead of either FTA entering into force”. In the light of this, does the Government intend to engage fully in the negotiations prior to its exit?*

I would like to reassure the committee that we will be fully engaged across the EU’s trade agreements prior to the UK’s exit. We have been unreserved in our support for the EU in opening negotiations on FTAs with Australia and New Zealand, and we are now working with the Commission and other Member States to make swift progress on the mandates.

*Second, the Commission sets out its assessment of the potential ‘impact on sectoral competitiveness’ of the two FTAs. Does the Government intend to produce a similar series of assessments as part of its negotiation of bilateral FTAs after Brexit?*

We are committed to giving a wide range of stakeholders the opportunity to engage with and contribute to our future trade policy. This includes Parliament, the devolved administrations, the devolved legislatures, local government, business, trade unions, civil society, and the public from every part of the UK. In line with this, we are in the process of developing our approach to how economic analysis is shared with Parliament.

*Third, will the Government combine its consultation with UK stakeholders on the EU-Australia and EU-New Zealand FTAs with consultations for post-Brexit bilateral FTAs?*

While we are members of the EU, we will continue to constructively engage with EU consultations on proposed trade agreements, promoting the voice of UK stakeholders and working to a positive outcome for business and consumers alike. Consultations on future bilateral trade agreements will be a matter for the UK government and therefore conducted separately. We have engaged with a broad range of stakeholders since the Referendum and will continue to draw on the widest possible range of expertise across the UK to ensure we create a trading environment that works for all.

*Fourth, what are the UK’s principal sectoral interests in negotiating these FTAs, and future bilateral FTAs with New Zealand and Australia?*

Currently, European operators are at a disadvantage against competitors from markets with which Australia and New Zealand have negotiated preferential trade agreements. The UK has consistently supported the Commission in pushing for ambitious trade deals which improve market access across a wide range of sectors, and will continue to do so while we remain in the EU. As we prepare to leave the EU, we are in the process of considering our future trading relationships with our partners, including Australia and New Zealand, but it is too early at this stage to set out our principal interests for future negotiations.

*Fifth, will the UK seek to negotiate its bilateral FTAs with New Zealand and Australia in parallel?*

Whilst the UK remains a member of the EU we will not be entering into formal negotiations with third country partners. As we leave, we will be developing our independent trade policy. This will include, in due course, trade agreements with key trading partners. My department has established a series of working groups and high-level dialogues with key trading partners including Australia and New Zealand, to explore the best ways of progressing our future trade and investment relationships.

*Sixth, we note that in your paper, Preparing for our future UK trade policy, published on 9 October 2017, you commit to “continue to respect the role of Parliament ... in preparing for and giving effect to an independent UK trade policy”. We request that you provide us with your commitment that Parliament will enjoy an equivalent or better level of transparency as enjoyed for the EU negotiations with New Zealand and Australia, with regard to the UK’s FTA negotiations with all countries after Brexit.*

I would like to reassure the members of your committee that in developing our future independent trade policy we are committed to a meaningful and transparent scrutiny framework, coherent with the need to ensure we do not undermine our negotiating position. We are carefully considering arrangements for engagement with Parliament on negotiations for future trade agreements once the UK has left the EU, in order to appropriately recognise Parliament’s important role in scrutinising the actions of Government.

*1 November 2017*

**Letter from the Chairman to the Rt Hon Greg Hands MP, Minister of State for Trade Policy**

Thank you for your letter of 1 November 2017, which was considered by the External Affairs Sub-Committee on 16 November 2017.

We are now content to release these documents from scrutiny. We look forward to updates on the EU discussions with Australia and New Zealand, as they progress.

There is no need to respond to this letter.

*16 November 2017*

**COMMUNICATION FROM THE COMMISSION WELCOMING FOREIGN DIRECT INVESTMENT WHILE PROTECTING ESSENTIAL INTERESTS (12217/17)**

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A FRAMEWORK FOR SCREENING OF FOREIGN DIRECT INVESTMENTS INTO THE EUROPEAN UNION (12137/17)**

**Letter from the Chairman, to the Rt Hon Greg Hands MP, Minister of State for Trade Policy, Department for International Trade**

Thank you for your Explanatory Memorandum (EM) of 5 October regarding the above documents. They were considered by the External Affairs Sub-Committee on 26 October 2017. The 'Policy Implications' section of your EM provides disappointingly little detail to support the points made, which raises a number of questions. We would like to request further information on the following issues.

First, your EM argues that the proposed mechanism "could add additional process to the UK's own limited investment screening activity before EU exit, constraining the ability of the UK to act swiftly in cases of genuine national security concern". It is not clear how the additional process of sharing information could prevent the UK from acting swiftly in cases of concern, or how important the ability to act swiftly would be. Could you please provide us with further information on this point?

Second, your EM states that "the compulsory sharing of information that is likely to be highly sensitive both for security and commercial reasons, would not be acceptable to the UK." The UK already shares information on a voluntary basis. What additional information would have to be shared and what safeguards would be in place to keep such information safe under the new Proposal? Which elements of the information sharing would be unacceptable to the UK? Is the element of compulsion the Government's concern?

Third, the EM argues that "allowing the Commission to encroach upon Member States' ability to act on a national basis to protect their security interests sets an unhelpful precedent both in relation to security matters and in respect of other areas of Member State competence." Where in the Proposal has such overstep been identified?

Fourth, the EM mentions that HMG is in the process of developing its own enhanced investment screening regime. Please provide us with further information about (1) the UK's current screening mechanism and whether it fulfils the Commission's proposed basic requirements, and (2) the new regime the Government is developing and how it differs from the previous one.

Fifth, the EM does not state the UK's position on the overall Proposal. What is the UK's position on this and to what extent will the UK take this Proposal into account when developing its new screening mechanism?

Sixth, the EM mentions that the UK will be subject to this mechanism after its exit from the EU. What is your assessment of the implications of the UK being subject to this as a third country?

Seventh, how is the UK balancing its current interests in the Proposal (as a Member State), and the future implications of the Proposal for the UK (as a third country likely to invest in EU Member States



after it has left the EU)? Is the latter likely to cause any difficulty in the UK's negotiations with other Member States on this dossier?

We have decided to retain the documents under scrutiny. We look forward to your response in the usual 10 working days.

26 October 2017

**Letter from the Rt Hon Greg Hands MP, Minister of State for Trade Policy and Minister for London**

I am writing in response to the letter from Baroness Verma, Chair of the External Affairs Sub-Committee on 26 October containing questions on the Department for International Trade's Explanatory Memorandum (EM) on the EU's proposed Investment Screening Regime. To note that these proposals are in draft form only and that, in the UK's engagement on them so far, a significant number of Member States share the UK's concerns.

The letter asks:

*First, your EM argues that the proposed mechanism "could add additional process to the UK's own limited investment screening activity before EU exit, constraining the ability of the UK to act swiftly in cases of genuine national security concern". It is not clear how the additional process of sharing information could prevent the UK from acting swiftly in cases of concern, or how important the ability to act swiftly would be. Could you please provide us with further information on this point?*

The EU's proposed mechanism includes giving Member States the opportunity to comment on live investment cases over a 25 working day period and then the Commission a further 25 working days to issue a non-binding opinion on how the case should be handled within the relevant Member State's national screening regime. This could add a delay of ten weeks or more to an investment authorisation or intervention being made by the UK at the national level, which may be unacceptable on security grounds as well as on presentational and process grounds. For example, a recent Ministerial intervention on national security grounds was conducted on an urgent basis in under five weeks, so the added procedural delay proposed by the EU could be significant.

Any additional uncertainty, burden, complexity or delay for investors is likely to create a deterrent, at least in the short term until investors understand how the regime will work and whether their investments will be welcome.

*Second, your EM states that "the compulsory sharing of information that is likely to be highly sensitive both for security and commercial reasons, would not be acceptable to the UK." The UK already shares information on a voluntary basis. What additional information would have to be shared and what safeguards would be in place to keep such information safe under the new Proposal? Which elements of the information sharing would be unacceptable to the UK? Is the element of compulsion the Government's concern?*

The precise intent of the Commission's proposals in regard to information sharing is not yet clear, but under the current draft of the proposals there is assessed to be significant risk that the UK would be compelled to share information on live cases that is sensitive for security and commercial reasons. Although the UK already shares information and collaborates with some other Member States on a voluntary basis through the appropriate channels, the proposals seek to extend this on a compulsory basis to all Member States and the EU Commission. There are no specific safeguards outlined in the proposals to protect this information.

The compulsory sharing of sensitive information is a key concern of the Government. In addition to this, the proposals presuppose that the Member States have the power to obtain 'information' from a putative investor. It is not clear how extensive this requirement might be and whether the UK Government has the powers to obtain and/or share this information.

*Third, the EM argues that "allowing the Commission to encroach upon Member States' ability to act on a national basis to protect their security interests sets an unhelpful precedent both in relation to security matters and in respect of other areas of Member State competence." Where in the Proposal has such overstep been identified?*

The ability of Member States to screen inward investment for the purposes of national security is preserved by the EU treaties and, for matters of public security or public policy, is provided for by the derogations set out in the EU treaties<sup>1</sup>. It is therefore the prerogative of Member States to act nationally to screen investments for security purposes. Although opinions issued by the Commission under these proposals would be non-binding, Member States would have to demonstrate that they had taken 'utmost account' of the Commission's opinion and provide an explanation to the Commission in the case of the opinion not being followed.

It is possible that the Commission issuing opinions on inward investment could be taken as precedent to expand their powers further in future.

*Fourth, the EM mentions that HMG is in the process of developing its own enhanced investment screening regime. Please provide us with further information about (1) the UK's current screening mechanism and whether it fulfils the Commission's proposed basic requirements, and (2) the new regime the Government is developing and how it differs from the previous one.*

1) Under the Enterprise Act 2002, Ministers can only intervene formally in merger cases that raise national security or other specified public interest concerns and meet the jurisdictional thresholds for merger control in the UK and, in the case of EU mergers, the turnover thresholds set out in the EU Merger Regulation. The UK thresholds mean that the acquired company must have an annual UK turnover of more than £70 million and/or the merging companies must collectively supply or acquire 25% or more of goods or services of a particular description in the UK (or a substantial part of it), provided that the merger results in an increment to that share. In addition, there are limited exceptions which allow intervention on public interest grounds in certain mergers involving defence and media companies which fall below the jurisdictional thresholds – the so-called special public interest merger regime.

Although it is not clear what 'basic requirements' are proposed by the Commission, the UK sets a high standard of non-discrimination and transparency in line with its other international obligations and is likely to be in a strong position to meet any general, or basic, standards in this regard. However any new procedural requirements, in particular providing for time for comments from other Member States and the Commission, would need to be added to the Enterprise Act 2002, and other legislation may be required regarding the gathering and sharing of information on live cases. Any significant delay or uncertainty added for investors would be detrimental to the UK's existing high standards of swiftness and transparency.

2) On 17 October BEIS published the Green Paper 'National Security and Infrastructure Investment Review' where details of the Government's proposed national security reforms are set out.

The Green Paper seeks views on two sets of proposals. The first is a set of short term proposals, with four weeks of consultation, concerning Government's intention to introduce secondary legislation to amend the turnover threshold and share of supply tests within the Enterprise Act 2002. This is to allow the Government to examine and potentially intervene in mergers that currently fall outside the thresholds in two areas: (i) the dual use and military use sector, (ii) parts of the advanced technology sector. For these areas only, the Government proposes to lower the turnover threshold from £70 million to £1 million and remove the current requirement for the merger to increase the share of supply to 25% or higher. This will enable the Government to intervene in mergers that currently fall outside the thresholds if necessary to protect national security, as turnover and share of supply are no longer reliable indicators of security risk in all cases.

The second set of proposals, on which there is a 12 week consultation, is of a longer term nature. Here the Government intends to follow the example of other developed, investment-liberal countries and make more substantive changes to how it scrutinises investment for the purposes of protecting national security. The broad options are a proposed call-in power in respect of domestic and foreign investment; a regime to automatically scrutinise foreign investment into critical infrastructure, or a mixture of both options. The Government has committed to follow the Green Paper with a White Paper to ensure adequate consultation on, and scrutiny of, these important reforms.

---

<sup>1</sup> The treaty articles include Article 4(2) of the Treaty on European Union which states that "national security remains the sole responsibility of each Member State". Article 65(1)(b) TFEU provides the derogations from the free movement of capital.

