



House of Commons

European Scrutiny Committee

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# **Eighth Report of Session 2009–2010**

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**Documents considered by the Committee on 20 January 2010,  
including the following recommendations for debate:**

Enlargement Strategy and Main Challenges 2009–2010

CSDP: Piracy off the coast of Somalia

Financial management

Mutual legal assistance in criminal matters between the EU  
and Japan





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## Notes

### Numbering of documents

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

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

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

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

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

### Abbreviations used in the headnotes and footnotes

EC	(in "Legal base") Treaty establishing the European Community
EM	Explanatory Memorandum (submitted by the Government to the Committee)
EP	European Parliament
EU	(in "Legal base") Treaty on European Union
GAERC	General Affairs and External Relations Council
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
RIA	Regulatory Impact Assessment
SEM	Supplementary Explanatory Memorandum

### Euros

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

### Further information

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

Letters sent by Ministers to the Committee about documents are available for the public to inspect; anyone wishing to do so should contact the staff of the Committee ("Contacts" below).

### Staff

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# 1 Enlargement Strategy and Main Challenges 2009–10

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(h) (31024) 14753/09 SEC(09) 1339	Progress Report on Serbia
(i) (31025) 14754/09 SEC(09) 1340	Progress Report on Kosovo <sup>1</sup>

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1 Under UNSCR 1244/99.

<i>Legal base</i>	—
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister’s letter of 12 January 2010
<i>Previous Committee Report</i>	HC 19–xxxii (2008–09), chapter 2 (11 November 2009)
<i>Discussed in Council</i>	7–8 December 2009 General Affairs and External Relations Council (GAERC)
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Document (a) for debate in European Committee B (decision reported on 11 November 2009) Documents (b)-(i) cleared (decision reported on 11 November 2009); further information now provided

## Background

1.1 The main document (which the Committee considered on 11 November last) is the Commission’s “Enlargement Strategy and Main Challenges 2009–2010”. Annex 1 of the Communication is the key points (styled “Conclusions”) in the latest Progress Reports on Croatia, Turkey, Macedonia, Montenegro, Albania, Bosnia and Herzegovina (BiH), Serbia and Kosovo. Individual country progress reports are set out in separate weighty Commission Staff Working Documents (documents 31018–25). All of this is summarised, and commented upon by the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant), in detail in our previous Report.

1.2 In sum, 2009 was seen as: a mixed year for Croatia; a good year for Turkey — still much to do, still hostage to resolution of the Cyprus question, but underlining its strategic significance in regional stability and EU energy security; a good year for Macedonia and Montenegro too. But the historic animosities that so disfigured the Balkans at the turn of the last century continue to bedevil the process of reconciliation, especially in BiH. Bilateral questions are said to be increasingly affecting the enlargement process, and regional cooperation is noted as a particular challenge for Serbia and Kosovo.

1.3 Much attention is again given to the “hardy perennials” of judicial reform and independence, proper functioning of state institutions and effective policies on tackling corruption and organised crime. For his part, the Minister said that strengthening the rule of law “remains a critical challenge — particularly the establishment of independent and impartial judiciaries and adequate measures to tackle corruption and organised crime.” The Commission “emphasises the importance it attaches to these issues and commitment to continuing to support the efforts made by the countries concerned and to monitor the results”, while the Minister said that the Government “believes that conditionality is an important part of the accession process.” He also said that it was “important that the accession process is fair and rigorous, to ensure that each country’s progress is dependant only on meeting the necessary criteria”, and that the Government welcomed the changes that had led “to an improvement in the quality of the enlargement process, including an earlier focus on the rule of law and good governance”. It was, he said, “essential to ensure that these elements are tackled early to resolve problems with corruption, organised crime and weak or ineffective judicial systems.”

1.4 The Minister also summarised the “strategy” component of the Communication for Croatia as follows:

“The enlargement strategy states that Croatia continued to meet the political criteria and make progress in most areas, including intensified efforts in the field of the rule of law. But in some areas progress has fallen behind the indicative road map for reaching the final stages of negotiations set out last year. A dispute about the Croatia/Slovenia border held back accession negotiations. But nonetheless preparations advanced substantially across the board so that technical negotiations are now nearing their final phase. If Croatia is able to meet the criteria then it should be possible to complete negotiations in 2010.

“Reform efforts need to be stepped up in the areas of judiciary and fundamental rights, in particular as regards the independence and efficiency of the judiciary, the fight against corruption and organised crime, minority rights, including refugee return, and war crimes trials. Public administration reform also requires particular attention.

“Croatia also needs to take all necessary steps to settle the issue of access for the International Criminal Tribunal for the former Yugoslavia (ICTY) to important documents. The Government agrees with this assessment. In particular we urge Croatia to do everything possible to demonstrate full cooperation with ICTY.”

## Our assessment

1.5 Despite the emphasis on having improved the accession process, that the Minister said only that “conditionality is an important part” of it was, the Committee felt, in unhappy contrast with the positions set out by the Foreign Secretary in his evidence to us in July, and subsequent correspondence,<sup>2</sup> and the Minister’s own evidence session on 28 October.<sup>3</sup>

1.6 With regard to the new chapter 23 of the accession process, which covers these “governance” issues, the Foreign Secretary noted that when the moment came for the Council to set closing benchmarks, “we and the EU will certainly want to ensure that they set clear requirements for tackling corruption, including a track record of results”. We subsequently asked the Minister for Europe if he agreed that, when it comes to “a track record of results”, Croatia should be required to demonstrate before accession what the Commission is still seeking from Bulgaria and Romania, viz:

- “an autonomously functioning, stable judiciary, which is able to detect and sanction conflicts of interests, corruption and organised crime and preserve the rule of law”;
- “concrete cases of indictments, trials and convictions regarding high-level corruption and organised crime”; and
- a “legal system ... capable of implementing the laws in an independent and efficient way.”

<sup>2</sup> See headnote: (30828) (30829): HC 19–xxvi (2008–09), chapter 22 (10 September 2009).

<sup>3</sup> To be published as HC 1076.

His answer then was an unequivocal: “Yes”. This, the Committee felt, seemed to be a long way from the position he had adopted now.

1.7 Instead, there remained indications of continuing pressure for the conclusion of negotiations on Croatia’s membership application by the end of 2010, despite there clearly being a great deal to be done if conditionality is to be properly adhered to, and to move ahead with Serbia’s Stabilisation and Association Agreement, notwithstanding the continuing freedom of the most egregious fugitive from justice, Ratko Mladic.

1.8 2009 had also seen applications for membership from two further countries at very different stages of development: Albania (where, despite the Government’s support for the Commission being asked to provide a formal Opinion on her application, the further progress needed in the “hardy perennials” was apparently holding up Council agreement) and Iceland.

1.9 Since these documents were to form the basis of a discussion on enlargement at the December GAERC, and “possibly the December European Council”, we recommended that the Commission Communication: “Enlargement Strategy and Main Challenges 2009–2010” be debated in the European Committee prior to the 7–8 December GAERC.

1.10 We cleared documents (b)-(i).<sup>4</sup>

### **The Minister’s letter of 12 January 2010**

1.11 The Minister begins by recalling his evidence to the Committee on 28 October 2009, and says that he would like to inform the Committee of developments on Croatia’s cooperation with the International Tribunal for the Former Yugoslavia (ICTY) and progress on accession negotiations, and continues as follows:

“As the Committee will be aware, the UK and 3 other Member States have put a brake on progress of that part of the accession negotiations dealing with the judiciary and fundamental rights in order to encourage Croatia to improve investigation into the whereabouts of missing documents requested by ICTY prosecutors for the trial of General Gotovina.

“Since September, under new Croatian Prime Minister Kosor there have been several positive developments. A Croatian taskforce was established to investigate the whereabouts of the requested documents. Prime Minister Kosor has been personally involved in efforts to resolve this issue. She has assured us that she is serious about searching for these documents and does not wish to put Croatia’s EU membership at risk over this issue. In December, Croatian authorities raided several addresses including those connected to Gotovina’s defence team and seized hundreds of military documents. Some new material welcome to Brammertz<sup>5</sup> has been provided. Brammertz reported progress to the UNSC on 2 December and to the General Affairs Council on 7 December. Croatia has also asked for outside assistance in order

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4 See headnote: HC 19–xxxi (2008–09), chapter 2 (11 November 2009).

5 Serge Brammertz, the International Criminal Tribunal for the Former Yugoslavia (ICTY) Chief Prosecutor.

to improve its investigation into the whereabouts of the documents requested by Brammertz.

“The Government believes that this recent improvement in Croatian activity and renewed commitment is welcome and should be recognised, and Kosor’s initiative supported, by allowing the chapter to progress to the next stage. We will therefore lift our reserve agreeing that the opening benchmarks (which did not include ICTY conditionality) had been met. If others, as we expect, do likewise, this will allow us to start negotiation on opening the chapter. The EU will invite Croatia to submit its negotiating position and EU member states will negotiate our common position including closing benchmarks (that will cover, amongst other things, the important areas of tackling corruption and reform of the judicial system).

“However, as Croatian investigations and the Gotovina trial are still ongoing and we want to see these positive steps maintained, we will not agree formal opening of the chapter unless Croatia continues constructive cooperation with ICTY Prosecutors. We also aim to secure EU agreement to make full cooperation with ICTY a condition for closing the chapter. We will also continue to raise ICTY cooperation with the Croatian Government in bilateral and other EU contacts.”

## Conclusion

**1.12 The debate in the European Committee will take place on 26 January 2010. We thank the Minister for his further information, which we are reporting to the House both because of the widespread interest in the issues dealt with in the Minister’s letter and also for the benefit of Members who may wish to participate in the debate.**

## 2 CSDP: Piracy off the coast of Somalia

(31259)	Draft Council Decision on a European Union military mission to contribute to the training of Somali Security Forces
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<i>Legal base</i>	Articles 28 and 43(2) TEU; unanimity
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 19 January 2010
<i>Previous Committee Reports</i>	None; but see (31174) 16450/09: HC 5–iii (2008–09), chapter 19 (9 December 2009); also (30982) —: HC 19– xxvii (2008–09), chapter 29 (14 October 2009); see (30724) — and (30728)—: HC 19 xxiii (2008–09), chapter 9 (8 July 2009) and (30341) —, (30348) — and (30349) —: HC 19–iv (2008–09) chapter 17 (21 January 2009); (30400) 13989/08: HC 16–xxxvi (2007–08), chapter 17 (26 November 2008) and HC 16–xxxii (2007–08), chapter 10 (22 October 2008); and (29953)—: HC16–xxx (2007–08), chapter 19 (8 October 2008)
<i>To be discussed in Council</i>	25 January 2010 Foreign Affairs Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; for debate in European Committee B

### Background

2.1 In response to growing international concern over the problem of piracy off the coast of Somalia, the United Nations Security Council adopted Resolution (UNSCR) 1816 (2008) in June which encouraged “States interested in the use of commercial maritime routes off the coast of Somalia, to increase and coordinate their efforts to deter acts of piracy and armed robbery at sea”. Then, on 7 October 2008, the Security Council unanimously adopted UNSCR 1838, which was initiated by France and co-sponsored by 19 countries (Belgium, Croatia, the US, UK, Italy, Panama, Canada, Denmark, Spain, Greece, Japan, Lithuania, Malaysia, Norway, the Netherlands, Portugal, Korea and Singapore).