*Fifth, the EM does not state the UK's position on the overall Proposal. What is the UK's position on this and to what extent will the UK take this Proposal into account when developing its new screening mechanism?*

The Government supports the continued ability of Member States to review, and intervene proportionately in, investment situations that could pose a genuine risk to national security, public security or public order. The Government also encourages the sharing of best practice and continued voluntary information sharing on investment-related security risks on a voluntary basis.

However, the Government has a number of concerns around the proposals with regard to the compulsory sharing of information on live cases and any additional delay and uncertainty to investors that could be caused, in addition to the precedent that it could set regarding Member States' ability to act nationally on issues of national security.

The Government's position is that such regimes should not be used, or be open to being used, for protectionist purposes such as reciprocity of market access.

The UK's proposals have been developed independently of the EU's proposals.

*Sixth, the EM mentions that the UK will be subject to this mechanism after its exit from the EU. What is your assessment of the implications of the UK being subject to this as a third country?*

On departure from the EU, the UK's own investors would be subject to the additional scrutiny and delay of these new proposals when investing in EU countries.

In addition to this, if these draft proposals came into force in the UK in their current form for a period before EU exit, some reputational damage may have already been done to the UK from participating in a regime that third countries may see as unwelcoming to investors, and potentially open to use for protectionist reasons.

*Seventh, how is the UK balancing its current interests in the Proposal (as a Member State), and the future implications of the Proposal for the UK (as a third country likely to invest in EU Member States after it has left the EU)? Is the latter likely to cause any difficulty in the UK's negotiations with other Member States on this dossier?*

The UK has an open and liberal approach towards trade and investment, an interest which spans the UK's position both as a current Member State and a future third country. The Government supports the right of countries to take proportionate action to intervene in investment scenarios that raise legitimate security concerns but does not support the use of screening regimes for wider protectionist purposes, nor the addition of unnecessary delay or uncertainty.

The Government has already begun working closely with the EU Commission and other Member States in order to respond to these proposals and early indications are that a significant number of other Member States share the UK's concerns.

7 November 2017

**Letter from the Chairman to the Rt Hon Greg Hands MP, Minister of State for Trade and Minister for London**

Thank you for your letter dated 7 November regarding the above document. This was considered by the External Affairs Sub-Committee on 16 November 2017.

We appreciate the additional information you provided in your letter. We are now content to release the item from scrutiny, but request you to provide us with information on the following matters.

Under the proposed regulation, would EU Member States (MS) have to wait ten weeks each time to see if an opinion might be issued on a possible investment case, or would it be possible that in uncontroversial cases MS and the Commission could waive their right to comment therefore allowing investment decisions to be taken faster?

Would the proposed mechanism apply to all FDI, regardless of its size or the sector invested in?

We are looking forward to your response within the usual ten working days.

16 November 2017

**Letter from the Rt Hon Greg Hands MP, Minister of State for Trade Policy and Minister for London**

I am writing in response to your letter of 16 November containing additional follow-up questions on the EU's proposed Investment Screening Regime after scrutiny of the Department for International Trade's Explanatory Memorandum on this issue.

The letter asks:

*Under the proposed regulation, would EU Member States (MS) have to wait ten weeks each time to see if an opinion might be issued on a possible investment case, or would it be possible that in uncontroversial cases MS and the Commission could waive their right to comment therefore allowing investment decisions to be taken faster?*

The Regulation requires other Member States and the Commission to be notified if a Member State is screening an investment which is planned or has been completed. It allows a period of 25 working days for Member States to provide comments or the Commission to issue an opinion, and a further 25 working days for the Commission to issue an opinion if a Member State comments. The Member State undertaking the screening must take into consideration these comments and the opinion of the Commission. There is also a separate procedure for the Commission to instigate an investigation into a proposed investment where it considers that it might affect projects or programmes of Union interest. The Commission may request information and has 25 days from receipt of sufficient information to issue an opinion.

The Regulation does not make provision for the time limits to be waived. It therefore introduces delay and uncertainty to processes that can be time sensitive and fall within the competence of Member States.

*Would the proposed mechanism apply to all FDI, regardless of its size or the sector invested in?*

The first procedure mentioned above would apply to any FDI that is being screened by any Member State. 13 Member States have investment screening regimes in place which vary in scope and procedure, so the Regulation does not set out a specific threshold on size or sector of investment, as each Member State will have its own requirements.

In addition, where the proposed mechanism allows the Commission to carry its own screening out on projects or programmes of Union interest, this also does not have a specific threshold on size or sector.

28 November 2017

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL EUROPEAN DEVELOPMENT FUND (EDF): FORECASTS OF COMMITMENTS, PAYMENTS AND CONTRIBUTIONS FROM MEMBER STATES FOR 2017, 2018, 2019 AND NON-BINDING FORECAST FOR THE YEARS 2020-2021 (13579/17)**

**Letter from the Chairman to the Rt Hon Lord Bates, Minister of State, Department for International Development**

Thank you for your Explanatory Memorandum (EM) dated 13 November regarding the above document. This was considered by the External Affairs Sub-Committee on 7 December 2017.

We have four questions to which we would be grateful for your response.

First, your EM states that "in Council Working Group meetings the UK has pushed against any amended proposal that would mean the Commission holds balances in excess of forecasted spending, or that would allow payments to be made in advance of need." It is not clear to us what the payment in advance of need refers to in this context, or how the process of Member State commitments becoming final contributions works. Please elaborate on your statement in the EM, and provide us with information about the timing and frequency of Member State contributions to the EDF, and whether instalments are paid before programmes are implemented.

Second, your EM mentions that "payments beyond our exit from the EU are subject to negotiations". In the Communication's attachment, UK contributions for 2017-2021 are outlined. We note that the

contributions for 2020 and 2021 are not binding, and that the UK Government has set out its plan to leave the EU on 29 March 2019. What is the Government's position on the UK's contribution to the EDF for the remainder of 2019? Might this be part of a transitional arrangement to be agreed with the EU? What preparatory work has been undertaken by the Department for International Development to assess the UK's interests in advance of these negotiations?

Third, we note that the Government's *Foreign policy, defence and development: a future partnership paper* mentions its ambition for "close collaboration" with "European partners" on a "case-by-case basis". In your letter of 17 February 2017, you wrote: "We have also made clear our potential interest in future partnership, working under aspects of the new EU-ACP framework." What is the Government's ambition for co-operation with the EDF after the UK has left the EU?

Fourth, please provide us with information on the auditing process of the European Development Fund and the main findings of its last audit.

We look forward to your response within the usual 10 working days. In the meantime, we have decided to retain the document under scrutiny.

7 December 2017

### **Letter from the Rt Hon the Lord Bates, Minister of State, Department for International Development**

Thank you for your letter, dated 7 December, relating to the scrutiny of the above document, I am pleased to respond to your questions and provide further information on the European Development Fund.

Each European Development Fund is established via an Internal Agreement between the EU Member States, to support the development finance provisions of the Cotonou Partnership Agreement between the EU and African, Caribbean and Pacific States. Internal Agreements establish the overall amounts for each EDF, and each Member State's respective contribution. Beneath these overarching Internal Agreements, details of the financial provisions are established in a Council Regulation for each EDF. As set out in the *financial regulation applicable to the 11th European Development Fund* (Doc 2015/323 in the Official Journal of the European Union) Member States are required to make payments to the EDF treasury three times a year, by January, July and November. In advance of this, the Commission set out their forthcoming projections, in the form of a Communication, biannually in October and June. An Explanatory Memorandum is routinely deposited on these as part of the parliamentary scrutiny process. Commission proposals are discussed in Council Working Groups, with instalment amounts then agreed to by Council Decision, triggering the payment process.

In Council Working Groups the UK has pushed back against any proposals that would mean the Commission-managed EDF treasury holds balances in excess of their forecasted spending, or which would entail Member States paying into the EDF Treasury at a quicker rate than Funds are being disbursed. The shortage payment credit of €90m (£80m), anticipated at the end of 2017, provides this reassurance that Member States are not paying in advance of need. Although EDF 11 funding must be committed between 2014 and 2020, programmes may run for a number of years after. Member State payments are therefore used to fund those EDF programmes which have already been approved by Member States at EDF Management Committees.

With regards to the ongoing EU Exit negotiations, the recently published Joint report on progress during phase I of negotiations<sup>2</sup> makes clear that the UK will honour commitments to the EU Budget made during the period of our membership. This will include our commitments to the current European Development Fund (EDF 11) until its closure as well as outstanding commitments made under previous European Development Funds. Payments will continue to form part of the UK's overall 0.7% ODA/GNI commitment.

---

<sup>2</sup> Joint report from the negotiators of the European Union and the United Kingdom Government on progress during Phase I of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union.

As we leave the EU, an important part of the UK's future international development strategy will be to continue working closely with our European partners. We have expressed our desire for a partnership with the EU on development that goes beyond existing third country arrangements, and which builds on the breadth and depth of our shared interests and values. This includes seeking to achieve flexibility to participate in programmes across the EU's external action instruments, on a case by case basis, where it is in our mutual interest to do so. The government looks forward to discussing the future relationship with the EU as part of Phase II of the exit negotiations.

Finally, you asked about the auditing process of the European Development Fund. The European Court of Auditors (ECA) report annually on the implementation of the European Development Funds (EDF) and assess the financial activities and expenditure. The most recent being the Annual Report on the Activities Funded by the 8th, 9th, 10th and 11th EDF for the year 2016 which accompanies the Annual Report on the Implementation of the Budget, and on which an Explanatory Memorandum was deposited on 1 November 2017. The ECA Report concludes that the EDF's accounts show a fair picture in terms of the fund's financial position, its cash flows, net assets and results and that these meet the provisions of the Financial Regulation and the accounting rules. Drawing from the report, the UK notes that overall progress is in the right direction but we also take note of the recommended improvements. As part of the UK Government's ongoing drive for sound financial management, budget discipline and a focus on performance, officials from DFID are engaging directly with Commission officials on the implementation of the ECA's recommendations.

*19 December 2017*

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) 2016/1036 ON PROTECTION AGAINST DUMPED IMPORTS FROM COUNTRIES NOT MEMBERS OF THE EUROPEAN UNION AND REGULATION (EU) 2016/1037 ON PROTECTION AGAINST SUBSIDISED IMPORTS FROM COUNTRIES NOT MEMBERS OF THE EUROPEAN UNION (14249/16)**

**Letter from the Rt Hon Greg Hands MP, Minister of State for Trade Policy and Minister for London, Department for International Trade**

Further to our previous correspondence, and the Explanatory Memorandum of 1 December 2016, I am writing to inform you that the Commission, the Estonian Presidency and the European Parliament have now found a compromise agreement on the Commission's proposal to revising its anti-dumping and anti-subsidies methodology.

As you are aware, these proposals have been brought forward to address changes to China's WTO accession protocol. On 11 December 2016, certain provisions of that protocol ceased to have effect, with the result that China now argues that it is entitled to be granted market economy status within the WTO (other members, notably the US, do not accept that this is the case). The European Commission has recognised that in light of this, its current framework and methodology for undertaking anti-dumping and anti-subsidy investigations should be amended, to remove references to non-market economies.

China has launched a formal WTO dispute case against the EU and the US for failing to reflect the changes to its protocol. It submitted a formal request for consultations on 12 December 2016, and subsequently on 21 March 2017 requested a formal dispute panel convene to judge its case against the EU. The request is based on the EU continuing with its current regulations after the 11 December 2016 WTO deadline. China has also included a reference to future methodologies, and may seek to include the new proposal in the current dispute, or failing that launch a separate dispute.

**The Commission's Proposal**

Currently, EU regulations list countries it deems to be non-market economies, including China, and uses the analogue country methodology (whereby information from a sector in a comparable third

country is used to calculate the normal value of a good).<sup>3</sup> This approach is unusual, as while other WTO members use the analogue methodology, they do not name specific countries they consider non-market economies within their legislation.

The Commission's proposal seeks to bring the EU more in line with other WTO members. In his letter dated 19 April, Lord Price described the changes proposed by the new Regulation. In essence, the Commission's proposal removes reference to non-market economies entirely and does not grant or deny market economy status to any particular country. The Commission will judge each individual dumping case on its merits and, only when there is evidence of significant distortions, costs of exporters affected by such distortions are replaced by costs in another representative market (a non-standard methodology). The Commission believe protection against dumped or subsidised imports will remain at a similar level and will not therefore have significant economic or social impacts on the EU as a whole, or on individual Member States, including the UK.