2.2 Our previous reports set out the history of the European Union’s endeavours to address this problem, leading to the creation of the first ESDP naval operation, Operation Atalanta, and subsequent developments.<sup>6</sup>

2.3 These include, in January 2009, an Explanatory Memorandum from the then Minister for Europe, giving “an overview on decisions made to facilitate the progress of Operation Atalanta” and incorporating a Joint Action launching the operation and two Council Decisions on Status of Force Agreements with both the Somali Republic and Djibouti.

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6 See headnote.

#### 2.4 Subsequent reports have covered:

- an exchange of letters between the EU and Kenya that give the right to enter and freedom of movement within the territory (including territorial waters and airspace) of Kenya “strictly limited to the necessities of the operation”;
- a further EU-Kenya agreement on the handover of pirates for trial;
- a Status of Forces Agreement (SOFA) with the Seychelles, allowing the EU to freely enter territory (including territorial waters and airspace) of the Republic of the Seychelles and the right to detain pirates in the Republic of the Seychelles waters;
- an agreement to allow the transfer of persons detained by EUNAVFOR in connection with armed robbery and associated seized property to the Seychelles for the purpose of investigation and prosecution;
- information on attempted and successful attacks with regard to the year to 9 June 2009, noting that the ratio of successful attacks in the Gulf of Aden had reduced from 1 in 3 at the end of 2008 to about 1 in 8 for most of the year to date and 1 in 11 in May, but also that these international effort may have had effect of pushing pirates to operation further South East including in Seychelles waters;
- a new piracy resolution (UNSCR 1851) adopted by the Security Council on 16 December 2008, which called for the establishment of an International Contact Group on Piracy off the Coast of Somalia (CGPCS), and gave details of the work upon which the CGPCS had embarked;
- agreement in May that, having reached Initial Operation Capacity (IOC) on 13 December 2008 and being intended to last until 13 December 2009, Operation Atalanta should be extended for a further 12 months, and that the revised Joint Action to extend the operation would be prepared and submitted to the Committee “after the summer”;
- conclusions adopted by the 15 June GAERC that:
 

“Operation ATALANTA had demonstrated its ability to act effectively against piracy, that piracy off the coast of Somalia was likely to remain a serious threat beyond Operation ATALANTA’s current end date of 13 December 2009, and that early agreement on extending the operation would facilitate the necessary force generation. In this context, the Council agreed that Operation ATALANTA should be extended for one year from its current end date”<sup>7</sup>
- the previous Minister for Europe’s views on the achievements, failings and lessons learned so far in the mission’s first year, which said that a more detailed review would be undertaken at the end of ATALANTA’s first year in December 2009;
- action the Government and the EU had taken during the year of operation to address the root causes of the immediate problem, which looked ahead to a regional needs

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7 See Council Conclusions at [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/gena/108452.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/gena/108452.pdf).

assessment to Kenya, Ethiopia and Djibouti that was to take place in early September, to be led by the UK and with the UN, US, EC and France also be taking part.

— a Council Decision amending the existing Joint Action to extend Operation ATALANTA for a further 12 months until 12 December 2010 and to include:

- monitoring of fishing activities off the coast in Somalia;
- the need for Operation Atalanta to liaise and cooperate with international bodies working in the region; and
- assisting the Somali authorities by sharing information on fishing activities;

2.5 In his accompanying Explanatory Memorandum of 25 November 2009 on this most recent Council Decision, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) went on to note that, although 2009 had witnessed an increase in the number of pirate attacks, the actual number of successful attacks has reduced significantly, especially in the critical Gulf of Aden transit artery; but also that the threat of piracy had not diminished, continued to pose a threat to international shipping, and had resulted in an increase in pirate attacks in the much broader Somali basin. The Minister also illustrated ways in which the UK continued to provide a direct contribution to a number of international efforts to counter piracy.

2.6 The Minister also subsequently sent the Committee two letters, of 27 November and 7 December 2009, which in various ways sought to respond to the Committee’s request for information on what action was being taken to deal with the circumstances that had led to the piracy problem, and both of which are set out in detail in our most recent Report.

## Our assessment

2.7 Against this background, we drew the Minister’s attention to a relevant letter published by “The Times” on 5 December 2009 from the Prime Minister of the Transitional Federal Government of Somalia (which we again reproduce at Annex 1 to this chapter of our Report). Though it seemed that a response to his first point — “The help we need is first in the restoration of both effective government and the training of national security forces required to secure peace and enforce laws” — was under discussion, it was not clear to what extent the other two — restoring and enforcing Somalia’s economic exclusion zone and a large scale civil affairs programme — were being addressed.

2.8 We therefore asked that, in his promised further letter, the Minister included his assessment of the extent to which:

- the activity to which he had referred in his letter of 7 December;
- the proposals under discussion within the EU to train Somali security forces; and
- what was contained in the Council Decision, particularly with regard to fishing activities

responded to the points made by the Prime Minister of the Transitional Federal Government in his letter.

2.9 We also asked for information on how much the UK had paid so far towards the cost of the operation, i.e., the UK share of common costs thus far and the cost of the “direct contribution to a number of international efforts to counter piracy” to which the Minister had referred.

2.10 In the meantime, we cleared the document, which we drew to the attention of the House because of the widespread interest in the situation that it was endeavouring to tackle and the UK role in it.<sup>8</sup>

2.11 For the same reasons we also drew it to the attention of the Foreign Affairs and Defence Committees.

### The Minister’s letter of 9 December 2009

2.12 In his further letter, the Government had been discussing with partners how the EU could increase its commitment to Somalia in a variety of areas, including reinforcement of Somalia’s capacity to manage security challenges; this, he said, was reflected at the General Affairs and External Relations Council on 17 November 2009 where a crisis management concept was adopted concerning a possible CSDP training mission for the Somali security forces. Closer analysis was, he said, currently being undertaken with research and planning expected to continue into next month. He continued as follows:

“A CSDP mission could make a useful contribution to increased international action on Somalia. We believe that the UK should work with the international community and regional partners and welcome further planning of this possible EU mission. However, we have been clear that our agreement to continue planning should not prejudice any future decisions regarding whether or not to agree to the Mission. We need to be fully convinced that, if launched, it will be workable and contribute to progress in Somalia.”

2.13 The Minister then went on to note that:

“Somalia is a failed state and has been for nearly two decades. A protracted conflict has been caused by a breakdown in the rule of law and frequent conflicts at national and local level. This has resulted in a humanitarian crises, increased migration, and the growth of terrorism and piracy. There is no ‘easy fix’ and no state can deliver progress in Somalia alone. The UK Government therefore believes that the international community (including regional actors) needs to engage effectively and develop a common approach. A CSDP mission could make a useful contribution to increased international action on Somalia.”

2.14 Finally, the Minister said that the Government, the EU as a whole and the UN fully supported the UN-led Djibouti process,<sup>9</sup> which he believed must provide the basis for a lasting and stable political settlement:

<sup>8</sup> See headnote: see (31174) 16450/09: HC 5–iii (2008–09), chapter 19 (9 December 2009).

<sup>9</sup> According to the Institute for Security Studies, the Djibouti peace process, which began in May 2008, was started following the failure of the Transitional Federal Government (TFG) to consolidate itself into an all-inclusive national government embraced by all Somalis, came in the midst of a deteriorating security and humanitarian situation following the forcible ouster of the Union of Islamic Courts (UIC) by Ethiopia, and was driven by the realization that

“We support the efforts of the Transitional Federal Government of Somalia (TFG) and welcome signs of progress made to achieve peace and stability. Progress towards peace and security in Somalia must be a Somali-led process, but the UK coordinates closely with the UN and the rest of the international community.”

## The draft Council Decision

2.15 In his Explanatory Memorandum of 19 January 2010 — which he says “sets out the legal basis for this EU action, an explanation for why this is being carried out at an EU level and why this is believed to be a positive contribution to the Somali peace process” — the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) says that, since the decision to adopt a crisis management concept, planning work has been undertaken, including the development of a military strategic option and a reconnaissance mission to Uganda. He then goes on to outline the proposed EU military mission set out in the draft Council Decision as follows:

“The proposed mission, EUTRA Somalia, would contribute to strengthening the Somali Security Forces through the provision of military training. The mission would be time-limited (one year) and would enhance an ongoing Ugandan training mission. It would train 2,000 Transitional Federal Government troops in Uganda and it would focus on initial training, training for leaders and training for units up to and including platoon level to complement the existing training programmes. The EU would provide instructors for specialist training. These instructors would come from several Member States and rotate over a period of one year.

“The EU Headquarters, intended to perform the functions of both Operational Headquarters and Force Headquarters, would be based in Uganda, with a liaison office in Nairobi and a support cell in Brussels. The Mission would need partners (including the US) to assist the EU by providing (in particular lethal) equipment and pay.”

2.16 The Minister notes that the Decision is in draft form and is still being discussed by the Commission’s External Relations Directorate, DG RELEX, and that discussions will continue on 21 January. He says that he does not expect any significant changes to be made to the draft text, but draws attention to Article 1, which is set out below:

“Article 1

“Mission

“1. The European Union (EU) shall conduct a military mission, hereinafter called [“...”] in order to contribute to strengthening the TFG as a functioning government serving the Somali citizens. In particular, the objective of the EU military mission shall be to contribute to strengthening the Somali Security Forces through the provision of military training and to contribute to a holistic and sustainable perspective for the development of the Somali Security Sector, without prejudice to other security-related actions, and the other actors in

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the Somali crisis would not be resolved without a negotiated settlement involving the Islamist groups, who denied foothold to the TFG in most parts of Somalia. For information on the Djibouti process, see [http://www.iss.co.za/index.php?link\\_id=29&slink\\_id=7229&link\\_type=12&slink\\_type=12&tmpl\\_id=3](http://www.iss.co.za/index.php?link_id=29&slink_id=7229&link_type=12&slink_type=12&tmpl_id=3).

the international community, in particular, the United Nations, the African Union and the United States.

“2.The EU military training carried out to that end shall take place mainly in Uganda, in accordance with the political objective of an EU mission to contribute to the training of Somali Security Forces, as defined in the Crisis Management Concept approved by the Council on 17 November 2009. An element of this EU military mission will also be based in Nairobi.”

2.17 The Minister says:

“The key issues on which discussions have focused are: expanding the objectives set out in Article 1 to include reference to how the Mission supports Ugandan training efforts; detailing the specialist nature of the training aimed at troops; and discussing the need for further thought to be given to the Mission’s end date or end state, retaining the need for some flexibility. The UK would support the inclusion of these points.”

2.18 The Minister then addresses the question of *Subsidiarity*, as follows:

“The EU, working with the wider international community, is seeking to contribute to the strengthening of the Transitional Federal Government (TFG) as a functioning government able to deliver basic services to the population.

“Despite some differences of emphasis, the international community shares a broad analysis of Somalia’s problems and possible solutions (for example, the need for the process to be Somali-led, the need for political outreach, support for the TFG and the African Union’s peacekeeping force: AMISOM). EU Member States, with a significant Somali diaspora, are increasingly interested in Somalia and are looking for ways in which to positively engage with the peace process.

“This CSDP Mission presents EU Member States with the opportunity to share costs and to work together to create a Mission with a greater effort and enhanced result than if each country was working towards the same goal individually. For the UK the ability to leverage international resources for an area we are interested in has benefits for our foreign and security policy. We have worked with the international community and regional partners to influence and shape this mission, ensuring that it is a well-organised initiative with an increased chance of delivering positive results.

“This CSDP Mission is an example of how the Lisbon Treaty will allow the EU to be a more effective international player. This approach is fully in line with the intentions behind the European External Action Service to have a foreign policy structure which is more coherent and able to develop policy on a more consistent basis — getting the collective voice of the EU heard throughout the world — and supports the UK objective to develop effective international organisations, above all the UN and EU.”

## The Government’s view

2.19 The Minister says that Somalia is a high priority for the UK:

“We have concerns about migration, terrorism and piracy and a large Somali Diaspora living in the UK. Instability in Somalia is a severe threat to regional and international peace, security and development, and it exacerbates the suffering of its people. The UK is already involved in EUNAVFOR, operation to tackle piracy off the coast of Somalia.”

2.20 He describes the UK approach to Somalia as “supportive of the UN-led Djibouti Peace Process which resulted in a new Transitional Federal Government of Somalia in January 2009 and looks to take the peace process forwards towards elections in 2011”, and continues as follows:

“The UK is committed to supporting the Transitional Federal Government, encouraging and supporting the political progress on an inclusive and peaceful solution under the Djibouti Process, and the international community to build a peaceful and stable Somalia. Now is an opportune time to take action — the Transitional Federal Government has maintained its position, resisting challenges from armed groups in Mogadishu, and has made head-way in efforts at political reconciliation and outreach. The CSDP Mission would develop the ability for the Transitional Federal Government to manage its own security in the longer term and to focus on building up infrastructure and government institutions within a more secure environment.”

2.21 The Minister then turns to the question of timing:

“The timing of EU support is crucial — the next training programme of Somali Security Forces in Uganda begins on 1 May. By agreeing to the launch the EU will be able to further plan and prepare work for the Mission and the UK will be able to continue shaping the Mission, ensuring that it makes a positive contribution. We remain concerned that the absorption arrangements, including payment and command structure, have not yet been fully addressed. The UK will give a strong political statement at the FAC on 25 January, committing the EU to resolve outstanding concerns before training begins and we will work with EU Member States, the Commission and other interested states to ensure full arrangements are in place before the training commences.”

2.22 On the Mission itself, the Minister says:

“The Mission is small, looking to support and enhance existing Ugandan-led training. The Ugandans, veterans of Mogadishu, have a clear idea of what will work in Somali culture and are in an excellent position to work alongside EU trainers. The Mission supports the African Union’s peacekeeping mission to Somalia (AMISOM). By focusing on the need to ‘train the trainer’ the benefits of the training are extended beyond the Mission’s timeframe as trainers are given the capability that will endure beyond the end of the mission. The training will take place outside Somalia, taking account of the security situation and its impact on the safety of EU instructors.”

2.23 With regard to the wider picture, the Minister says:

“Constructive and co-ordinated engagement in Somalia as part of a comprehensive approach is critical. The UN takes the lead internationally on Somalia. Action to be

undertaken in relation to Somalia needs to respect the resolutions of the UN Security Council and the measures that it has put in place. This CSDP mission would involve close EU cooperation and coordination with the African Union (AU), the UN and other relevant partners and is consistent with wider work on Somalia Security Sector Reform. The Mission would meet the emerging recommendations from the Joint Needs Assessment on Security Sector Reform. The Transitional Federal Government, the UN Political Office of Somalia (UNPOS), the EU, the United States and other international actors were all involved in producing this Needs Assessment.”

2.24 Finally, on the *Financial Implications*, the Minister says that an accurate assessment of costs is still being finalised:

“However, the reference amount for this ESDP training mission, covering the operation’s specific requirements, is estimated at 4.8 million euros for a 12 month period. This cost estimate can be broken down as 1.3 million euro towards the HQ, 1 million euros towards infrastructure for EU instructors, 0.7 million euros towards medical services, 0.2 million euros towards medevac, 1.1 million Euros towards training facilities (if this is not eligible for funding under the Africa Peace Facility), and 0.5 million euros towards additional infrastructure.

“The UK share from Assessed Costs would be around £700,000 for 2010/11 under the Athena mechanism (or about £550,000 subject to access to the Africa Peace Facility to cover a proportion of the costs intended for infrastructure). Athena costs would be taken from Tri-Departmental Peacekeeping Budget. Our work to influence the shape, size and length of the mission should help to minimise costs.”

## Conclusion

2.25 We have no wish to stand in the way of this process. But a number of questions arise:

- In his 9 December 2009 letter, the Minister said that he would need to be fully convinced that, if launched, a CSDP mission will be workable and contribute to progress in Somalia. Given the general impression that the TFG does not control the whole of Mogadishu, let alone the country, the question inevitably arises as to whether it is possible to be thus convinced.
- There are already hints that this mission will not be ended in 12 months time, given that the draft text says that the Mission “shall terminate when 2000 Somali recruits are trained up to and including platoon level, including appropriate modular specialised and training for officers and non-commissioned officers” — the feasibility of which in 12 months, in all the circumstances, must be open to question.
- When the Minister says that the Mission “would need partners (including the US) to assist the EU by providing (in particular lethal) equipment and pay”, what does he mean? What lethal equipment? And pay to whom for what?

- As well as contributing to strengthening the Somali Security Forces through the provision of military training, the draft text says that the Mission’s other objective will be “to contribute to a holistic and sustainable perspective for the development of the Somali Security Sector”. It is by no means clear what “a holistic and sustainable perspective” is. Nor what is meant in practice by the requirement to fulfil these objectives “without prejudice to other security-related actions, and the other actors in the international community, in particular, the United Nations, the African Union and the United States.”
- In his most recent letter, the Minister said that he believed “that the international community (including regional actors) needs to engage effectively and develop a common approach.” Are they so engaging? If so, with whom, and in what ways? What common approach is being developed?

2.26 We note that this proposal is to be discussed at the Foreign Affairs Council on 25 January, and no doubt the Minister will not wish to delay progress. We also note that a further Council Decision will be required in order to launch the Mission following approval of the Mission plan.

2.27 We recommend that, the forthcoming Foreign Affairs Council discussion notwithstanding, this Council Decision should be debated in European Committee B, to give the House an opportunity to pursue these and other questions that interested Members may wish to raise, and the Minister to respond to those of our earlier questions that remain unanswered (c.f. paragraphs 0.7–0.9 above). We ask that this debate be arranged before any further related Council Decision is put forward for scrutiny.

2.28 As before, we are also drawing this chapter of our Report to the attention of the Foreign Affairs and Defence Committees.

## **Annex 1: Letter to “The Times” from the Prime Minister of the Transitional Federal Government of Somalia**

“Sir, Clare Lockhart’s article (“At last. Obama’s vision offers hope for all sides”, Opinion, Dec 3) marks a sea change in international support to troubled countries. What is so startling is that all the conclusions are as true about Somalia as they are about Afghanistan.

“We accept that after 20 years without government, the situation in Somalia will appear beyond repair but the reality is very different. Piracy and the growth of Islamic extremism are not the natural state of being. They are but symptoms of an underlying malaise — the absence of government and hope.

“Regional stability is increasingly at stake as Islamic extremism and the piracy problem grows and my government is working hard with your Foreign and Commonwealth Office

to present and initiate our Somali lead strategy that will help the Somali people themselves to bring Somalia back from the brink.

“The help we need is first in the restoration of both effective government and the training of national security forces required to secure peace and enforce laws.

“Second, in restoring and enforcing Somalia’s economic exclusion zone so that Somalia can use its vast potential wealth in fish, oil and gas to fund its own future. Our fishermen currently watch as other countries plunder our waters. While we condemn it outright, it is no wonder these angry and desperate people resort to “fishing” for ships instead.

“And third, in launching a large scale civil affairs programme to train our young people and establish legitimate commercial livelihoods.

“You have employed these same principles to great effect in other conflict-ridden countries (that harbour terrorists threatening UK national security) such as Northern Ireland, Iraq and Afghanistan, so why not here too? The irony is that it would cost only a quarter of what is being spent right now on the warships trying to combat piracy, to fund our plan and actually solve the problems rather than simply chasing them round the Indian Ocean.

“Omar Sharmarke

Prime Minister, Transitional Federal Government of Somalia”

### 3 Financial management

(31201)	European Court of Auditors: <i>Annual report on the implementation of the budget</i>
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<i>Legal base</i>	—
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister’s letter of 18 January 2010
<i>Previous Committee Report</i>	HC 5–iv (2009–10), chapter 2 (15 December 2009)
<i>To be discussed in Council</i>	February 2010
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	For debate in European Committee B together with the Commission’s 2008 report on the fight against fraud and related documents, which we have already recommended for debate (decision reported on 15 December 2009)

## Background

3.1 The European Court of Auditors (ECA) is responsible for the external audit of the Community's public finances. It examines the legality, regularity and soundness of the management of all the Community's revenue and expenditure, and the revenue and expenditure of any body (agencies etc) created by the Community. In December 2009 we recommended, as is customary, the ECA's Annual Report on activity carried out under the General Budget in 2008, for debate in European Committee, together with other documents relevant to financial management.

3.2 In reporting that decision we noted that we would be receiving a copy of the Government's official response for the Commission in relation to the ECA's references to the UK in its report.<sup>10</sup>

## The Minister's letter

3.3 The Economic Secretary to the Treasury (Ian Pearson) has now been able to send us that response.

## Conclusion

**3.4 We are grateful to the Minister for this information, which will be of interest to those Members taking part in the forthcoming debate and which will be included in the debate pack.**

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<sup>10</sup> See headnote.