This conclusion is based on an assessment of data from ten existing anti-dumping cases. The Impact Assessment compared duties calculated under the existing methodology (based on the use of a producer located in an analogue country) with an estimate of duties that would have been imposed if, instead, dumping margins were based on: a) prices and costs prevailing in China (standard methodology) and b) the new methodology (NADM). These duty estimates are provided by the Commission, partly based on confidential data from investigations.

The Commission estimates are that, in these ten cases, the use of the standard methodology would have led to an average duty reduction of around 30% points, including zero duties in three of the ten cases. By contrast, the use of the new methodology would have led to an average reduction in duties of just 4% points. The latter suggests that duties imposed using the current analogue methodology slightly overstate the duties needed to counter the effects of dumping compared with those that would be imposed under the NADM.

Using economic modelling techniques, the Impact Assessment also estimates the longer term direct and indirect employment impacts of using the standard methodology and NADM, taking account of effects on sectors likely to be directly protected by anti-dumping measures now and in the future, as well indirect impacts on upstream and downstream sectors (those that supply and buy from sectors directly protected by AD measures). Employment impacts are measured relative to a baseline of continued use of the current analogue country methodology. Details are set out below.

Based on this modelling, the Impact Assessment concludes that use of the standard methodology would lead to a direct reduction in UK employment of over 15,000, and an overall reduction of over 17,000 compared with the baseline. Although a small loss in the context of overall UK employment, the impacts would be heavily concentrated. For example, over 80% of UK employment in sectors currently directly protected by anti-dumping measures against China is in the iron and steel and ceramics sectors. By contrast, the fall in UK employment under the scenario where the NADM is used, is much smaller (around 2000).

The Impact Assessment does not take account of wider macro-economic impacts of having lower anti-dumping duties than at present. However, its estimates of upstream and downstream impacts add an additional element of rigor to the assessment. The estimates of the impacts on duty levels are crucial in driving the overall results, and because these are partly based on confidential data, we cannot fully assess their reliability. However, we have concluded that, overall, the Impact Assessment provides a good guide to the likely economic impact of the NADM on the UK economy at this stage

**Estimated Long Term EU and UK Employment Impacts of using the Standard Methodology and NADM compared with the use of the Analogue country methodology.**

	Direct	Downstream	Upstream	Total	Loss as % of total Employment

<sup>3</sup> The other non-market economies currently listed in the EU's existing legislation include Vietnam, Kazakhstan, Albania, Armenia, Azerbaijan, Belarus, Georgia, North Korea, Kyrgyzstan, Moldova, Mongolia, Tajikistan, Turkmenistan, and Uzbekistan

<b>EU</b>					
Standard Methodology	-175,6000	+28,400	-54,600	-201,800	-0.09%
NADM	-22,600	+4,500	-7,000	-25,000	-0.01%
<b>UK</b>					
Standard Methodology	-15,200	+2,350	-4,200	-17,146	-0.06%
NADM	-1,960	+379	-550	-2,130	-0.01%

Source: Commission Impact Assessment

I have attached the Commission impact assessment to my letter (Annex I)

The UK has supported the Commission's proposal, while advocating that any amendments to the regulations must be applied in a way which is WTO compliant. Dialogue meetings have started before the summer recess and on 3 October the Commission, the Presidency and the European Parliament reached a compromise agreement.

Whilst the UK would generally support the compromise agreement, the Government has some concerns on the inclusion of labour and environmental standards in the regulation as a determination for what costs and data would be used by the EU to define trade defence measures. The UK plays an active role in upholding labour and environmental standards across the world, both through our role as a member of the ILO and by actively promoting human rights. While the Government is exploring all options in the design of future plurilateral and bilateral trade and investment agreements, including with regards to human rights, environmental and labour protections, we don't believe that trade remedies cases are an appropriate vehicle for such issues and is not provided for in WTO rules that relate to trade remedies.

As Lord Price explained in his previous correspondence to the Committee, in taking a position on the compromise agreement, the UK will need to consider both its position as a member of the EU, and the UK's exit from the EU and our global trade ambitions. The Government will need to take into account future trading relationships with third countries, including China and the European Union, and the position of UK industries with a high interest in trade defence.

We continue to maintain a scrutiny reserve on this file, however we anticipate that progress will now be reached fairly rapidly and anticipate this issue to be tabled at Council in December. We have no control over this Presidency timing.

Should the agreement move forward to a decision at Council at this time, I am proposing to support the Commission's proposed approach. If this becomes necessary, I will, as is standard practice, write to set out the need for an override, unless of course your committee (along with the House of Commons European Scrutiny Committee) agrees to release this file ahead of the Council meeting.

Supporting this legislative text does not mean the UK should look to replicate, in total, the EU's trade remedies framework after exiting the EU. My Department is developing options for introducing a balanced and proportionate approach to trade defence on exit, which will enable the UK to tackle significant market distortions.

14 November 2017



Letter from the Chairman to the Rt Hon Greg Hands MP, Minister of State for Trade Policy and Minister for London, Department for International Trade

Thank you for your letter dated 14 November 2017 regarding the above document. This was considered by the External Affairs Sub-Committee on 30 November 2017, and followed your phone call with Baroness Verma this week. Your letter raises two issues, as below.

First, we note that your letter repeats, word for word, what Lord Price told us on 19 April about a post-Brexit UK trade defence regime, that support for the EU proposal:

“does not mean the UK should look to replicate, in total, the EU’s trade remedies framework after exiting the EU. My Department is developing options for introducing a balanced and proportionate approach to trade defence on exit, which will enable the UK to tackle significant market distortions.”

We request that you provide a detailed update on the work that the Department for International Trade has undertaken since April on the UK’s future trade defence regime.

Second, you repeat that China submitted a formal request for WTO consultations on 12 December 2016 and that in March 2017 it requested that a formal dispute panel be convened. Has such a dispute panel yet been convened in response to China’s request? What is the timeline for this process likely to be?

We look forward to your response on these two matters within the usual 10 working days. In the meantime, we are now content to clear this item from scrutiny.

*1 December 2017*

**Letter from the Rt Hon Greg Hands MP, Minister of State for Trade Policy and Policy and Minister for London**

Thank you for your letter dated 1 December 2017. I am glad that the Committee has cleared the proposed regulation on protection against dumped and subsidised imports from countries not members of the European Union. I would like to take this occasion to inform you that the proposal was unanimously approved by the Council on 4 December 2017 (with the UK voting in support of the measure) and it should enter into force on 20 December 2017.

In your letter there is a request for further information on the work that the Department for International Trade (DIT) has undertaken since April on the UK’s future trade defence regime. I would like to inform you about the following key steps undertaken by my department to set out arrangements for our future trade policy:

- The White Paper on “Preparing for our future UK trade policy” was published in October 2017. It established the principles that will guide future UK trade policy, as well as laying out the practical steps that will support those aims.
- On 28 November 2017 my department published a call for evidence to identify those trade remedy measures currently applied by the EU, which matter to UK businesses (<https://www.gov.uk/government/consultations/call-for-evidence-to-identify-uk-interest-in-existing-eu-trade-remedy-measures>). When the UK begins to operate its own independent trade remedies framework, it is important that we provide certainty to UK business and avoid exposing them to injury from known unfair trade practices. The Government is committed to maintaining a fair and transparent approach to the handling of these existing remedies and to minimising trade disruptions to our trade partners and UK businesses. The call for evidence is open for responses until 30 March 2018 and we welcome responses from all interested parties.
- On 21 November 2017 the Trade Bill was introduced to the House of Commons. The Bill will put in place the necessary legal powers and structures to enable us to operate a fully functioning trade policy, including the setting up of the independent Trade Remedies Authority, to operate the UK’s trade remedies system once we leave the EU. The measures in this Bill will ensure the UK is ready for exit, providing continuity for individuals, businesses, and international trading partners. The Taxation (Cross-border trade) Bill introduced on 7

December includes provisions setting out the framework for our new trade remedies system.

In addition to the above, I would like to highlight that since this summer, my officials have been engaging with stakeholders and other interested parties through a range of roundtables, bilateral and Ministerial meetings, to understand their views and discuss the design of a future trade remedies framework. This engagement will continue as we develop secondary legislation, setting out how the system will work in practice.

You have also requested information on the developments and timeline of the World Trade Organization (WTO) dispute launched by China against the EU (DS516). Please be aware that a panel was established on 10 July 2017 with an initial hearing held on 6 - 7 December 2017. We could expect the case to be concluded in the second half of 2018 at the earliest, but if the judgement is appealed this could be delayed to 2019.

*14 December 2017*

## COUNCIL DECISION AUTHORISING THE OPENING OF NEGOTIATIONS WITH THE GLOBAL GREEN GROWTH INSTITUTE FOR AN AGREEMENT ON THE MEMBERSHIP OF THE EUROPEAN UNION (14875/17)

### **Letter from the Rt Hon Lord Bates, Minister of State, Department for International Development**

I am writing to bring to your attention a proposal which seeks to open negotiations between the EU and the Global Green Growth Institute (GGGI). Firstly I would like to apologise that, due to an administrative error, your committee was not made aware of this proposal sooner.

A recommendation for a Council Decision opening negotiations between the EU and the GGGI (8038/17), marked restreint and later declassified, was released in May 2017. This week, upon the release of Council Decision 14875/17 it came to light that the Scrutiny Committees had not been made aware of the proposal. No formal decisions on the matter have yet been taken, however this Decision will be brought to Council for approval on Monday 18 December. The UK is supportive of the EU's proposed membership of the GGGI and as such it is unfortunate that we will have to override scrutiny on this occasion.

The attached document, dated 12 December 2017, is being provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limited marking. It cannot be published, nor can it be reported on in any way which would bring detail contained in the document into the public domain.

The GGGI is a multilateral institution working across 27 developing countries to promote green growth in partnership with governments. The EU has identified GGGI membership as a chance to extend the EU's climate diplomacy outreach and as a useful forum in which to share its experiences on green growth. The UK became a contributing member of the GGGI in 2014, and remains one of the largest donors. We are supportive of the GGGI's objective of helping developing countries to achieve climate-smart economic growth, and in January 2018 the UK will take a seat on the GGGI Council.

It is in the UK's interest to support the EU during negotiations to become a participating member, as this would help to further raise the profile and the influence of the GGGI. While the UK contributes to the GGGI budget and is joining the GGGI Council, which scrutinises key decisions, the EU is seeking to become a 'participating member' of the GGGI, meaning it will not be a Council member in its own right nor contribute financially. After consulting other GGGI members, we are confident that EU membership will not diminish the UK's influence with the GGGI.

This proposed Council Decision marks the start of the process, authorising the opening of negotiations, and we are committed to updating the Scrutiny Committees as required throughout this process. The UK supports the proposed EU membership of GGGI, both in our role as a member state and in our role as a GGGI donor, however we will not be intimately involved in negotiations on either side. Whilst it is regretful that we have to override scrutiny in this instance, please be assured that the Government remains fully committed to its scrutiny obligations to Parliament while we remain a member of the EU.

In line with these commitments, we will deposit a post-adoption EM on the now de-classified initial proposal (recommendation for Council Decision 8038/17) at the earliest opportunity, as well as on any Council Decisions which may arise at the Conclusion of an agreement.

15 December 2017

JOINT REPORT TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN  
ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS.  
REPORT ON THE IMPLEMENTATION OF THE EUROPEAN NEIGHBOURHOOD  
POLICY REVIEW (9435/17)

**Letter from the Chairman to the Rt Hon Sir Alan Duncan MP, Minister for Europe and  
the Americas, Foreign and Commonwealth Office**

Thank you for your letter of 29 September 2017, which was considered by the External Affairs Sub-Committee on 12 October.

We are now content to clear this document from scrutiny. There is no need to respond to this letter.

13 October 2017

FCO SCRUTINY

**Letter from Baroness Verma to the Rt Hon Sir Alan Duncan MP, Minister for Europe  
and the Americas, Foreign and Commonwealth Office**

Thank you for your letter of 29 September, in response to my letter of 15 September regarding the Foreign and Commonwealth Office's performance on EU parliamentary scrutiny. Your letter was considered by the EU External Affairs Sub-Committee on 12 October.

As you will be aware, the Committee secretariat met with your officials on 4 October to discuss this matter and the working-level processes that underpin scrutiny. We look forward to your attendance at our meeting on 26 October to discuss these issues further.