## 4 Mutual legal assistance in criminal matters between the EU and Japan

(a) (31239) 17708/09 COM(09) 706	Draft Council Decision on the conclusion of the Agreement between the European Union and Japan on the mutual legal assistance in criminal matters
(b) (31258) 15921/09 —	Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and Japan on the mutual legal assistance in criminal matters
(c) (31257) 15915/09 —	Agreement between the European Union and Japan on the mutual legal assistance in criminal matters

<i>Legal base</i>	Article 82(1)(d) and 218(6)(a) TFEU; QMV; consent
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 19 January 2010
<i>Previous Committee Report</i>	None; but see (31123) — HC 5–ii (2009–10), chapter 2 (25 November 2009)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	(a) For debate in European Committee B (rescinding decision reported on 25 November relating to (31123)) (b) and (c) cleared

### Background

4.1 The purpose of the Agreement is the provision of mutual legal assistance between EU Member States and Japan in connection with criminal proceedings. Mutual legal assistance covers all aspects of investigating and prosecuting crime, including taking witness statements; obtaining evidence, including through execution of search and seizure; serving court documents; assisting with the freezing or seizure and confiscation of proceeds of crime, and “any other assistance permitted under the laws of the requested State and agreed upon between a Member State and Japan” (see Article 3(1)(k) of the Agreement). The Agreement applies to the territories of Japan and EU Member States, and “territories for whose external relations a Member State has responsibility” where agreed upon by an exchange of diplomatic notes by all parties. It does not, however, apply to extradition, transfer of proceedings in criminal matters and enforcement of sentences other than confiscation.

## The Documents

4.2 The Council Decision to sign the Agreement is document 31258; the signed Agreement document 31257. The Council authorised the signing of the Agreement on 30 November 2009. We reported on the draft Agreement in detail on 25 November.<sup>11</sup> In the unnumbered EM that was submitted on the draft Agreement, the Minister of State at the Home Office (Mr. Phil Woolas) explained that certain changes were going to be made at the request of the UK. These have been made and are minor: they do not affect the Committee’s view of the political or legal importance of the document. The proposal for a Council Decision to conclude the Agreement is document 31239.

## Legal base

4.3 With the entry into force of the Lisbon Treaty on 1 December 2009, the procedures to be followed for conclusion of the Agreement are governed by Article 218 TFEU. Article 218(6)(a) TFEU states that in the case of agreements covering fields to which the ordinary legislative procedure applies, the Council shall adopt a decision concluding the agreement, after obtaining the consent of the European Parliament. Article 82(1)(d) TFEU allows the Council and the European Parliament to adopt, by means of the ordinary legislative procedure (formerly “co-decision”), measures to “facilitate cooperation between judicial or equivalent authorities of the member States in relation to proceedings in criminal matters and the enforcement of decisions”. Once the Agreement is concluded, the Government will have to decide whether to opt into it.

## Previous consideration

4.4 In our previous Report we concluded as follows:

“We recognise the benefit of this draft Agreement is that it will extend the scope for cooperation in the investigation and prosecution of crime both in the UK, throughout the EU, and Japan, in circumstances where current cooperation with Japan is limited.

“Whilst many of the provisions of the Agreement are standard terms derived from previous mutual legal assistance conventions, we are concerned that the “Fundamental Rights Analysis” in the Minister’s Explanatory Memorandum did not address the Government’s policy on assistance provided to Japan for criminal offences which attract the death penalty. This is mentioned in Article 11 of the Agreement as a possible ground for refusing to provide assistance, but the Minister is silent on his approach to this Article. Similarly, the Explanatory Memorandum should in our view have addressed the absence of a dual criminality test in the Agreement. Whatever the explanation such an oversight is concerning, particularly with regard to the question of the death penalty.

“In our view the draft Agreement raises important political and legal questions about the context in which the UK should provide assistance to countries in the

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<sup>11</sup> See headnote.

investigation of serious crime. We therefore recommend it be debated in European Committee B, until which time it be held under scrutiny. The debate should centre on the two aspects of concern identified in this Report: the absence of a dual criminality test and assistance given for offences which attract the death penalty in Japan. The debate should take place before the Council decision to conclude the Agreement under Article 82 TFEU and before the Government decides whether to opt in or not.

“However, whilst retaining the draft Agreement under scrutiny, under paragraph (3)(b) of the Scrutiny Reserve Resolution we consent to the Minister giving his agreement to the Council Decision on the signature of the draft Agreement by the Presidency in the JHA Council on 30 November.”

### **The Government’s view**

4.5 The Minister has submitted a new Explanatory Memorandum on the proposal for a Council Decision to conclude the Agreement, dated 19 January 2010.

### ***Impact on United Kingdom law***

4.6 The Minister explains that compliance with the obligations arising under the Agreement will not require any changes to UK primary legislation, but in order to provide assistance in accordance with Article 18 (bank accounts) of the Agreement it will be necessary to designate Japan as a participating country for the purposes of sections 31, 32, 35, 37, 40, 43, 44 and 45 of the Crime (International Co-operation) Act 2003 prior to the Agreement coming into force. Designation for these purposes would be by affirmative order. Section 32 in England, Wales and Northern Ireland and section 37 in relation to Scotland enables the UK to provide information about UK bank accounts relating to a person who is the subject of an investigation in a participating country. Section 43 provides for the UK to make such requests to a participating country. Section 35 provides for a specified bank account in England, Wales or Northern Ireland to be monitored during a specified period of time upon request by a participating country. Section 40 makes similar provision in relation Scotland. Section 44 provides for such requests to be made by the UK to a participating country. Section 45 provides that all outgoing requests falling under sections 43 and 44 must be transmitted via the Secretary of State (or the Lord Advocate in Scotland). The Home Office and Scottish Executive will be the departments responsible for making these legislative changes.

4.7 The UK is fully compliant with all other provisions found in the Agreement.

### ***Fundamental Rights Analysis***

4.8 The Minister is satisfied that compliance with the EU-Japan Agreement will not give rise to any breach of fundamental rights. While the EU-Japan Agreement provides a framework for the provision of criminal mutual legal assistance between the EU and Japan he stresses that when providing MLA the UK is *always* bound (by virtue of section 6 of the Human Rights Act 1998 (the HRA 1998)) to ensure that any such decision is consistent with rights accruing under the European Convention on Human Rights (ECHR). Article

10(2) of the agreement itself also makes it clear that a request for MLA can only be executed using measures that are in accordance with the laws of the requested state. The HRA 1998 makes it clear that public authorities in the UK must act in accordance with the ECHR.

4.9 The Minister repeats the points he made in his earlier Explanatory Memorandum on coercive measures and giving of evidence, including transferral of detained persons to Japan. We reported on these in November.

4.10 In relation to bank records and asset freezing/confiscation he states as follows. Article 18 of the Agreement enables one party to request the other to ascertain whether banks within their territory possess information on whether a suspect is the holder of an account and to produce records of any such accounts or transactions. To the extent that these powers interfere with the Article 8 ECHR right to private and family life he is of the view that any such interference would be proportionate having regard to the legitimate interest in combating crime. Article 25 allows one party to the Agreement to assist another in the freezing, seizure and confiscation of the proceeds or instrumentalities of crime. While such action would plainly touch upon fundamental rights, Article 25 is clear that such assistance may only be provided in accordance with the law of the requested state. The UK would, therefore, only be allowed to provide this assistance where compatible with the ECHR.

4.11 In answer to the concerns we raised about the application of the death penalty in Japan, the Minister states as follows:

“In considering the compatibility of the Agreement with fundamental rights, it is also important to note that Article 11 of the Agreement allows assistance to be refused where there are grounds for concluding that the request for assistance has been made for the purpose of persecuting or punishing a person by reason of race, religion, nationality, ethnic origin, political opinions or sex, or where there are grounds for concluding that their position might otherwise be prejudiced for one of those reasons. Furthermore, while Japan continues to impose the death penalty in certain cases, Article 11(1)(b) makes it clear that a request for assistance *could* be refused in a case where the death penalty may be imposed.”

4.12 The Explanatory Memorandum does not address the absence of a dual criminality test.

## Conclusion

**4.13 We thank the Minister for the additional Explanatory Memorandum, but note that it does not address in any detail the points we raised in our Report of 25 November, when we recommended the Agreement for debate in European Committee B. That debate is to take place on 2 February.**

**4.14 Since we last reported, the signed Agreement has been deposited. This, rather than the draft Agreement, should be the document debated. We therefore rescind our decision of 25 November to refer for debate the Council Decision on the signing of the Agreement, which incorporated the draft Agreement in an annex. In its place, we refer the signed Agreement (31239) for debate in European Committee B.**

4.15 Finally, we ask the Minister to confirm whether the Government will opt into the Agreement once concluded.

## 5 Value added taxation

(31234) 17760/09 COM(09) 672	Draft Council Regulation laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (Recast)
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<i>Legal base</i>	Article 397 of the VAT Directive; — ; unanimity
<i>Document originated</i>	17 December 2009
<i>Deposited in Parliament</i>	6 January 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 13 January 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

### Background

5.1 In 2006, Council Directive 2006/112/EC, the VAT Directive, which entered into force on 1 January 2007, consolidated the legislation governing value added taxation in the EU.<sup>12</sup> Article 397 of the VAT Directive says “The Council, acting unanimously on a proposal from the Commission, shall adopt the measures necessary to implement this Directive.” Article 398 establishes “the VAT Committee”, a Commission–chaired advisory body, to examine questions raised by the Commission, or Member States, in order to agree how the provisions of the Directive should be applied, where there is some doubt.

### The document

5.2 With this draft Regulation the Commission proposes a recast (that is codification, or consolidation, together with some substantive amendment) of Council Regulation (EC) No 1777/2005, which prescribed the implementing measures for the pre-2007 VAT legislation.<sup>13</sup> The aim of the proposal is to provide clear and uniform interpretation of selected areas of the VAT Directive.

5.3 In addition to recasting the measures in Council Regulation (EC) No 1777/2005 to reflect the structure and numbering of the VAT Directive, there are articles in the proposal

<sup>12</sup> (25558) 8470/04: see HC 42–xx (2003–04), chapter 23 (18 May 2004).

<sup>13</sup> (26014) 13394/04: see HC 42–xxxv (2003–04), chapter 12 (3 November 2004).

derived from guidelines as to how the VAT Directive’s provisions should be interpreted, which have been unanimously, or nearly unanimously, agreed by Member States in the VAT Committee. New measures proposed are of three types:

- Guidelines agreed within the last year that are directly linked to the changes to the rules for “place of supply” in Council Directive 2008/8/EC, which entered into force on 1 January 2010<sup>14</sup> — there are 30 of these, forming by far the largest and most significant category of measures;
- four Guidelines relating to different elements of the VAT Directive which were agreed in the VAT Committee prior to adoption of Council Regulation (EC) No 1777/2005, but which for various reasons were not included within it; and
- four Guidelines relating to different elements of the VAT Directive which have been agreed in the VAT Committee since adoption of Council Regulation (EC) No 1777/2005.

### The Government’s view

5.4 The Financial Secretary to the Treasury (Mr Stephen Timms) comments first that the primary objective of the proposal is to facilitate the smooth entry into force of the “place of supply” changes and provide certainty for business and that, in effect, it puts in place further detail to support the implementation of those changes and is thus a continuation of that work. He says that, although this is broadly welcome and the Government supports the objectives in principle, it has identified a small number of issues on which it proposes to undertake some further analysis and consult with UK business. The Minister adds that the Government:

- also needs to ensure sufficient time is built into the discussions of the proposal to enable the detail to be tested against commercial transactions undertaken under the new “place of supply” rules, before being finally consolidated into a legally binding Regulation; and
- will therefore continue to work with business to monitor what happens in practice and to obtain a clearer picture on these issues.

5.5 Turning to other new provisions in the draft Regulation the Minister says that these, which the Government supports, cover a range of topics which broadly reflect the Government’s existing approach or which provide welcome clarifications. He gives as an example defining the elements of a body to be set up as a European Research Infrastructure Consortium, so as to enable such a body to benefit from the VAT reliefs for international bodies. The Minister comments that while it would be desirable to achieve agreement to this category of new measures, they are not as important as the “place of supply” category.

5.6 Commenting on the recasting of Council Regulation (EC) No 1777/2005, the Minister says that the Government supported the introduction of these measures in 2005 because

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14 (26739) 11439/05: see HC 34–v (2005–06), chapter 6 (12 October 2005), HC 34–xv (2005–06), chapter 3 (18 January 2006) and *Stg Co Debs*, European Standing Committee B, 16 February 2006, cols. 3–20.

they ensured consistency of VAT treatment across the EU, especially for businesses engaged in the cross-border supply of services such as electronic services. He notes that they helped to avoid double or non-taxation and that they remain relevant. He says that the Government fully supports the need to update the text so as to ensure that all the legal references are correctly aligned with those in the VAT Directive.

## Conclusion

**5.7 Clearly, this draft Regulation will serve a useful purpose and we recognise that the draft is largely unexceptionable. Nevertheless, before considering the document further we should like to hear from the Government about progress in improving the text in the light of its further analysis and its consultations with UK business. Meanwhile the document remains under scrutiny.**

## 6 Agreement with Iceland and Norway on cross-border crime and terrorism

(31232) 17709/09 COM(09) 707	Draft Council Decision on the conclusion of the Agreement between the European Union and Iceland and Norway on the application of certain of the provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA and the Annex thereto
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<i>Legal base</i>	Articles 81(1)(d), 87(2)(a) and 218(6)(a) TFEU; consent; QMV
<i>Document originated</i>	17 December 2009
<i>Deposited in Parliament</i>	6 January 2010
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 19 January 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

## Background

6.1 In 2008, the Council adopted a Decision to strengthen cooperation between Member States' law enforcement authorities through the exchange of information relevant to the prevention and detection of cross-border-crime and terrorist offences ("the Prüm

Decision”).<sup>15</sup> The Council also adopted an implementing Decision.<sup>16</sup> The UK is bound by both Decisions.

6.2 Article 82(1)(d) of the Treaty on the Functioning of the European Union (TFEU) requires the European Parliament and the Council to adopt measures to facilitate cooperation between the judicial authorities of the Member States in relation to criminal matters and the enforcement of decisions. Article 87(2)(a) TFEU authorises the European Parliament and the Council to adopt measures on the collection, storage, processing, analysis and exchange of information for the purposes of police cooperation to prevent and detect criminal offences. Article 218(6)(a) TFEU provides that the Council may adopt and conclude agreements with third countries after obtaining the consent of the European Parliament.

### The document

6.3 In October 2008, the Council authorised the opening of negotiations with Iceland and Norway for an Agreement on the application to Iceland and Norway of the provisions of the Prüm Decision, and the implementing Decision, on the mutual exchange of data about DNA, fingerprints, vehicle registration, major events and the prevention of terrorist offences. In September 2009, following the successful completion of the negotiations, the Council authorised the Presidency of the Council to sign the Agreement with Iceland and Norway.

6.4 The Commission now proposes this draft Council Decision to complete the process by formally concluding the Agreement and authorising the Presidency to designate a person to deposit the instrument expressing the EU’s consent to be bound by the Agreement.

### The Government’s view

6.5 The Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) tells us that the Government welcomes the extension of the Prüm arrangements to Iceland and Norway and supports the conclusion of the Agreement. But it has not yet decided whether to opt into the draft Decision. Considerations relevant to the Government’s decision will include:

- the UK’s participation in and support for the Prüm Decision and the implementing Decision; and
- if the UK opted in, it would not be able to conclude any new bilateral agreements with Iceland and Norway which would conflict with the EU’s Agreement with them.

### Conclusion

**6.6 We can see potential practical benefits for the UK from the mutual exchange of information for which the Agreement with Iceland and Norway provides. So we ask the**

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15 Council Decision 2008//615/JHA: OJ No. L 210, 6.8.08, p.1. (28409) 6566/07: see HC 41–xxiii (2006–07), chapter 22 (6 June 2007).

16 Council Decision 2008/616/JHA: OJ No. L 210, 6.8.08, p.12.

**Minister to tell us the Government’s decision whether to opt into the draft Decision and the reasons for it. Meanwhile, we shall keep the document under scrutiny.**

## 7 Interpretation and translation rights in criminal proceedings

(31224) 16801/09 —	Draft Directive on the rights to interpretation and translation in criminal proceedings
+ ADD 1	Explanatory memorandum
+ ADD 2	Detailed statement in accordance with Article 5 to Protocol No 2 to the Lisbon Treaty
+ ADD 3	Summary of the detailed statement in accordance with Article 5 to Protocol No 2 to the Lisbon Treaty

<i>Legal base</i>	Article 82(2)(b) TFEU; QMV; co-decision
<i>Deposited in Parliament</i>	17 December 2009
<i>Department</i>	Justice
<i>Basis of consideration</i>	EM of 30 December 2009
<i>Previous Committee Report</i>	None; but see (31010) — HC 19–xxviii 2008–09, chapter 16 (21 October 2009); (30984) — HC 19–xxvii 2008–09, chapter 13 (14 October 2009); (30783) 11917/09 HC 19–xxvi 2008–09, chapter 11(10 September 2009)
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Legally important
<i>Committee’s decision</i>	Not cleared, further information requested

### Background

7.1 The (JHA) Council adopted a roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings on 30 November 2009.<sup>17</sup> The roadmap enumerated six measures as the basis for future action, one of which was legislation on the right to translation and interpretation in criminal proceedings. This took the form of a draft Framework Decision under Title VI (the third pillar) of the former Treaty on European Union.

7.2 We reviewed the draft Framework Decision on translation and interpretation on three occasions, clearing it from scrutiny in time for its expected adoption at the JHA Council on

<sup>17</sup> (30985) —; see HC 19–xxviii (2008–09), chapter 15 (21 October 2009), (30753) 11457/09, (30985) HC 19–xxvii (2008–09), chapter 12 (14 October 2009), and HC 19–xxvi (2008–09), chapter 10 (10 September 2009).

30 November 2009. For reasons which are not clear, the proposal was not adopted at the JHA Council, although a General Approach had been agreed the week before. And so, with the coming into force of the Lisbon Treaty, it has had to be re-presented as a Directive under Title V of the Treaty on the Functioning of the EU (TFEU). Because the caretaker Commission, which is in place pending formal approval of a new Commission by the European Parliament, cannot propose legislation, the draft Directive is an initiative of a group of Member States,<sup>18</sup> in permitted by Article 76(b) TFEU.

## New legal base

7.3 The initiative for a Directive on the right to interpretation and to translation in criminal proceedings is based on Article 82(2)(b) TFEU, according to which *“To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States. They shall concern: (...) (b) the rights of individuals in criminal procedure.”*

7.4 In accordance with Article 82(2) TFEU, the provisions of this Directive set minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection. However, the level of protection should never fall below the standards provided by the European Convention on Human Rights, as interpreted in the case-law of the European Court of Human Rights.

7.5 The legislative procedure for the Directive is the “ordinary legislative procedure”,<sup>19</sup> formerly known as co-decision, in which the Council and the European Parliament have equal legislative powers. The procedures, which provide for three readings and establish a Conciliation Committee in case of disagreement, are the same as those for co-decision under the former EC Treaty.<sup>20</sup>

7.6 The incorporation of the former third pillar of the EU into Title V TFEU not only gives a role to the European Parliament in the formulation of legislation on police and judicial cooperation in criminal matters; it also brings this area of legislation fully into the framework of EU law. This means that legislation adopted under this Title can be directly effective, and falls under the jurisdiction of the Court of Justice, to which national courts can refer questions under Article 267 TFEU. The Commission also has the power to take infringement proceedings against Member States who fail to implement legislation properly.

## Explanatory Memorandum of 30 December 2009

7.7 In his Explanatory Memorandum the Parliamentary Under-Secretary at the Ministry of Justice (Lord Bach) describes the Government’s reasons for supporting this initiative in

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18 Belgium, Germany, Estonia, Spain, France, Italy, Luxembourg, Hungary, Austria, Portugal, Finland and Sweden.

19 Article 289(1) TFEU.

20 Article 294 TFEU.

terms similar to before. He says there is evidence of discrepancies between how Member States have implemented the requirement to provide translation and interpretation services for suspects under Article 6 of the ECHR; this has led to widely varying interpretation and translation standards in Member States; common minimum standards for interpretation and translation at EU level would therefore help to protect the rights of criminal suspects, particularly given the wide use of the right to free movement in the EU, and would facilitate judicial co-operation and mutual recognition by building trust and confidence between Member States. In terms of subsidiarity, the Government is of the view this initiative will be achieved most effectively through common action at EU level, rather than by Member States acting independently. The Government is therefore likely to opt into the draft Directive.

7.8 The Minister does not anticipate that the Directive would have a significant legislative or financial impact on the UK because regional legal systems already afford free access to interpretation during the investigative and trial stage. So far as translation is concerned in England and Wales there may however be a need to set out clearly which essential documents are to be translated. The Government would expect this may be done in part through amendment to the PACE Code C, which could also make provision for review of police decisions. The Government will also consider looking at the existing guidance in the National Agreement on arrangements for the use of interpreters and translators. It does not rule out the possibility “to embed more firmly” the above best practices, as applied through the common law, into some future legislation — although this would be considered regardless of the existence of EU law on the subject. The Minister reports that officials in devolved administrations are still considering implementation.

7.9 Given that the UK participated in the negotiations of a text that was politically agreed as a Framework Decision, the Government is confident that it will be able to reach a final text it can accept, although it recognises that this measure will now be subject to the agreement of the European Parliament through the ordinary legislative procedure.

The main provisions of the Directive are as follows:

### **Recitals**

7.10 The first two recitals of this Directive recall the establishment (following the Tampere Conclusions) of mutual recognition as “the cornerstone” for judicial cooperation in the EU and the adoption of that principle in The Hague Programme. The third and fourth recitals make the link between implementation of the principle of mutual recognition and the need for mutual trust of the criminal justice systems of the member States, while the fifth notes that being party to the ECHR does not in itself guarantee that trust.