Your letter addresses the difficulty of sharing documents in draft form. We appreciate that this is an ongoing challenge to timely parliamentary scrutiny, and are requesting, where possible, short updates to be provided to the Committee by letter as a scrutiny update in advance of key discussions at the EU level. This was discussed by our officials as a method of information sharing utilised by other departments such as the Department of International Trade.

You also ask how the Committee wishes to approach the scrutiny of new and renewed EU CSDP missions and other EU external affairs activities that extend beyond March 2019. Given the stated intention of the Government of "continued close cooperation" with the EU, as set out in *Foreign policy, defence and development - a future partnership paper* (12 September 2017), it is all the more important that full EU scrutiny by both Houses of Parliament continues. The EU External Affairs Sub-Committee will continue to scrutinise all EU documents within its remit of EU foreign affairs, defence, trade and development, including the implications of the UK's withdrawal from the EU.

13 October 2017

NEGOTIATIONS ON THE ADAPTION OF PROTOCOLS TO THE ASSOCIATION  
AGREEMENT BETWEEN THE EUROPEAN UNION AND THE KINGDOM OF  
MOROCCO

**Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas,  
Foreign and Commonwealth Office**

I am writing to let your Committee know that when reviewing our scrutiny records, we realised that we had omitted to notify you of a European Council decision that was adopted earlier this year during

the election period. This was a Restreint document which whilst we cannot share this with you, we should have notified you. Please accept my apologies for not writing sooner.

On 29 May 2017, the European Council authorised the European Commission to open negotiations on the adaptation of protocols to the Agreement between the European Union and Morocco and adopted directives for the negotiations.

In 1996, the Euro Mediterranean Agreement, establishing an association between the European Communities and the Kingdom of Morocco, was signed (the Association Agreement). Pursuant to that, an Agreement between the EU and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural and fish products was signed in 2010 and came into force in 2012, introducing Protocols to the Association Agreement. In December 2016, the Grand Chamber of the ECJ found that the Association Agreement and, by consequence, the Liberalisation Agreement, did not apply to the territory of Western Sahara. This was despite the Agreement being applied de facto to Western Sahara.

Consequently, this Council Decision authorising the negotiating mandate and directives now provides authorisation for the Commission to negotiate an amendment to the Agricultural Protocol (and related protocols) with Morocco to amend its territorial scope to take account of the judgment of the Court.

The Commission has started the process of formal negotiations with Morocco, reporting back to the EU working groups at regular intervals. The Commission hopes to be able to present recommendations for Council Decisions on signature and conclusion of the revised agreement in the coming months. We will submit the documents for your Committee's consideration when the Council Decisions for signature and conclusion of the Agreement issue.

On the broader issue of the status of Western Sahara, the UK Government continues to support UN-led efforts to reach a lasting and mutually acceptable political solution that provides for the self-determination of the people there. We encourage both parties to the dispute to engage positively with the new UN Secretary General in this respect.

*28 December 2017*

**COUNCIL DECISION TO ESTABLISH AND LAUNCH THE EU ADVISORY MISSION  
(EUAM) IN IRAQ; AND COUNCIL DECISION TO ALLOW THE EU TO BEGIN  
NEGOTIATIONS WITH GOVERNMENT OF IRAQ ON A STATUS OF MISSION  
AGREEMENT (SOMA)**

**Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas,  
Foreign and Commonwealth Office**

I am writing with regard to the aforementioned EU Council Decisions concerning the EUAM Iraq.

On 16 October, the Council adopted Decision 2017/1869 CFSP which established and launched a new Civilian CSDP Mission for Iraq, the EU Advisory Mission (EUAM) in Iraq. The Council also enabled the HRVP to begin negotiations on a SOMA. My separate Explanatory Memoranda of 5 October provided an overview of the draft Council Decisions.

Unfortunately, the recent parliamentary recess prevented the draft Council Decisions completing the scrutiny process before adoption. Were we to have waited we would have delayed the launch of the mission, which would not have been in the interest of UK foreign policy. I therefore regret that, given these timeframes and the importance of this work, I found myself in the position of having to agree to the adoption of these Council documents before your Committee had the opportunity to clear them from scrutiny.

*20 October 2017*

## FUTURE CUSTOMS ARRANGEMENTS – A FUTURE PARTNERSHIP PAPER

### **Letter from Baroness Verma to Lord Callanan, Minister of State, Department for Exiting the European Union**

Congratulations on your appointment as Minister of State at the Department for Exiting the European Union.

As you may be aware, the EU External Affairs Sub-Committee takes a strong and ongoing interest in the arrangements for trade with the EU after Brexit, which were the subject of the Committee's reports *Brexit: the options for trade* and *Brexit: trade in goods*. The Committee has considered the document *Future customs arrangements—a future partnership paper*, and intends to take oral evidence on the Government's approach to this crucial issue.

We are disappointed that the document does not provide a sufficient level of detail on either of the two proposed options. It is not possible to assess or examine the implications of either scenario, given that each is lightly sketched. We note that the White Paper on the Customs Bill (Cm9502) provides for the implementation of tax-related elements of the 'highly streamlined customs arrangement', but is not able to provide for any elements of the 'new customs partnership' option, because it is an "innovative and untested approach".

We understand that many of the elements of both a 'highly streamlined customs arrangement' and 'new customs partnership' option would be subject to negotiation with the EU. We request that you provide us with details of the preparatory work you are undertaking to prepare for these negotiations on customs, including the following areas: waiving the need for entry and exit summary declarations; membership of the Common Transit Convention; mutual recognition of the AEO scheme; a technology solution for ports; and other customs cooperation, assistance and data sharing.

31 October 2017

### **Letter from Lord Callanan, Minister of State for Exiting the European Union**

Thank you for your letter of 31 October and your congratulations on my appointment as Minister of State.

The EU External Affairs Sub-Committee's strong interest in the United

Kingdom's future trading arrangements is recognised by the Government, and we welcome the thoughtful analysis which your Committee has undertaken in preparing its recent reports.

I am aware that you have also recently written to the Secretary of State in relation to the Government's response to the report "*Brexit: Trade in Goods*" and I understand that the Secretary of State will be responding in due course.

6 November 2017

## EU FOREIGN AFFAIRS COUNCIL 10 NOVEMBER 2017

### **Letter from the Rt Hon Greg Hands MP, Minister of State for Trade Policy and Minister for London, Department for International Trade**

The EU Foreign Affairs Council (Trade) will take place in Brussels on 10 November. I will represent the UK.

Please see attached a Pre-Council Written Ministerial Statement which is being laid in Parliament.

3 November 2017

**Letter from the Rt Hon Greg Hands MP, Minister of State for Trade Policy and Minister for London**

I represented the UK at the Foreign Affairs Council (Trade) in Brussels on 10 November. Please see attached a Post-Council Written Ministerial Statement, which will be laid in both Houses on Tuesday 21 November.

*21 November 2017*

**COUNCIL REGULATION (EU) 2017/2062 OF 13 NOVEMBER 2017 AMENDING REGULATION (EU) 2017/1509 CONCERNING RESTRICTIVE MEASURES AGAINST THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA**

**Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

I am writing with regard to Council Regulation (EU) 2017/2062 concerning restrictive measures against the Democratic People's Republic of Korea (DPRK). As detailed in the Explanatory Memorandum, this Regulation revises the EU autonomous measures which prohibit the import and export of luxury goods to DPRK.

This Regulation is linked to Council Regulation (EU) 2017/1858 amending Council Regulation (EU) 2017/1509, which was adopted on 16 October and covered in the Explanatory Memorandum which I submitted on 1 November. The new Regulation covers technical changes to the annex of luxury goods prohibited by EU restrictive measures. It was adopted by the Council on 13 November and published in the Official Journal on 14 November. The draft Regulation was received from the Commission the previous week. I therefore found myself in the position of having to agree the adoption of this Regulation before you and your Committee had the opportunity to scrutinise it.

*22 November 2017*

**NEGOTIATIONS FOR A MODERNISED EU-CHILE ASSOCIATION AGREEMENT**

**Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

I am writing to inform you that the Council of the European Union and the Representatives of the Governments of the Member States have adopted negotiating directives to modernise the EU's Association Agreement with Chile.

The EU and its Member States concluded the current Association Agreement with Chile in 2003. It includes political, cooperation and trade provisions. In recent years, EU Member States and Chilean leaders have expressed interest in modernising the Agreement to reflect the strong growth in bilateral trade and investment, and developments in global and EU trade policy, which have taken place since 2003. The aims, as set out in the mandate, are to broaden the current scope of the Agreement and create a comprehensive, up-to-date framework for the EU's relations with Chile, with a particular focus on trade liberalisation.

Since the original agreement, Chile has become one of the most open economies in the world; a status epitomised by its founding membership of the Pacific Alliance, which is dedicated to free trade, free markets and democracy. Chile is a global leader in Free Trade Agreements (with 26 of them already concluded with 65 countries) and is keen to be at the front of the queue for concluding a FTA with the UK post-Brexit. Although the UK is leaving the EU, the Government does not wish our exit to delay the progress of agreements which are important to our EU partners and to the third countries in question. As a current member of the EU, the UK is therefore supportive of the modernisation negotiation with Chile.

While the negotiating directives for modernising the Association Agreement do not fall within the documents listed for formal scrutiny under the Scrutiny Reserve Resolution, I will continue to update the Committee as negotiations continue; and when a Council Decision for signature and conclusion of the Association Agreement issues, I will submit the document for your Committee's consideration.

22 November 2017

## ESTABLISHMENT OF PERMANENT STRUCTURED COOPERATION (PESCO)

### **Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas, Foreign and Commonwealth Office**

Ahead of the launch of PESCO and bringing this formally to the Scrutiny Committee, I thought it would be helpful to set out some background on the initiative and UK involvement to date.

PESCO is provided for in the Lisbon Treaty, introducing the possibility for EU Member States to strengthen their cooperation in military matters. In June 2016, when the EU agreed the European Global Strategy, the PESCO debate was re-launched with a call on Member States to 'make full use of the Lisbon Treaty's potential'.

Under PESCO, groups of participating Member States can work together to pursue specific capability projects. PESCO is voluntary and works on an opt-in basis. In July this year, France and Germany released a draft notification letter to encourage participation by Member States. There are plans to make PESCO projects eligible for up to 30% of their funding from the Commission's European Defence Fund. As a result, PESCO may increasingly become the primary avenue for military capability development between Member States.

In the margins of the 13 November Foreign Affairs Council with Defence Ministers (FAC(D)), 23 Member States signed an agreed notification letter (copy attached) marking the first step in the establishment of PESCO. The UK - along with Denmark, Ireland, Malta and Portugal - did not sign this notification.

The UK has supported the ambition of PESCO to develop military capabilities that address the shortfalls in EU and NATO contexts. As the Rt Hon Earl Howe affirmed at the FAC(D), we welcome PESCO as a tool to support the development of capabilities that Europe needs for its security, provided it remains complementary to NATO and encourages EU-NATO cooperation. The UK approach reflects our continuing commitment to European defence and security, and protecting the interests of UK industry.

The UK has consistently said that if it is to be successful, PESCO must be designed in a way that strengthens the relationship with NATO and promotes an open and competitive European Defence industry. In line with our position, we are encouraging Member States to develop PESCO to be open to third country participation, especially for the UK and our defence industry, where there is clear value in doing so. It is also important to us that projects carried out under PESCO arrangements should remain Member State-owned and that the capabilities delivered are available not only to the EU but can also be used in support of NATO and UN operations.

As PESCO develops, it is possible that projects are developed that the UK would find it beneficial to join. So we are looking into how the UK or UK industry might join projects in the future. This will be particularly important if, over the coming years, PESCO becomes the principal format for capability cooperation in the EU. This policy is still under development as detailed discussions on third party access have been deferred until after the launch of PESCO.

The Secretaries of State for Defence and Foreign and Commonwealth Affairs have joint interest in UK policy towards PESCO. The Secretary of State for Exiting the EU will also have an interest in how this initiative progresses as the UK leaves the EU.

In terms of next steps, the expectation is that PESCO will be officially launched at the December Foreign Affairs Council (11 December) via Council Decision, to then be endorsed at the December European Council (14 December). We received yesterday an informal draft version of the Council Decision text that has not yet been to the RELEX committee for discussion. As soon as I am able, I will update the Committee with a copy of the draft Council Decision text to adhere to scrutiny processes.