7.11 The sixth and seventh recitals refer to Article 82(2)(b) of the TFEU as a basis for establishing minimum rules in order to improve judicial cooperation through mutual trust. The eighth explains that this Directive aims to facilitate the application of Article 6 ECHR in practice by guaranteeing suspects’ rights to interpretation and translation to safeguard their right to fair proceedings. The ninth notes that the Directive extends to European Arrest Warrant (EAW) proceedings and costs will be borne by the executing Member State. The tenth acknowledges that the Directive sets minimum rules, so Member States may extend rights further, and notes that the level of protection should not fall below the

ECHR. Ten and 11 note that the suspect should be able to communicate with his counsel to exercise his defence, but Member States need not provide interpretation where they can communicate effectively in the same language or where interpretation is clearly not for the purpose of exercising fair trial rights.

7.12 Recitals 13 and 14 deal with the provision of appropriate assistance and attention to those with hearing impediments and physical impairments. 15 and 16 refer to the need to translate certain essential documents as a minimum, and state that a waiver of this right should be unequivocal and not run counter to any important public interest.

7.13 17 and 18 explain that the Directive respects and promotes ECHR rights, and Member States should ensure that, where provisions of the Directive correspond to ECHR rights, they are implemented consistently with the ECHR and its case law. The Minister states that the Government supports recital 18 in particular; it believes that it is important that there is clarity about the relationship between this Directive and the ECHR as they both legislate in the same area. Recital 19 explains that this Directive is consistent with the principles of subsidiarity and proportionality.

## Articles

### Scope

7.14 Article 1 sets out the scope of the Directive: to lay down rules concerning the rights to interpretation and translation in criminal proceedings and proceedings for the execution of an EAW. The rights apply from the time that a person is informed by the Member State's competent authorities that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings. Conclusion of the proceedings is defined as the final determination of whether the suspected or accused person has committed the offence. The Directive does not apply to proceedings leading to sanctions from an authority other than a criminal court, unless the proceedings are pending before a court with criminal jurisdiction. The Government is considering the scope in the light of the new Treaty base.

### Interpretation

7.15 Article 2 describes the ambit of the right to interpretation. Article 2(1) states that interpretation must be given to a suspected or accused person in order to safeguard his right to fair proceedings. Interpretation, including communication between the suspect and his legal counsel, shall be provided during criminal proceedings before investigative and judicial authorities. The Government welcomes this focus on the suspect's right to fair proceedings, and the clarity that 2(1) brings to the right set out in the ECHR. That said, it would have preferred the wording to be even clearer regarding a suspect's right to interpretation of communications with their legal counsel and, if the opportunity arises, it would support an amendment to this effect. Article 2(2) notes that persons with a hearing impediment shall receive interpretation, if appropriate for that person. The Government thinks this is flexible enough to allow for the varying needs of persons with hearing impediments, and is content. Article 2(3) requires Member State competent authorities to verify whether the person understands and speaks the language of the criminal proceedings

and needs an interpreter. The Government supports this provision. Article 2(4) states that there must be the possibility of a review of the decision finding that there is no need for interpretation. The Government supports having an opportunity for review, and believes that this wording is sufficiently flexible, for example at the investigation stage to allow for a review by the police, rather than as part of an appeal. Article 2(5) provides that subjects of EAW proceedings who do not understand and speak the language of the proceedings shall be provided with interpretation. The Government believes that this is an important safeguard to balance the powers contained in the EAW and supports this provision.

### *Translation*

7.16 Article 3 sets out the right to translation of essential documents. Article 3(1) provides that Member States shall ensure that a suspected or accused person who does not understand the language of the criminal proceedings is provided with translations of all documents, or at least the important passages of such documents, which are essential to safeguard his right to fair proceedings, providing he already has access to such documents under national law. The Government is content. Article 3(2) states that the competent authorities of the Member States shall decide which are the essential documents. However, these must include at least detention orders or equivalent decisions depriving the person of his liberty, the charge or indictment, and any judgment, where such documents exist. The Government supports this provision: it is sufficiently specific, but allows for the common law system where, for example, there may not be a “judgment” to be translated. The suspected or accused person or his counsel may submit a reasoned request for translation of further documents which are needed to exercise the right of defence (3(3)). There must be the possibility of a review at some stage in proceedings if documents are not provided under 3(2) or 3(3), but this review does not necessitate a separate mechanism in which the sole ground is that challenge. The Government supports allowing for further requests and review, and is content with the wording of these provisions. Article 3(5) states that the executing Member State shall ensure that those who are the subject of proceedings for the execution of an EAW shall be provided with a translation of it. The Government supports this provision. Article 3(6) states that an oral translation or summary of the essential documents may, where appropriate, be provided instead of a written translation, providing this does not affect the fairness of the proceedings. The Government supports this provision. Finally, Article 3(7) states that the suspected or accused person may waive his rights under this Article. The Government is content.

### *Costs*

7.17 Article 4 provides that Member States shall cover the costs of interpretation and translation arising from Articles 2 and 3, irrespective of the outcome of proceedings. As the Government supports the obligations as defined in Articles 2 and 3, it is also content with this provision.

### *Quality*

7.18 Article 5 provides that Member States shall take concrete measures to ensure that interpretation and translation is of adequate quality so that the suspected or accused person

(or person subject to an EAW) is fully able to exercise his rights. The Government supports this provision.

### *Non-regression clause*

7.19 Article 6 is a non-regression clause, which makes clear that nothing in the Directive is to be construed as limiting or derogating from the rights and procedural safeguards that are ensured under the ECHR, other relevant international law or national laws which provide a higher level of protection. The Government supports this provision.

### *Miscellaneous*

7.20 Articles 7, 8, and 9 deal with implementation, reporting on compliance and entry into force. Consideration will need to be given to the implementation timetable but otherwise these are standard articles and the Government is content.

## **Conclusion**

7.21 **The recitals and Articles in the draft Directive are with minor exception identical to those of the draft Framework Decision, which this draft Directive replaces.**

7.22 **We reported on the draft Framework Decision on three occasions before clearing it from scrutiny in October last year. We concluded that there was a need to reinforce suspects' rights to interpretation and translation in order to avoid miscarriages of justice, and that this need was better met at EU than Member State level. This was for two reasons. Firstly the discrepancies in provision between Member States would be more effectively overcome by common standards being applied and overseen centrally than by Member States acting unilaterally. Secondly, such common standards would enhance mutual trust between Member States.**

7.23 **Our view has not changed, but we would be grateful for an update on negotiations in time for us to report within the eight week period from publication, as agreed by Baroness Ashton for parliamentary scrutiny of opt-in decisions. What is important to us is that the standards achieved in the previous negotiations are not watered down. We would also be grateful to be informed of the response of the relevant devolved administrations to these proposals within the same time period.**

## 8 The EU and Serbia

(a) (29213) 15616/07 + ADDs 1–2 COM(07) 743	Draft Council Decisions on the signing and on the conclusion of the Stabilisation and Association Agreement between the European Communities and its Member States and the Republic of Serbia
(b) (29214) 15690/07 + ADDs 1–2 COM(07) 744	Draft Council Decision concerning the signing and conclusion of the Interim Agreement on trade and trade-related matters between the European Community and the Republic of Serbia
(c) (29427) — —	Interim Political Agreement on Co-operation between the European Union and its Member States and the Republic of Serbia

<i>Legal base</i>	(a) and (b) Articles 300 and 310 EC; unanimity (c) —
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister's letter of 14 January 2010
<i>Previous Committee Reports</i>	HC 5–iii (2009–10), chapter 20 (9 December 2009), HC 19–xxvi (2008–09), chapter 21 (10 September 2009); HC 19–xxiii (2008–09), chapter 8 (8 July 2009); HC 19–ix (2008–09), chapter 11 (4 March 2009); HC 19–v (2008–09), chapter 16 (28 January 2009); HC 19–i (2008–09), chapter 17 (10 December 2008); HC16–xxiv (2007–08), chapter 15 (18 June 2008), HC16–xxi (2007–08), chapter 17 (14 May 2008), HC 16–xii (2007–08), chapter 1 (20 February 2008) HC 16–x (2007–08), chapter 4 (30 January 2008) and HC 16–viii (2007–08), chapter 5 (16 January 2008); also see (26575) 8884/05: HC 34–i (2005–06), chapter 48 (4 July 2005); and (29103): 14999/07; (29104):15001/07; (29100): 14995/07; (29099): 14993/07; (29101):14996/07; (29102):14997/07: HC 16–v (2007–08), chapter 1 (5 December 2007)
<i>Discussed in Council</i>	8 December 2009 General Affairs and External Relations Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared (debate on 29 April 2008); further information provided.

## Background

8.1 The Stabilisation and Association Process is designed to bring the countries of the Western Balkans closer to the EU and to help prepare them for eventual membership. The Stabilisation and Association Agreement (SAA) is a key step — a far-reaching legal relationship, entailing mutual rights and obligations; the gradual implementation of a free trade area; reforms designed to achieve the adoption of EU standards in areas such as justice, freedom and security, accompanied by formalised political dialogue; enhanced regional co-operation; and a Stabilisation and Association Council to supervise implementation.

8.2 The Committee has been engaged in discussion with both the previous and the present Minister for Europe about signature of the SAA (which is then subject to parliamentary ratification) and the interim agreement (the trade-related aspects, implemented on signature); and, latterly, the proposal that, given differences then obtaining among Member States, there should be an Interim Political Agreement on Co-operation. Those differences, and the Committee's concern, have revolved around the associated Conditionality, i.e., “full cooperation” with the ICTY (International Criminal Tribunal for the former Yugoslavia) in connection with the apprehension and surrender of the most egregious fugitives, Radovan Karadzic<sup>21</sup> and Ratko Mladic.

8.3 In the event, they were resolved among Member States in such a way that the 29 April GAERC approved the Council Decisions, whereupon the two agreements were signed. On the same day, European Committee B debated these documents and a collection of annual progress reports on the Western Balkan EU aspirants. All of this is summarised in our previous Report, along with the Committee's consideration of subsequent correspondence with the Minister for Europe.

8.4 On 1 December 2009, the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) wrote to the Committee as follows:

- “the Government's policy until now has been that the UK would be content to implement Serbia's Interim Agreement, on the basis of Serbia's significantly improved co-operation with the ICTY, while keeping ratification of the SAA conditional on Serbia's full co-operation with the ICTY;
- “the Government's view is that ‘full co-operation’ means committed and sustained activity from the Serbian Government, demonstrating 100 percent effort and political will in co-operating with ICTY — and that that co-operation covers efforts in a wide range of areas including: tackling support networks; meeting requests for documents; allowing access to archives; ensuring protection of witnesses; as well as in locating and transferring the remaining indictees.”