23 November 2017

**Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

I am writing with regard to the Council Decision establishing Permanent Structured Cooperation (PESCO). Since I last wrote to you this matter on 23 November, I am pleased to notify the Committee that the UK has negotiated a satisfactory outcome to the draft Council Decision on PESCO, which addresses key Government concerns, including the participation of third countries and third country industry.

Negotiations have progressed at pace and the Estonian Presidency is now on track to launch PESCO on Monday 11 December at the Foreign Affairs Council. Although the UK is not joining PESCO, we will vote in favour of the Council Decision now that we are satisfied our requirements regarding third country industry access have been met. I regret that the pace of negotiations has not allowed sufficient time for your Committee to scrutinise the Council Decision and that overriding scrutiny is, therefore, necessary in this case, but the short timescales are such that this is unavoidable.

As you know, the responsibility to keep your Committee informed on these issues is something I take seriously and the need for the override of scrutiny on this occasion was regrettably unavoidable. I will write again with an accompanying Explanatory Memorandum as soon as possible next week.

*8 December 2017*

**Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

I am writing with regard to the EU Council Decision establishing Permanent Structured Cooperation (PESCO). Following my letter to the House of Commons' and House of Lords' Scrutiny Committees of 8 December, I attach an Explanatory Memorandum and a copy of the relevant Council Decision text, which we expect to be finalised today.

The 11 December Foreign Affairs Council adopted the Council Decision to establish PESCO and determined the list of participating Member States. PESCO allows participating Member States to group together to propose and pursue specific capability initiatives and projects. The UK welcomes the establishment of PESCO and we voted in favour of the Decision's adoption but did not join PESCO. Further detail is contained in the accompanying Explanatory Memorandum.

I regret that I find myself in the position of having agreed to the adoption of this Council Decision before your Committee had an opportunity to scrutinise the Council Decision text. At the October European Council and subsequent Foreign Affairs Council on 13 November, Member States agreed the political commitment to deliver PESCO by the end of 2017. However, there was not a suitable draft Council Decision available in time to allow proper scrutiny. A delay in agreeing the Council Decision would have had significant political and reputational consequences for the UK.

As you know, I take my responsibility to keep your Committee informed on issues concerning Common Security and Defence Policy seriously and the need for the override of scrutiny on this occasion was regrettably unavoidable.

*13 December 2017*

**FOREIGN AFFAIRS COUNCIL (TRADE) 10-13 DECEMBER 2017 – PRE-COUNCIL  
WRITTEN MINISTERIAL STATEMENT**

**Letter from the Rt Hon Greg Hands MP, Minister of State for Trade Policy and Minister  
for London, Department for International Trade**

The Foreign Affairs Council (Trade) will take place at MCI I in Buenos Aires between 10-13 December 2017. I will represent the UK.

Please see attached a Pre-Council Written Ministerial Statement which is being laid in Parliament.

*1 December 2017*



WRITTEN MINISTERIAL STATEMENT GENERAL AFFAIRS COUNCIL, 12 DECEMBER  
2017

**Letter from Lord Callanan, Minister of State, Department for Exiting the European Union**

I represented the UK at the General Affairs Council (GAC) meeting in Brussels on Tuesday 12 December. The main items on the agenda were: preparations for the December European Council on 14 and 15 December; a follow-up to the October European Council; legislative programming, covering the Joint Declaration on legislative priorities for 2018-19; and the European Semester, focusing on the Annual Growth Survey.

A provisional report of the meeting and the conclusions adopted can be found on the Council of the European Union's website at:

<http://www.consilium.europa.eu/en/meetings/gac/2017/12/12/>

**Preparation of the European Council, 14 to 15 December 2017**

The Presidency introduced the agenda for the December European Council, which included: Defence; Social, Culture and Education; Migration; and External Relations. I intervened to welcome the Draft December conclusions as short and well balanced.

On the Defence agenda item, the Council were informed that NATO Secretary General Stoltenberg would attend the DEC to discuss EU-NATO cooperation. I intervened to emphasise the importance of EU-NATO cooperation. I also welcomed swift progress on the Permanent Structured Cooperation (PESCO) and the attention given to the European Defence Industrial Development Programme (EDIDP).

Ministers exchanged views on the Conclusions for the Social, Education and Culture agenda item. I stressed the importance of subsidiarity in this area and noted that economic strength and the creation of jobs are the best way to deliver social protection.

Under the Migration agenda item, Ministers discussed the Common European Asylum System (CEAS).

**October European Council follow-up**

Commission Vice President Timmermans updated Ministers on the successful replenishment of the EU Africa Trust Fund (EUTF), which had exceeded the €110million target set by Leaders in October. Vice President Timmermans also updated that cuts to Turkey's pre-accession funding were a reflection of political developments in the country.

**Legislative programming - joint declaration on interinstitutional programming**

The Council approved the joint declaration on the EU's legislative priorities for 2018-2019. The priorities, which include views on annual interinstitutional programming, are due to be signed by the Presidents of the European Council, Commission and Parliament.

**European Semester 2018 - Annual Growth Survey**

The Commission introduced the Annual Growth Survey, which set out its priorities for action at national and EU-level over the next twelve months to support economic growth and employment.

*12 December 2017*

COUNCIL DECISION AUTHORISING THE EUROPEAN COMMISSION TO NEGOTIATE  
INSTRUMENTS ON THE ENFORCEMENT OF INTERNATIONAL COMMERCIAL  
SETTLEMENT AGREEMENTS RESULTING FROM CONCILIATION IN THE

## FRAMEWORK OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

### **Letter from the Rt Hon David Lidington CBE MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice**

I am writing to inform you that the Council adopted recently a Decision which authorises the European Commission to negotiate at UNCITRAL instruments on the enforcement of international commercial settlement agreements resulting from conciliation. As the Commission's proposal for a Council Decision and the negotiating mandate are restricted they are not depositable. In accordance with established practice, however, I am writing to inform your Committee about them now that they have been adopted.

It was in July 2015 that UNCITRAL agreed to identify issues arising from the enforcement of international settlement agreements and to develop possible solutions. Negotiations to date have decided that there should be both a draft model law complementing the existing UNCITRAL Model Law on International Commercial Conciliation and a draft Convention that should have similar provisions, adapted only to the extent necessary for their specific form.

The Commission decided in May to issue a proposed Council Decision and negotiating mandate given that the negotiations had moved from the scoping phase to specific plans for instruments. The UK decided to opt in to the Council Decision in August. This is being confirmed separately by way of a Written Ministerial Statement.

While I am not in a position to share the EU negotiating mandate I can outline some of the policy issues being considered.

There is a difference of opinion between UNCITRAL members about whether any instrument in this area is necessary. It is for that reason that the parallel approach of a Convention and a Model Law is being considered.

The Government is not at present convinced of the need for such an instrument. Parties to an agreement arising from mediation or conciliation from elsewhere in the world can in principle bring an action for breach of contract in the courts in England & Wales to enforce that agreement (subject to our usual jurisdiction rules). Where a settlement agreement in a cross-border case is confirmed by a court, parties within the EU can, by virtue of Directive 2008/52/EC, have that agreement enforced in another Member State. In the future, it is likely that such agreements approved by a court will fall within the scope of the Hague Judgments Convention (currently under negotiation) which, if agreed, will allow recognition and enforcement of court decisions between participating countries.

Without prejudice to whether the UK chooses later to become party to a Convention or to apply the Model Law, the UK is participating actively in the negotiations to make sure whatever is agreed is practical and respects the way that our conciliators operate. Even if the UK applies neither instrument, UK conciliators undertaking conciliation for parties from countries that do may be caught by the provisions.

While I cannot disclose the specific content of the EU negotiating mandate I can confirm that it does consider issues such as the scope of any future instruments and the need for sufficient protection to parties so that inappropriate agreements are not capable of enforcement.

One issue of which you will want to be aware is the extent to which there is exclusive competence for the EU to negotiate in this area on behalf of Member States. This largely depends on the scope of the instrument and the extent to which settlements approved by a court are or are not included. The Council Decision authorises the Commission to negotiate the Convention at UNCITRAL on behalf of the EU to the extent that the Convention may affect or alter EU rules.

The next negotiations in UNCITRAL are scheduled for New York in February. I will update your Committee as and when I am able.

*18 December 2017*

**Letter from the Chairman to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas, Foreign and Commonwealth Office**

Thank you for your letter of 29 September 2017 regarding the above document. The letter was considered by the External Affairs Sub-Committee on 12 October 2017.

We are content with your responses to most of the questions in our letter of 15 September, but your letter does not satisfactorily answer our question on co-operation on Common Security and Defence Policy missions after Brexit. The question was: “Has [the EU-Republic of Korea Framework Participation Agreement] been considered by the UK as a potentially useful model for UK-EU co-operation on CSDP after Brexit?” Please answer this question, and provide us with your assessment of this agreement as a mechanism for a third country to participate in CSDP missions.

We also note that your letter commits to providing a separate update on the forthcoming EU-Canada Security of Information Agreement, and how this will “facilitate military-to-military co-operation substantively”, as stated in *CFSP Report – Our priorities in 2017*. This has not yet been provided.

In the meantime, we have decided to continue to hold the document under scrutiny. We look forward to your reply within the usual 10 working days.

13 October 2017

**Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

Thank you for your letter of 13 October, which sought further clarification on two points in the report and the Explanatory Memorandum.

First, you asked whether the EU’s Framework Participation Agreement with the Republic of Korea could be a useful model UK-EU engagement on CSDP after Brexit. The ‘*Agreement between the European Union and the Republic of Korea establishing a framework for the participation of the Republic of Korea (ROK) in European Union crisis management operations*’ governs ROK participation in EU missions in the field of crisis management, including peace-keeping operations and humanitarian operations. We have assessed and considered all existing third country models for CSDP cooperation in our analysis of options for the future UK-EU relationship, including this EU-ROK Agreement. These include framework agreements (of which the EU-ROK Agreement is an example), which set the same terms for each mission a third country participates in, and participation agreements, which set the terms on a mission-by-mission basis.

As outlined in the Government’s Future Partnership Paper on Foreign Policy, Defence and Development, the UK seeks to develop a deep and special partnership with the EU that goes beyond these existing third country arrangements. Under a future partnership agreement, the UK could offer assistance through a continued contribution to CSDP missions and operations, including UK personnel, expertise, assets, or use of established UK national command and control facilities. The UK would seek to work with the EU during mandate development and detailed operational planning; the level of UK involvement in the planning process should be reflective of the UK’s contribution.

You also asked how the EU-Canada Security of Information Agreement would facilitate military-to-military co-operation. Security of Information Agreements govern the protection of classified information provided or exchanged between the parties. These Agreements therefore strengthen bilateral and multilateral dialogue, and assist practical cooperation in support of shared foreign policy and security interests. The US, Australia and NATO also have Security of Information Agreements with the EU.

The EU-Canada Agreement has passed through the relevant working groups in Brussels and is due to be signed by High Representative Federica Mogherini and Canadian Foreign Minister Chrystia Freeland at the Joint Ministerial Committee in Brussels on 4 December.

27 October 2017

**Letter from the Chairman to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

Thank you for your letter of 27 October 2017 regarding the above document. The letter was considered by the External Affairs Sub-Committee on 16 November 2017.

Your letter answers our two outstanding questions to our satisfaction. Thank you for providing this information. We are now content to release this item from scrutiny.

There is no need to respond to this letter.

*16 November 2017*

**OTNYR COUNCIL DECISION AMENDING DECISION (CFSP) 2015/778 ON A EUROPEAN UNION MILITARY OPERATION IN THE SOUTHERN CENTRAL MEDITERRANEAN (EUNAVFOR MED OPERATION SOPHIA)**

**Letter from the Chairman to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas, Foreign and Commonwealth Office**

Thank you for your letter of 29 September 2017, which was considered by the Committee at its meeting on 12 October 2017.

We are now content to release this document from scrutiny. There is no need to respond to this letter.

*13 October 2017*

**OTNYR COUNCIL DECISION ON THE EUROPEAN UNION ADVISORY MISSION IN SUPPORT OF SECURITY SECTOR REFORM IN IRAQ (EUAM IRAQ)**

**OTNYR COUNCIL DECISION TO AUTHORISE THE HIGH REPRESENTATIVE TO OPEN NEGOTIATIONS WITH IRAQ FOR AN AGREEMENT ON THE STATUS OF THE EUROPEAN UNION ADVISORY MISSION IN IRAQ (EUAM IRAQ)**

**Letter from Chairman to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas, Foreign and Commonwealth Office**

Thank you for your Explanatory Memorandums of 5 October 2017 regarding the above documents. They were considered by the External Affairs Sub-Committee on 26 October 2017.