8.5 The Minister noted that ICTY Prosecutor Brammertz was scheduled to deliver his next report on ICTY's completion strategy to the UN Security Council on 3 December, “just days before the 7/8 December GAERC (at which we expect Serbia's relationship with the EU, including in relation to progress on ICTY co-operation, to be discussed).” The

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<sup>21</sup> Transferred to the ICTY in July 2008.

Minister said that this report would include an annex on the co-operation of regional states with his office, including Serbia. It was, the Minister said, “Brammertz’s most positive report on Serbia to date”, assessing that:

- Serbia’s co-operation has continued to improve and develop;
- the Serbian authorities are providing timely responses to requests arising during trials at The Hague for access to documents and archives, with no requests outstanding;
- they have responded quickly to facilitate the appearance of witnesses before the tribunal and made the necessary arrangements to safeguard them;
- they are actively conducting search operations for the two remaining indictees.

8.6 With regard to the central issue of cooperation, the Minister said that the report concluded that Brammertz was “satisfied” with the current level of efforts undertaken by the Serbian authorities.

8.7 Turning to the Committee’s request in our Report of 10 September to be informed of any decisions ahead of any GAERC where Serbia’s progress along the EU path may be discussed, the Minister said:

“The decision of whether or not Serbia is fully co-operating with the ICTY is one for individual member states to take. However as you are aware a unanimous decision is required by all EU Member State to implement the IA and ratify the SAA.

“Given the very short window between Brammertz’s formal report to the UNSC on 3 December and EU discussion at the GAERC on 7–8 December, I wanted to inform the Committee that, provided Brammertz’ report to the UNSC confirms his draft assessment, the Government will assess that Serbia is now fully co-operating with ICTY and therefore would be ready in principle to support an EU decision both to implement Serbia’s Interim Agreement and also to start the process of SAA ratification. Our judgement is that this would be the right way to incentivise further sustained co-operation by Serbia. In doing so, we shall make clear to the Serbian Government, EU partners and Chief Prosecutor Brammertz that, should Serbia fail to maintain full co-operation at any stage during its EU accession process, we would be ready to support appropriate measures in response.”

8.8 Subsequently, on 7 December 2009, the Government issued a Written Ministerial Statement, which is reproduced at Annex 1 of this chapter of our Report.

8.9 Then, on 8 December, the Council adopted the following Conclusions:

“The Council welcomes Serbia’s commitment to EU integration by undertaking key reforms in line with European standards and by gradually building up a track-record in implementing the provisions of the Interim Agreement with the EU. The Council notes that the Office of the Prosecutor of the ICTY is satisfied with the current level of efforts undertaken by Serbia’s authorities in their cooperation and insists that Serbia maintain these efforts in order to achieve additional positive results. Recalling the Council conclusions of 29 April 2008, the Council decides that the Union will start implementing the Interim Agreement. The Council will turn to the next issue

— ratification of the Stabilisation and Association Agreement — in six months time.”<sup>22</sup>

## Our assessment

8.10 We thanked the Minister for this further information, which we reported to the House because of the widespread interest in the accession process in the western Balkans.

8.11 Only time, we felt, would tell if the right decisions had been taken. And the government had made it clear that, if thus “incentivised”, the Serbian authorities failed to respond, it would respond appropriately.

8.12 We looked forward to hearing further from the Minister in six month’s time, which we presumed would be after the ICTY Chief Prosecutor’s next report.

## The Minister’s letter of 14 January 2010

8.13 The Minister for Europe (Chris Bryant) begins by confirming that:

- ICTY Chief Prosecutor Brammertz gave his formal presentation to the UNSC on 3 December, assessing Serbia’s co-operation with ICTY as “very positive” and describing their level of co-operation as “satisfactory”;
- the General Affairs Council discussed Serbia on 7/8 December and agreed to unblock implementation of Serbia’s Interim Agreement;
- although there was no consensus to unblock ratification of the Stabilisation and Association Agreement, it was agreed to consider this in six months time, provided Serbia’s improved level of co-operation with ICTY is sustained.

8.14 He continues as follows:

“I would like to reiterate that, while the Government’s position is that Serbia is now fully co-operating with ICTY, we continue to make it clear to the Serbian Government, EU partners and Chief Prosecutor Brammertz that, should Serbia fail fully to co-operate at any stage during its EU accession process, we would be ready to support appropriate measures in response which could include delaying, slowing or stopping UK ratification of Serbia’s SAA, and/or holding back the granting of Candidate Status and the opening of accession negotiations. We could also seek, as we did for Croatia, to incorporate within the Negotiating Framework a requirement for Serbia to maintain full cooperation with ICTY thereby allowing any new concerns to affect the advancement of negotiations once they are opened.”

8.15 The Minister also notes that Serbia submitted an application for EU Membership on 22 December:

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<sup>22</sup> Part of the full “Council conclusions on enlargement/stabilisation and association process”, available at [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/genaff/111830.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/genaff/111830.pdf) .

“The Government supports the principle whereby applications for EU membership are referred promptly by the Council to the Commission for the Commission to prepare detailed advice (an Avis) on whether, in the Commission’s opinion, the applicant is ready to open accession negotiations. However, as you are aware, a unanimous decision by EU Member States is required before referral can take place. In our view it is unlikely that all Member States will be willing to take this step without there first being consensus on beginning the SAA ratification process.”

8.16 The Minister concludes his letter by undertaking to keep the Committee informed of developments.

## Conclusion

8.17 **We are grateful to the Minister for this further information, which we are once again reporting to the House because of the widespread interest in the issues concerned.**

### **Annex 1: 7 December 2009: Written Ministerial Statement on Serbia’s co-operation with the International War Crimes Tribunal for Former Yugoslavia (ICTY).**

“The International War Crimes Tribunal for Former Yugoslavia (ICTY) Chief Prosecutor, Serge Brammertz, delivered his latest report on the ICTY completion strategy to the UN Security Council on 3 December. One of his key judgements was his very positive assessment of Serbia’s co-operation with the ICTY. The Government warmly welcomes this assessment.

“The Government has long been amongst the strongest supporters of the ICTY, and of a clear policy of conditionality underpinning EU integration. It is important that all countries wishing to join the EU show their commitment to the rule of law and fully accept their responsibility to deal with the past, in particular by ensuring that all those indicted for the most serious of crimes face justice. EU member states have made it consistently clear that achieving and maintaining full cooperation with the ICTY is essential for progress towards EU membership.

“We have had many discussions with the Serbian authorities about this over recent years. We have not been slow, when we thought they were not doing enough, to make our views known.

“When the new Serbian Government took office last year, under President Tadic’s leadership, we were encouraged by their public commitment to do everything necessary to conclude this process successfully. We have maintained close contact since then with those responsible for the investigations.

“I have previously made clear to this House that our assessment of full co-operation would be based on committed and sustained activity from the Serbian Government, demonstrating 100 per cent effort and political will in co-operating with ICTY. That co-

operation should cover efforts in a wide range of areas including: tackling support networks; meeting requests for documents; allowing access to archives; ensuring protection of witnesses; as well as in locating and transferring the remaining indictees. The Government’s assessment is that Prosecutor Brammertz’s report shows this to be the case.

“We congratulate the Serbian authorities on this significant achievement. We are discussing with our EU partners how the EU should recognise this. We will remain in close touch with the authorities in Serbia to underline the importance of maintaining this sustained effort, including to track down and deliver the two remaining ICTY indictees, Ratko Mladic and Goran Hadzic.”

## 9 The EU and the Arctic Region

(30227)	Commission Communication: <i>The European Union and the Arctic Region</i>
—	
COM(08) 763	

<i>Legal base</i>	—
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister’s letter of 7 January 2010
<i>Previous Committee Report</i>	HC 19–viii (2008–09), chapter 1 (25 February 2009)
<i>Discussed in Council</i>	8–9 December 2008 General Affairs and External Relations Council
<i>Committee’s assessment</i>	Politically Important
<i>Committee’s decision</i>	Cleared (decision reported 22 April 2009); further information provided

### Background

9.1 On its website, the Arctic Council describes the Arctic as “an enormous area, sprawling over one sixth of the earth’s landmass; more than 30 million km<sup>2</sup> and twenty-four time zones”, with a population of “about four million, including over thirty different indigenous peoples and dozens of languages.” The region has “vast natural resources and a very clean environment compared with most areas of the world.”

9.2 The Ottawa Declaration of 1996 formally established the Arctic Council as “a high level intergovernmental forum to provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic Indigenous communities and other Arctic inhabitants on common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic.” Member States of the Arctic Council are Canada, Denmark (including Greenland and the Faroe Islands), Finland, Iceland, Norway, Russian Federation, Sweden, and the United States of America.

A category of Permanent Participation also provide for active participation of, and full consultation with, the Arctic Indigenous representatives within the Arctic Council.<sup>23</sup>

## Commission Communication

9.3 The Commission describes the European Union as “inextricably linked to the Arctic region<sup>24</sup> (hereafter referred to as the Arctic) by a unique combination of history, geography, economy and scientific achievements.” The November 2008 Commission Communication, “*The European Union and the Arctic Region*”, reviewed EU interests in the Arctic and proposed action around three main policy objectives:

- protecting and preserving the Arctic;
- promoting sustainable use of resources;
- enhancing Arctic multilateral governance.

## Our assessment

9.4 The countries and issues involved are of some significance. But the Explanatory Memorandum from the then Minister for Europe at the Foreign and Commonwealth Office (Caroline Flint) neither summarised the document properly, nor outlined in any real way the Government’s views. We also felt that the areas discussed in subsequent correspondence referred to above should have been outlined in the first instance in a more substantial Explanatory Memorandum. Though a further Communication was promised with more detailed proposals, we also felt that sufficiently major policy issues were already raised in this Communication for a debate in the European Committee to be warranted, and so recommended. That debate took place on 21 April 2009.<sup>25</sup>

9.5 We also raised an initial query about the Community’s competence to make recommendations in all of the areas covered by the Communication.<sup>26</sup>

9.6 Nothing more was heard until the present Minister for Europe (Chris Bryant) wrote to the Committee on 9 December 2009, with his views on the Council Conclusions on this topic adopted by the 8 December Foreign Affairs Council (which are reproduced at Annex 1 of this chapter of our Report).

9.7 In responding to him, the Committee noted its surprise that the debate was led not by his ante-predecessor, who had submitted the Communication for scrutiny, but by the then “geographical” Minister (Gillian Merron). The Committee recalled the then Minister for Europe’s sketchy Explanatory Memorandum of 16 December 2008, where she welcomed the Commission’s Communication as “an example of renewed EU interest in Arctic issues”, regarded it as “important to take a holistic view of the Arctic Region”, supported

23 For full information on the Arctic Council, see <http://arctic-council.org/article/about>.

24 The notion “Arctic region” used in this Communication covers the area around the North Pole north of the Arctic Circle. It includes the Arctic Ocean and territories of the eight Arctic states: Canada, Denmark (including Greenland), Finland, Iceland, Norway, Russia, Sweden and the United States.