We understand that you agreed to the Council Decisions at the Foreign Affairs Council on 16 October 2017, resulting in two overrides of parliamentary scrutiny. As the Sub-Committee mentioned during your meeting with them, we are disappointed that there was a delay of a week in the provision to the Committee of the two Explanatory Memorandums, which contributed to this outcome. We understand from your officials that the draft Council Decisions were received from the External Action Service on 14 September 2017, and the Explanatory Memorandums were not submitted until 5 October 2017, missing the agreed 10 day deadline by five working days. We reiterate once again the importance we attach to the timely provision of documents for parliamentary scrutiny, and that parliamentary recess does not have an impact on the 10 day period by which Explanatory Memorandums on EU documents are due.

Your letter of 2 August 2017 on the planned mission, provided at our request, was useful in setting out the background to EUAM Iraq before it was subject to the scrutiny process. We were pleased to receive a particularly detailed Explanatory Memorandum on the *Council Decision on the European Union Advisory Mission in support of Security Sector Reform in Iraq (EUAM Iraq)*. We do not have any further questions at this time, and are content to clear the item from scrutiny.

The *Council Decision to authorise the High Representative to open negotiations with Iraq for an Agreement on the status of the European Union Advisory Mission in Iraq (EUAM Iraq)* was cleared at the Chairman's sift on 17 October 2017.

26 October 2017

OTNYR COUNCIL DECISION AMENDING DECISION (CFSP) 2015/1763  
CONCERNING RESTRICTIVE MEASURES IN VIEW OF THE SITUATION IN BURUNDI

**Letter from the Chairman to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas, Foreign and Commonwealth Office**

Thank you for your letter dated 5 October 2017 regarding the above document. This was considered by the External Affairs Sub-Committee on 26 October 2017.

As the Sub-Committee mentioned during your meeting with them, we were disappointed with the quality of the Explanatory Memorandum (EM), which provided little background information or analysis. Please provide us with further information as below.

First, please provide us with your assessment of the current political situation in Burundi.

Second, who are the targets of state repression and human rights abuses in Burundi, what is the role of the Burundian government—including the role of the four listed individuals—and what is the scale of these abuses?

Third, you state in your EM that the Burundian government is refusing to engage in political dialogue with the international community. How has the international community (and particularly the EU and UK) tried to engage with Burundi over the past 18 months, and what response has been received?

Fourth, what is your assessment of the impact of the EU sanctions regime to date?

Fifth, the Committee considered the conclusion of consultations with Burundi under Article 96 of the Cotonou Partnership Agreement (CPA) in April 2016, but has not received any further information since that date. The then Minister for Europe stated in his EM, dated 7 April 2016, that the EU was due to suspend all financial support from the European Development Fund which directly benefited the Burundian administration or institutions, and the Committee was informed that the EU would be reviewing the financing of the Burundian contingent in the African Union Mission in Somalia. Please provide us with information on the measures that have been taken by the EU since the conclusion of consultations, and your assessment of the impact that these measures have had and what leverage the CPA provides.

We have decided to continue to hold the item under examination. We look forward to your response within the usual 10 working days.

26 October 2017

**Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

Thank you for your letter dated 26 October 2017, in which you asked for further information regarding the Council Decision amending restrictive measures against Burundi. You asked for further information on five issues.

I. Our current assessment of the current situation in Burundi

In general terms, we remain concerned about the political crisis in Burundi which can only be resolved by inclusive dialogue that preserves the Arusha Agreement. We believe that the East African Community dialogue led by former Tanzanian President Mkapa offers the best prospect for a mediated solution in which we call on all parties to engage without preconditions.

We remain troubled by the human rights situation in Burundi and disappointed by the Burundian Government's response to the UN Commission of Inquiry's report on human rights in Burundi, and in particular, their rejection of the report's conclusions that there were reasonable grounds to believe that crimes against humanity had been committed.

We welcome the resolutions on Burundi at the UN Human Rights Council in September, and urge the Burundian Government to engage with the international community to bring an end to the violence and to hold the perpetrators to account. We continue to work with partners in multilateral fora towards an inclusive, negotiated solution to the political crisis. We support the EU Article 96 Cotonou process,

the EU- African, Caribbean and Pacific (ACP) countries relations framework, and urge the Burundian government to meet the criteria for the resumption of aid.

## 2. Our assessment of the targets of state repression and human rights abuses

The targets are those opposed to the government including opposition activists and supporters, civil society, independent journalists and human rights defenders. The UN Commission of Inquiry's report highlighted that the majority of the human rights violations, including excessive use of deadly force, torture and ill treatment, sexual violence, extrajudicial executions and arbitrary detentions, have been carried out by the Burundi security and defence forces.

We urge the authorities to use the UN Commission's report as an opportunity to rethink this stance before the situation deteriorates further. The four listed individuals in Council Decision 2015/1763 are subject to EU travel restrictions and an asset freeze. They are widely recognised to have been key figures behind the organisation of violence against opposition, following the announcement of the presidential candidacy of President Nkurunziza on 26 April 2015. There is strong evidence that their activities include acts of violence, repression, incitement to violence, and human rights violations.

## 3. International engagement with Burundi

To date, the Burundian Government has refused to engage with the international community, including with the UN Commission, to bring an end to the violence and hold the perpetrators to account.

The lack of engagement has been either at the United Nations or at the East Africa Community Inter Burundian Dialogue, chaired by former Tanzanian President Benjamin Mkapa (Mkapa Dialogue). The international community continues to attempt to engage with Special Envoys to the Great Lakes through an International Contact Group on the Great Lakes.

The UK Special Envoy to the Great Lakes, Simon Mustard, visited Burundi on Thursday 2 November, where he met the Burundian Foreign Minister Alain Nyamitwe. Baroness Anelay visited Burundi in February 2017 where she also met Foreign Minister Nyamitwe. The immediate Burundian response has been positive, but in the longer term, the Government of Burundi has failed to follow-up with positive engagement in multilateral fora. Burundi continues to make wild allegations that Belgium and the European Union is working to achieve regime change in Burundi. The UK is currently sponsoring a project to support the Mkapa Dialogue, which is showing very tentative, early signs of greater engagement between representatives of the Government of Burundi and opposition leaders.

## 4. Our assessment of the impact of EU sanctions to date

EU sanctions have been effective as part of a range of actions to maintain pressure on the Government of Burundi. We support these sanctions, alongside high level dialogue, and work at the UN, to encourage all parties to engage in the political process, and to hold the perpetrators of abuses to account. There are signs that pressure is leading to early signs of behind the scenes engagement between the government and opposition. In addition, failure to maintain sanctions would be seen in Bujumbura as a signal of EU weakness and lack of resolve in tackling ongoing human rights violations in Burundi. The relevance of the current sanctions was recently underlined in the UN Commission of Inquiry Report with subsequent UN Human Rights Council Resolutions on Burundi further underlining the need to maintain pressure on the regime.

## 5. Our assessment of the suspension of financial support of the Cotonou Partnership Agreement (Article 96 measures).

The suspension of financial support has severely affected the Government of Burundi's ability to obtain funds for personal gain. However, this has come at a cost for the Burundian economy which suffers a severe shortage of foreign exchange and contributes to the economic difficulties being experienced there. As part of Article 96 measures, the payment of stipends to the Burundian contingent to the AMISOM mission in Somalia have been made using a new mechanism, directly serving soldiers, to avoid the ability of senior government figures obtaining these funds for personal gain. This has been a success and has further starved the regime in Bujumbura of funds. The suspension of financial support is part of the range of measures that are applying pressure of the Government of Burundi.

Thank you again for your letter and I hope this response provides the further analysis you requested.

8 November 2017

OTNYR COUNCIL DECISION AMENDING DECISION 2010/573/CFSP CONCERNING  
RESTRICTIVE MEASURES AGAINST THE LEADERSHIP OF THE TRANSNISTRIAN  
REGION OF THE REPUBLIC OF MOLDOVA

**Letter from the Chairman, to the Rt Hon Sir Alan Duncan MP, Minister for Europe and  
the Americas, Foreign and Commonwealth Office**

Thank you for your Explanatory Memorandum (EM) dated 9 October regarding the above document. This was considered by the External Affairs Sub-Committee on 26 October 2017.

As the Sub-Committee mentioned during your meeting with them, we regret that your EM omits important information about the political situation in Moldova and efforts to resolve the impasse. We note that such information was provided to the Committee in your EM last year on this regime (dated 9 November 2016). The EM also wrongly states that “the Council Decision renews EU sanctions against Moldova”, rather than against the leadership of the Transnistrian region. The omission of the necessary background and analysis leads us to have a number of questions, to which we would be grateful for your response.

First, your EM states that “there has been no change of circumstances since the review in 2016.” Which circumstances does this refer to? What is the Government’s assessment of the current political situation in Moldova and of future prospects for resolving the impasse, in particular in relation to the Moldovan government’s stated intention to present a vision for a Transnistrian settlement in 2017?

Second, your EM mentions the difficulties Latin script schools are facing, such as the registration of schools; maintaining adequate school premises; and restrictions on teaching materials and food coming from other parts of Moldova. Does this mean that schools are prevented from registering and therefore cannot be established? Please provide us with further information and examples of the difficulties.

Third, your EM states that the sanctions are being maintained to “to maintain pressure on Transnistria to engage in OSCE brokered settlement talks”. Please provide us with information about (1) the frequency of settlement talks, and (2) your assessment of the talks’ achievements so far.

Fourth, what other forms of engagement is the EU currently undertaking as part of its European Neighbourhood Policy to support Transnistrian settlement and improve the situation of Latin script schools?

Fifth, is the Moldovan government’s approach to the Transnistrian leadership in line with the EU’s sanctions?

Sixth, your EM of 9 November 2016 stated that “the UK once again raised questions about the efficacy of the measures”. Is the Government now content that the measures are efficient, although circumstances and the status of Latin script schools have not changed, and no individuals are listed?

Seventh, your EM on this sanctions regime of 9 November 2016 mentioned a six month review of the regime, which the UK had initiated. What was the outcome of the last review, and what is the current frequency of reviews?

We look forward to your response within the usual 10 working days.

26 October 2017

**Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

Thank you for your letter of 26 October concerning the Explanatory Memorandum (EM) dated 9 October regarding EU sanctions against the leadership of the Transnistrian region of the Republic of Moldova. I was sorry to read you were disappointed with the information contained in the Explanatory Memorandum. You asked seven questions relating to our assessment of the current political situation in Moldova which I will aim to answer in turn.

I. The current political situation in Moldova and prospects for resolving the impasse

The circumstances to which we refer to in the EM relate to the current political situation in Moldova. The Government of Moldova is due to publish a vision for a political settlement for Transnistria but has not detailed when they will do this. The vision is expected to be based on a special status for Transnistria within Constitutional limits; withdrawal of Russian troops and munitions; reconfiguring the peacekeeping forces into an international civilian mission; and, continuation of Moldova's European ambitions in line with the EU-Moldova Association Agreement.

Whatever the Moldovan Government's vision might be, it must be credible and beneficial for both sides. The delays by the Moldovan Parliament in passing the laws setting out the special status of the Gagauzia Autonomous Region will only serve to entrench Tiraspol's view that it has little to gain from reaching a wider political settlement with Chisinau.

## 2. Current difficulties Latin script schools are facing

Problems reported in the past related to the active interference of the de facto authorities in school activities but this has decreased significantly, especially after the change of de facto leadership at the end of 2011. The overall relationship between the schools and the de facto authorities has become more constructive. However, while many aspects of the day-to-day functioning of the Latin script schools have improved, some of the major, longstanding issues facing those schools have not been resolved. These include the status of the nearly-complete buildings in Ribnita, which were constructed by the Moldovan Ministry of Education but remain unoccupied after their seizure by the de facto authorities in 2004.

With regards to registration, the Transnistrian de facto authorities have finalised the registration process for five out of the six schools located in Transnistrian controlled territory, with the schools registered as non-governmental establishments (not as public institutions). As the schools are not registered as public institutions, they face discriminatory treatment in terms of rental fees and utility tariffs for services such as electricity, gas, water and heating, in comparison with other schools in Transnistria. However, the schools have not experienced any rise in utility tariffs in the past 12 months. In addition there has been no increase in rental fees in the past 12 months except for the "Evrrika" lyceum, whose monthly rent increased by 10 %. The issue of rent and utilities has in fact slightly eased due to depreciation of the "Transnistrian rouble" by about 15 % (all payments in the Transnistrian region are made in this "currency").

All six of the schools are in need of renovation and do not have adequate kitchen, playground and sports facilities. The "Alexandru cel Bun" lyceum is split into three buildings located in different parts of the city of Bender, which causes particular difficulties for the teachers and their students. The "Evrrika" lyceum, in the city of Ribnita, operates from inadequate premises rented from the Moldovan Metallurgical Plant (MMZ) – the premises rented were originally a nursery used by the children of MMZ employees. Work on the construction of new buildings for the "Evrrika" lyceum, funded by the Moldovan Government, was halted by the de facto Transnistrian authorities in 2004.

As the six schools operate under the aegis of the Moldovan Ministry of Education, they follow the curriculum set by the Ministry and use teaching materials approved and supplied by the Ministry of Education and in the language of instruction used in the schools (Romanian). Most of the schools encounter difficulties in bringing in manuals and other teaching supplies from Moldovan controlled territory. These goods are subject to "customs clearances" from the de facto authorities and the schools are obliged to submit an annual inventory of all such materials to the de facto authorities.

## 3. The frequency of settlement talks and their success as well as other forms of EU engagement

The international negotiating format for a resolution of the Transnistria unresolved conflict is the "5+2" format.

This is chaired by the OSCE, with Moldova and Transnistria as the parties to the conflict; Russia and Ukraine as the guarantors/mediators (the 5); and the EU and US as observers (the 2). The last formal meeting of the 5+2 took place in Berlin in June 2016 under the German Chairmanship in Office of the OSCE. The Berlin 5+2 agreed a "small steps" approach intended to focus on a number of lower-level issues which, once resolved, would benefit those living in both Moldova and the Transnistria region. These issues included a "status neutral" format for the vehicle registration plates of Transnistrian



vehicles, restoration of telecommunications links and the recognition by Moldova of diplomas issued by Transnistrian universities.

The Transnistrian side has indirectly linked the resolution of problems related to the Latin-script schools to the recognition of “status neutral” higher education diplomas issued in Transnistria. So far, the sides have not managed to reach a solution. One of the key obstacles used to be the name of the Tiraspol University with the *de facto* Transnistrian authorities insisting that it should be called the “Pridnestrovian State University” (Russian for Transnistria). Chisinau in turn proposed the formulation “Transnistrian Taras Shevchenko University”. Although the Transnistrian side have agreed to drop the word “State” they insist on “Pridnestrovian” which Chisinau refuses to countenance.

There have been no formal 5+2 talks in 2017 under the Austrian Chairmanship in Office of the OSCE. The annual Bad Reichenhall conference on confidence building measures did not take place either.

However, in one sign of progress, Chisinau and Tiraspol are close to agreeing the reopening of the Gura Bicului – Bychok bridge. The bridge was destroyed during the conflict but rebuilt in 2000, with EU financial assistance. As well as the rebuilding of this bridge, the EU is funding a number of projects in the Transnistria region with the UNDP leading on the delivery of these, including work to renovate some of the schools.

4. Other forms of engagement which the EU is currently undertaking as part of its European Neighbourhood Policy to support Transnistrian settlement and to improve the situation of Latin script schools.

The EU Border Assistance Mission to Moldova and Ukraine (EUBAM) was founded in 2005 and is funded from the European Neighborhood and Partnership Instrument. The Mission contributes towards the peaceful settlement of the Transnistrian conflict through the “5+2” process and through its wider technical and advisory work. The Mission has achieved some notable successes in encouraging the free movement of goods and people. In 2012, following proposals from EUBAM reopening transport corridors and railway freight across Transnistria resumed after 6 years’ suspension. The mandate of the Mission has been extended four times (in 2007, 2009, 2011 and 2015) and is currently headed by Andrew Tesoriere a former senior British diplomat and specialist in security, trans-boundary and governance issues. The current work of EUBAM has a strong focus on assisting with the implementation of the EU-Moldova and EU-Ukraine Association Agreements - specifically the Deep and Comprehensive Free Trade Area (DCFTA) elements of these – and in strengthening Chisinau-Tiraspol cooperation in the field of transport, customs and trade, and law enforcement.

As mentioned, the EU participates as an observer in the 5+2 negotiation process on the settlement of the Transnistrian conflict, and it continues to support a comprehensive, peaceful settlement based on the sovereignty and territorial integrity of Moldova with a special status for Transnistria.

The EU has funded some €28 million worth of confidence building measures, delivered by UNDP and designed to foster regional development in the Gagauzia Autonomous Territorial Unit in the south of Moldova, and to facilitate the settlement of the Transnistrian conflict by increasing confidence between Chisinau and Tiraspol through joint initiatives involving local authorities, civil society organizations and other stakeholders from both sides.

5 & 6 Whether the Moldovan Government’s approach to the Transnistrian leadership is in line with the EU’s sanctions; and a current assessment of the effectiveness of the sanctions regime.

In 2003, the EU adopted a sanctions regime against the leadership of the separatist Transnistrian region of Moldova who were obstructing efforts to reach a political settlement. In August 2004, the Council extended the scope of these restrictive measures to the *de facto* officials held responsible for the design and implementation of a campaign of intimidation and closure of the Latin script schools.

After strong condemnation by the international community, the *de facto* authorities withdrew from the schools’ premises, and both sides returned to the negotiating table. Ultimately, five of the six schools on Transnistrian controlled territory received permanent registration in 2005 as non-governmental establishments.

Following a change of leadership in Transnistria at the end of 2011, the EU lifted sanctions against the leadership. All those who had been listed in Annex II of Council Decision 2004/179/CFSP as being responsible for the design and implementation of the intimidation and closure of the Latin script schools in 2004 were dismissed from office by the *de facto* Transnistrian leadership in 2012. However, the EU maintained the sanctions regime in respect of Latin script schools (Council Decision 2012/527/CFSP of 27 September 2012) as a 'blank list' with no individuals subject to sanctions.

Thus far, EU sanctions have proved unsuccessful in the Transnistria context, and have not helped to improve the situation of the Latin-script schools. As previously mentioned, neither the Moldovan Government nor the *de facto* Transnistrian authorities show any real interest in taking substantive steps to address the issue and are content to maintain the status quo. A blank list, with the potential to add listings can have the potential to send a strong signal and the sanctions regime in its entirety will continue to be reviewed, as is the case with all EU sanctions regimes, to determine whether their imposition is having the desired impact.

#### 7. The outcome of the last review, and the current frequency of reviews.

The European External Action Service (EEAS) submit a report on the situation of the schools every 6 months. The last review, in September 2017, found that while no progress in resolving the remaining problems around the Latin-script schools had been made, no significant deterioration of the situation has taken place either.

Thank you again for your letter. I hope you find this broader analysis useful.

8 November 2017

#### **Letter from the Chairman to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

Thank you for your letter dated 8 November regarding the above document. This was considered by the External Affairs Sub-Committee on 16 November 2017. It provides all the necessary information that we requested in order to assess the renewal of the sanctions regime, and we are now content to clear the item from scrutiny.

There is no need to respond to this letter.

16 November 2017

#### **OTNYR COUNCIL DECISION AMENDING DECISION 2014/486/CFSP ON THE EUROPEAN UNION ADVISORY MISSION FOR CIVILIAN SECURITY SECTOR REFORM UKRAINE (EUAM UKRAINE)**

#### **Letter from the Chairman to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

Thank you for your Explanatory Memorandum (EM) dated 1 November 2017. This EM was particularly thorough, and for this reason the document was cleared at the Chairman's sift, expediting the scrutiny process. It was considered by the External Affairs Sub-Committee on 16 November 2017 as an information item only.

There is no need to reply to this letter.

16 November 2017

COUNCIL DECISION AMENDING DECISION 2010/452/CFSP ON THE EUROPEAN UNION MONITORING MISSION IN GEORGIA, EUMM GEORGIA

**Letter from the Chairman to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas, Foreign and Commonwealth Office**

Thank you for your Explanatory Memorandum (EM) dated 23 November regarding the above document. This was considered by the External Affairs Sub-Committee on 7 December 2017.

This item has been cleared from scrutiny, but we have one question, to which we would be grateful for your response.

When explaining the increase in the proposed budget for capital expenditure, the EM states that you “have requested that the old vehicles be put to good use, including donation to EU family members, or harvested for parts, where appropriate.” It is not clear to us what “EU family members” means. Please could you explain who or what this phrase refers to?

We look forward to your response within the usual 10 working days.

*7 December 2017*

**Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

I am writing in response to your question on the Explanatory Memorandum (EM) for the above Council Decision, which was cleared from scrutiny at the External Affairs Sub-Committee on 7 December 2017.

When explaining an increase in the proposed budget for capital expenditure for the EUMM, the EM states that we “have requested that the old vehicles be put to good use, including donation to EU family members, or harvested for parts, where appropriate.” You asked me to clarify what was meant by the phrase “EU family members”.

This means that the vehicles/parts will be used by the other EU missions working in Georgia - the EU Delegation and/or the EU Special Representative’s office - or NGOs working in partnership with them. It is not permitted for EUMM staff to receive or buy old official vehicles.

*18 December 2017*

COUNCIL DECISION AMENDING DECISION (CFSP) 2010/788 CONCERNING RESTRICTIVE MEASURES IN VIEW OF THE SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**Letter from the Chairman to the Rt Hon Sir Alan Duncan, Minister for Europe and the Americas, Foreign and Commonwealth Office**

Thank you for your Explanatory Memorandum (EM) dated 5 December regarding the above document. This was considered by the External Affairs Sub-Committee on 7 December 2017.

As you will be aware, the document was held under examination pending the resubmission of the EM, to address some drafting errors. The Committee Secretariat has worked with your officials to resolve these issues. The revised EM is much clearer. We are now content to clear the item from scrutiny.

There is no need to respond to this letter.

*7 December 2017*

GOVERNMENT RESPONSE TO COMMITTEE REPORT – BREXIT: TRADE IN GOODS

**Letter from the Rt Hon David Davis, Secretary of State for Exiting the European Union, Department for Exiting the European Union, to Baroness Verma**

I would like to thank you for your report *Brexit: Trade in Goods*. I apologise for the delay in responding. The timing of any information we publish is carefully considered in order to ensure the best possible

outcome for negotiations. Our timing and content has also been influenced by the publication of our position papers, '*Continuity in the availability of goods for the EU and the UK*', published on 21 August and the '*Future customs arrangements - a future partnership paper*' published on 15 August, alongside the Florence Speech on 22 September, the publication of the *Customs Bill White Paper* and the paper on *Preparing our future UK Trade policy* on 9 October.

I am grateful to the Committee for examining the key issues facing the UK's goods sectors with regards to our exit from the European Union. I welcome the detailed consideration the Committee has given to these issues, and take note of your recommendations.

As noted in Baroness Anelay's closing remarks to the House in the debate on this report on 18 July, the Government is committed to maintaining the close trading relationship between the UK and the EU. When we leave the EU, the UK will no longer be members of the Single Market or the Customs Union. Instead, we will pursue a new, comprehensive economic partnership with the EU, including an ambitious agreement on trade. That agreement should be of greater scope and ambition than any such existing agreement, covering both goods and services. It should give UK companies the maximum freedom to trade with and operate in the European market, and allow EU companies to do the same in the UK.

The EU is the UK's largest export market, but the UK is also a key market for the EU27. In 2016, the UK exported £145 billion worth of goods to the EU and imported £242 billion worth of goods from the EU. For this reason, we want to see zero tariffs on trade in goods and to minimise regulatory and market access barriers for both goods and services.

We have started negotiations to secure an exit deal in the national interest that works for the whole of the UK. The Government is working to achieve this through a continuing programme of engagement with businesses, Parliament, the devolved administrations and the public to build a national consensus around our negotiating position.

The Government remains committed to engaging with select committees throughout the process of withdrawal. However, I reiterate that we will not publish anything that would undermine the Government's ability to negotiate the best deal in the national interest, nor will we prejudge outcomes that are dependent on negotiations. These principles form the basis of our response to your report.

A formal response to each of the recommendations made in the Committee's report is enclosed herewith. Attached as an annex to this response is the list of sectors used to help structure our analytical work on EU exit. I am placing a copy of the annex in the House libraries. [Not published here.]

30 October 2017

### **Letter from Baroness Verma to the Rt Hon David Davis MP, Secretary of State for Exiting the European Union**

Thank you for your letter of 30 October 2017, enclosing the Government's response to the EU Committee's report *Brexit: trade in goods*. There are a number of issues on which the response does not provide enough information, as follows.

First, the response states that the Government "will seek to transition all existing EU trade agreements and other EU preferential arrangements". Does the Government expect all these transitional deals with third countries to come into effect from 29 March 2019?

Second, the paper reiterates that under the 'highly streamlined customs arrangement model' (in *Future customs arrangements - a future partnership paper*), the UK could implement "unilateral improvements to our domestic regime", but that "the promotion of the free flow of trade ... would require the EU to implement equivalent arrangements at its borders with the UK". What actions is the Government taking to encourage EU countries to implement equivalent measures, and how confident are you that EU countries will do so?

Third, the Committee's conclusion that leaving the EU customs union would result in costly administrative procedures for companies, and delays in consignments of goods, is not addressed in the response. Has the Government undertaken an assessment of the cost implications for businesses under either of the two proposed customs arrangements outlined in *Future customs arrangements - a future partnership paper*, and if not, does it intend to do so, and to what timescale?

Fourth, your response states that “all departments are developing plans to deal with exiting the EU”. We note that the Cabinet was informed on 31 October that an additional 3,000 – 5,000 staff will be recruited by HMRC next year. Did HMRC undertake an assessment on which this staffing figure is based, and if so, which options did it consider?

Fifth, your response states that, of the UK’s imports from third countries, only “8% of goods are identified for further control requiring examination of paper documents or physical inspection.” In preparing for the possibility of a ‘no deal’ scenario—trade between the UK and the EU under WTO rules—what assessment has the Government made of the percentage of goods imports from the EU that would require further examination after Brexit?

Sixth, your response states that the new Customs Declaration Service (CDS) is “on track” and that the contingency plan for any overrun on implementing CDS is to run the existing system, CHIEF, in parallel. However, your response then notes that “CHIEF cannot cope with the full scale of new functionality necessary under the Union Customs Code”, before going on to state that “trade will continue to flow as expected”. These statements seem somewhat contradictory. Which elements of the Union Customs Code (UCC) cannot be handled by CHIEF? What additional contingency arrangements has the Government put in place to manage these UCC elements in the event that CDS is delayed, and only CHIEF is operational?

Seventh, your response on trade promotion is unclear. Please provide us with further information on what is meant by: “global export promotion exercises are prioritised by identifying the sector-market combinations that present the greatest opportunities”. Your response also refers to a study of export-promotion agencies in 2015. Please provide us with the list of countries to which the UK was compared in this regard. Our original question (paragraph 311 of *Brexit: trade in goods*) referred specifically to the comparative staffing of the embassies of European countries, and we would welcome your response on this specific point. Will the Government be increasing the resources available to the Department for International Trade for trade promotion, in the light of the opportunities it has identified?

We look forward to your response within the usual 10 working days.

2 November 2017

## INQUIRY ON COOPERATION ON CSDP AFTER BREXIT

### **Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas, Foreign and Commonwealth Office**

Parliamentary Relations Team passed me the email of 13 October from Eva George regarding your committee’s plan to undertake its next inquiry into co-operation on the CSDP after Brexit, which is likely to begin in January.

Regarding the request for an updated table of the UK’s participation in CSDP missions and operations, please see attached annex [not published here].

31 October 2017

### **COUNCIL DECISION (CFSP) 2017/1342 OF 17 JULY 2017 AMENDING AND EXTENDING DECISION 2013/233/CFSP ON THE EUROPEAN UNION INTEGRATED BORDER MANAGEMENT ASSISTANCE MISSION IN LIBYA (EUBAM LIBYA)**

### **Letter from the Chairman, to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas, Foreign and Commonwealth Office**

Thank you for your letter dated 29 September regarding the above document. This was considered by the External Affairs Sub-Committee on 12 October 2017.

Thank you for the additional information you provided in your letter. We still have two questions, to which we would be grateful for your response.

First, you state that EUBAM continues “planning for a possible future civilian CSDP mission while gaining a better understanding of the priorities for future support.” What progress has been made on the planning of a possible civilian mission to date, given that this was added to EUBAM Libya’s mandate in February 2016? How would the UK like to see the mandate of such a mission differ from EUBAM’s current mandate?

Second, your letter states that the Government agrees “with the EEAS’s assessment of the quality of EUBAM’s reporting and the logistical challenges they have faced”. What specific measures have been taken to address these shortfalls to date, and is the Government confident that these will yield the necessary improvements?

We look forward to your response within the usual 10 working days. In the meantime, we have decided to retain the document under scrutiny.

13 October 2017

### **Letter from the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

Thank you for your letter of 13 October regarding the above document. I am replying to your request for further detail.

*You ask what progress has been made on the planning of a possible civilian mission to date, given that this was added to EUBAM Libya’s mandate in February 2016? How would the UK like to see the mandate of such a mission differ from EUBAM’s current mandate?*

Since incorporating the planning of a possible civilian mission (CSDP) into the EUBAM mandate, EUBAM has taken a number of steps to progress this work despite the significant political and security challenges in Libya. It has expanded its mandate beyond border management to include law enforcement and criminal justice. It has focussed on providing training packages to border management agencies, unifying the security and justice institutions, coordinating counter terrorism strategy development with agencies, and assessing reform plans in the criminal justice sector. Since writing to you in September, ten mission staff were able to travel into Tripoli carrying out EUBAM mission duties. Regular travel to Tripoli has been essential in engaging and assisting Libyan authorities with the mission, whilst fostering Libyan ownership. More staff are planning to travel into Tripoli to support the scoping phase.

These current efforts, focusing on training and building relationships with key national and international partners, will help to lay the building blocks for the future civilian mission. It is not possible at this stage to be too prescriptive about the mandate of the civilian mission, given that it will need to take into account political and security challenges and will take time to develop in detail. As a general approach, the UK encourages all civilian missions to be adaptive and flexible while being focussed on country needs, and to ensure there is genuine country ownership. The current EUBAM team is helping to scope and steer planning for the civilian mission, as well as providing information needed for policy decisions ahead of a CSDP. Any new mission in Libya, or reform of the EUBAM mission to suit Libyan needs following the ongoing mapping, will follow the usual planning stages in Brussels. In particular, any new civilian mission which may follow EUBAM will need wider political approval.

*You ask what specific measures have been taken to address the shortfalls of the EEAS assessment if the quality of EUBAM’s reporting and logical challenges and whether the Government is confident that these will yield the necessary improvement.*

Measures have been taken to address the shortfalls identified by the EEAS assessment of the quality of the EUBAM’s reporting and the logistical changes they have faced. The UK has played a key role in steering the mission’s reporting capacity: we continue to press for detail of the impact and outcome of the scoping mission and visits to Tripoli, in order to help Member States assess the success of the mission. The UK has taken the lead in holding EUBAM to account and has steered the mission towards clearer reporting, reiterating the need to focus on outcomes and impact. Member States expect the next EUBAM report to provide more detail, which will take into account the recommendations made in the recent review.

Member States welcome the regular updates from EUBAM and the mid-year reviews of its performance as a means to monitor the work of the mission. Whilst there is currently no start date for a new civilian mission, EUBAM Member States will work to guide the mission to strengthen preparation efforts,

building on EUBAM's ongoing planning. In order for the mission to deliver its mandate, renewal of the budget is expected before 30 November 2017 (when the current budget expires). We will scrutinise the proposed budget against the mandate. We expect the next Strategic Review in spring 2018 and will report on its findings.

I hope that this response goes some way in reassuring the Committee that the UK remains at the centre of ensuring that EUBAM is accountable for its planning activities, and that we continue to hold EUBAM to account in regular meetings with member states.

*27 October 2017*

**Letter from the Chairman to the Rt Hon Sir Alan Duncan MP, Minister of State for Europe and the Americas**

Thank you for your letter dated 27 October regarding the above document. This was considered by the External Affairs Sub-Committee on 16 November 2017.

Thank you for the additional information you provided in your letter, and your commitment to updating us on the findings of the Mission's next Strategic Review, which we understand will take place in spring 2018. In this regard, we will be particularly interested in the planning for a new mission, and how the Mission has addressed the challenges which you have identified on reporting and logistics in that update.

We are now content to clear the document from scrutiny. There is no need to reply to this letter.

*16 November 2017*

**COUNCIL DECISION (CFSP) 2017/1194 OF 4 JULY 2017 AMENDING DECISION 2013/354/CFSP ON THE EUROPEAN UNION POLICE MISSION FOR THE PALESTINIAN TERRITORIES (EUPOL COPPS)**

**COUNCIL DECISION (CFSP) 2017/1193 OF 4 JULY 2017 AMENDING JOINT ACTION 2005/889/CFSP ON ESTABLISHING A EUROPEAN UNION BORDER ASSISTANCE MISSION FOR THE RAFAH CROSSING POINT (EUBAM RAFAH)**

**Letter from the Chairman, to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas**

Thank you for your letter of 29 September 2017, which was considered by the Committee at its meeting on 12 October 2017.

We are now content to release this document from scrutiny. There is no need to respond to this letter.

*13 October 2017*

**COUNCIL DECISION (CFSP) 2017/1425 OF 4 AUGUST 2017 ON A EUROPEAN UNION STABILISATION ACTION IN MOPTI AND SEGOU**

**Letter from the Chairman, to the Rt Hon Sir Alan Duncan MP, Minister for Europe and the Americas, Foreign and Commonwealth Office**

Thank you for your letter of 29 September, which was considered by the External Affairs Sub-Committee on 12 October.

Thank you for the detailed responses to our questions, and your commitment to keeping the Committee better informed in the future.

We are now content to release this document from scrutiny. There is no need to respond to this letter.

*13 October 2017*

## OVERSEAS TERRITORIES AND THE EUROPEAN UNION COMMITTEE

### **Letter from the Rt Hon Priti Patel MP, Secretary of State, Department for International Development, to Baroness Verma**

Thank you for your letter of 22 September regarding the Government response to Hurricane Irma and Hurricane Maria.

My thoughts are with all those affected by these terrible hurricanes and I witnessed the devastation first-hand during my visit to the region last weekend. The Department for International Development (DFID) is doing all it can to support them.

To date, the UK Government has committed £62 million to support those affected by Hurricane Irma and Hurricane Maria. In addition, DFID will match every £1 donated to the British Red Cross' Hurricane Appeal, up to a total of £3 million, and over a million pounds has been matched so far.

DFID is also doing everything possible to provide practical and technical assistance, including in the badly hit British Overseas Territories of Anguilla, British Virgin Islands and Turks and Caicos. To date, 178.5 tonnes of DFID relief items have either arrived or been procured in the region including much needed food, water, shelter and building materials. We have deployed over 40 UK aid experts in the region and there are now approximately 1300 British military personnel and over 50 police officers in the region helping with the relief effort.

HMS Ocean arrived last week and is currently assisting distribution of supplies and helping reach some of the hardest hit areas. DFID is working closely with colleagues across Government including FCO, MOD, Police, Public Health England and BEIS, and the Governments of Overseas Territories to deploy our supplies and personnel where they are most needed. We have set up a UK Task Force in the region to coordinate the UK Governments efforts in the Overseas Territories.

As you mentioned, distribution is key and DFID is coordinating with and building the capacity of partners in the region, including the Caribbean Disaster Emergency Management Agency, local authorities, the UN, and the Red Cross. Additionally, the UK is engaging with the EU regularly through our European Civil Protection and Humanitarian Aid Operations, which is being delivered through the Emergency Response Coordination Centre.

The UK is in close contact with French and Dutch authorities to ensure adequate help is in the region to coordinate the response, particularly around coordinating the distribution of supplies. The UK sent supplies on a Dutch navy ship and is working with French and Dutch Governments to coordinate use of assets in the region. We are also working with the French, Dutch and UK partners to ensure that we get better at building automatic recovery systems in the Caribbean, so that when disaster strikes we can all respond even faster.

Recovery planning for the Overseas Territories will be the first but important step in the reconstruction process. As we consider recovery, reconstruction and long term development planning for each territory, this will include an assessment of what support will be required, in terms of resource and expertise

DFID is doing everything possible to provide practical assistance to the affected territories and working effectively with the FCO and agencies to ensure that help is delivered where and when it is needed. Thank you for your letter and for your ongoing support.

*6 October 2017*