25 See <http://www.publications.parliament.uk/pa/cm200809/cmgeneral/euro/090421/90421s01.htm> for the record of that debate.

26 See headnote: HC 19–viii (2008–09), chapter 1 (25 February 2009).

the overall approach as set out in the Communication and looked forward to “the more detailed EU Arctic policy which the Commission has planned for early next year”.

9.8 But, the Committee noted, this further Commission Communication had not materialised; instead, a substantive set of Council Conclusions had been adopted which, as the Minister said, constituted “a set of overarching principles and actions which the Commission can begin to develop in collaboration with Member States.”

9.9 The Minister also noted the Government’s continued support for the EU “in its efforts to become more engaged on the Arctic” and consider that the Commission “has a valuable role to play in many areas as outlined in the Council Conclusions.” But, the Committee observed, nowhere did the Minister explain what he considered that valuable role to be.

9.10 The Minister also said that, at the same time, he had “striven to ensure that, where competency is reserved or shared, UK interests are protected [and] also sought to ensure that our bilateral and multilateral relationships with the Arctic States and the Arctic Council are unaffected.” But, again, he did not explain where he believed such competency was reserved or shared, how UK interests were protected or how he had sought to ensure that these relationships would be unaffected.

9.11 Looking ahead, the Minister said that, as with the development of these Conclusions, “future work will continue to be a partnership between the Commission and Member States [in which] ... the UK will engage closely, through the relevant EU Working Groups, to further develop policy and ensure that our views are taken into account.”

9.12 The impression left with the Committee was that an important stage in the parliamentary scrutiny of this sensitive but nonetheless developing EU policy had been passed over, by virtue of there being no further Commission Communication but instead — as if there had been, and it had been appropriately scrutinised — the adoption of very substantive Conclusions setting out the way forward.

9.13 The Committee accordingly asked the Minister for an explanation of what had happened over the past year, as well as a response to the detailed points outlined above.

### **The Minister’s letter of 7 January 2010**

9.14 The Minister begins his letter by expressing his sorrow that that the Committee “feels so querulous” about the level of scrutiny that has been applied to the developing EU Arctic policy but assures the Committee that he has been “very conscious of the need to keep the Committee fully informed of developments.” He continues as follows:

“Let me explain the situation. As you say in your letter, and as my predecessor (as Minister responsible for the Arctic) Gillian Merron said then, it was at the time the intention of the Commission to produce a new, more extensive Commission Communication before the end of 2009. However, in September, Member States were informed that the Commission no longer intended to issue a new Communication, and that instead the Presidency intended to take the policy forward through new Council Conclusions. A draft Conclusions text then issued in November. The UK played a significant role in developing and improving those Conclusions ahead of their adoption at the FAC on 8 December. Throughout this

process, FCO officials worked to ensure that UK interests related to the Arctic were protected.”

9.15 Recalling his letter to the Committee of 9 December 2009, the Minister says: “I do not believe that writing to the Committee before their adoption would have been appropriate, given that negotiations were on-going.”

9.16 While professing to understand the Committee’s frustration that the Commission decided not to proceed with a further Communication, the Minister says:

“this was entirely their decision and we could not oblige them to do so. However, the decision by the Council to proceed with a second set of Conclusions does, I believe, provide a platform to take this policy forward and, importantly, ensure that the Council and Member States remain fully involved in the process.”

9.17 With regard to the role that he considers the EU can play in the Arctic, the Minister says:

“By virtue of its size and weight, scientific expertise and funding possibilities, the EU can exert a positive influence over Arctic issues that is complementary to and greater than that exerted by the UK alone.

“The EU and the UK have shared objectives in the Arctic relating to climate change, sustainable development, environmental protection, governance and access for shipping.

“Therefore a co-ordinated approach seems sensible and prudent. The EU is already engaged in the Arctic, including through the Northern Dimension and EU-Barents Sea groups, and so has significant regional expertise. As you know, science is an important influencing factor in the region and the EU’s significant level of science funding and ability to co-ordinate that effort amongst Member States is one of the primary advantages of its involvement.

“The Council Conclusions deal with matters of both reserved (such as fishing) and shared competence (for example environment, transport, energy). We have sought throughout this process to ensure that the Conclusions do not impinge upon UK bilateral relations or allow any form of Commission ‘competence creep.’ My officials were also able to ensure that the Council Conclusions did not contain any inappropriate specific commitments, especially spending commitments. We believe that the Conclusions provide an operational framework for the Commission’s work in the Arctic over the next 18 months, until June 2011, at which stage the Commission has been tasked to provide a progress report to the Council. This will help ensure engagement with Member States and adequate oversight. It should also address concerns raised in the April 2009 debate and emphasises the fact that the Conclusions are of course a Council not a Commission text.”

9.18 The Minister then goes on to “stress that bilateral and multilateral relations will not be affected”, as follows:

“The UK will be able to continue our excellent relationships with the Arctic States, such as our memorandum of understanding with Canada, our close working relationship on Polar issues with Norway and our ongoing work as a Permanent Observer at the Arctic Council.”

9.19 The Minister concludes by referring again to the status report that the Conclusions ask the Commission to provide by June 2011, at which point “we and other Member States will be able to assess how effective this new programme has been and to decide how to take the work forward.”

## Conclusion

9.20 **Whether or not the Council could oblige the Commission to produce the promised further more detailed Communication is not the point: the case was, in the Minister’s words, that “instead the Presidency intended to take the policy forward through new Council Conclusions” — i.e., the decision was taken by the Council, not the Commission. We do not understand why the Minister did not report that decision to the Committee. Indeed, we feel that he should have taken care to do so, given that the “framework” Communication had been debated on that basis.**

9.21 **As to whether writing to the Committee before their adoption would have been appropriate, given that negotiations were on-going: this is a matter upon which the Committee has long taken a view different to that of the Government. However, regardless of the present difference of view, we see no reason why the Minister, in fulfilling the obligation we feel he had to notify the Committee of the change of plan, could not have outlined what he would be seeking in negotiating those Conclusions.**

9.22 **Indeed, this seems to us to be a perfect example of why the Committee takes the view that draft Conclusions should be deposited for scrutiny. As we observed in our letter to the Minister, the effect of the course he has chosen to take is that an important stage in the parliamentary scrutiny of this sensitive but nonetheless developing EU policy had in effect been passed over, by virtue of there being no further Commission Communication but instead the adoption of very substantive Conclusions setting out the way forward to be taken by the Commission.**

9.23 **What this does is to reinforce the strong sense of the avoidance of proper scrutiny that we felt from the outset, when the Minister speaking for the Government was not the Minister for Europe, who had submitted the original Explanatory Memorandum and who was versed in the issue in question — the competence and proper role of the Commission within the existing, well-established governance framework for the Arctic and, beyond generalities, what the Government’s policy is. We do not feel consider the answers provided by the Minister on both the process and the key issue of competence are adequate, and accordingly ask that he appear before us at an evidence session in order to provide them.**

## **Annex: Council conclusions on the European Union and the Arctic region**

“1. The Council welcomed the Commission’s Communication on the European Union and the Arctic region, considering that it is a first layer of an EU Arctic policy. The Communication is also an important contribution to implementing the Integrated Maritime Policy of the EU.

“2. The Council agreed that the effects of climate change and of human activities in the Arctic have significant repercussions for the European Union as a whole. The European Union should therefore aim at preserving the Arctic in unison with its population and address Arctic challenges in a systematic and coordinated manner in areas such as environment, biodiversity, climate change, chemicals, maritime affairs, energy, research and observation, fisheries and transport, as well as the protection of the livelihood of indigenous peoples. This should have due respect for and take into account the special position and interests of the Arctic areas of the three Arctic Member States, including those areas of one Member State enjoying OCT status and special contractual links with the EU. Furthermore, the Council welcomed the conference “The Arctic: observing the environmental changes and facing their challenges”, organised by the Presidency in Monaco in November 2008.

“3. The goals of the EU can be achieved only in close cooperation with all Arctic partner countries, territories and communities, noting also the inter-governmental cooperation in the region. The European Union should enhance its contribution to Arctic multilateral cooperation, in conformity with international conventions, in particular the United Nations Convention on the Law of the Sea, and recognising the role of the Arctic states and that of the Northern Dimension policy. The Council welcomed the decision of the Commission to apply for permanent observer status in order to represent the European Community in the Arctic Council.

“4. The Council agreed that the proposals for action contained in the Communication should lead to a more detailed reflection and looked forward to further examining them in the first half of 2009.”

## 10 Post–Lisbon changes to ongoing legislative proposals

(31212) 17193/1/09 + ADDs 2–5 COM(09) 665	Commission Communication: <i>Consequences of the entry into force of the Treaty of Lisbon for ongoing inter-institutional decision making procedures</i>
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<i>Legal base</i>	—
<i>Document originated</i>	2 December 2009
<i>Deposited in Parliament</i>	11 December 2009
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 13 January 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	n/a
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Cleared

### Background

10.1 The Treaty of Lisbon entered into force on 1 December 2009. It amends the Treaty on European Union and the Treaty establishing the European Community. In addition, the TEC was renamed the Treaty on the Functioning of the European Union (TFEU).

### The document

10.2 The European Commission has prepared a Communication entitled *Consequences of the entry into force of the Treaty of Lisbon for ongoing inter-institutional decision-making procedures* to inform the Council and European Parliament of legislative proposals introduced under the previous treaty regime that need to be adapted to the new post-Lisbon legislative framework.

10.3 The Lisbon Treaty necessitate the following five categories of changes to ongoing legislative proposals:

- All pending proposals will have to be renumbered in accordance with the new post-Lisbon Treaty framework. This is very much a technical change with no substantive implications;
- The Lisbon Treaty provides for the extension of “ordinary legislative procedure” (formerly known as co-decision) to a number of new areas. It also affects the use and scope of the other legislative procedures which are now known collectively as ‘special legislative procedures’. Budgetary matters, i.e. overall spending levels and levels of Member State contributions, will continue to be decided by Member States strictly by unanimity. An approval procedure will be applied to the conclusion of international agreements, whilst otherwise foreign and defence policy will remain largely unaffected by changes in legislative procedure;

- In addition to all proposals being renumbered, there are 16 proposals where the Lisbon Treaty entails a change to their legal base that goes beyond a mere change to the numbering (Annex 1). The 16 proposals are set out in the Addendum to this Chapter;
- The Communication lists all current ex-Third Pillar Justice and Home Affairs proposals, which are to be withdrawn and to be replaced, for the most part, with new proposals. Those proposals which are most recent will be retabled and will be subject to the normal scrutiny arrangements (Annex 2);
- Commission “recommendations” under Article 126(6) (ex Article 104(6) EC) will now be known as Commissions “proposals” (Annex 3). This is also a technical change with no substantive implications.

10.4 The Commission provides an indicative list of ongoing proposals whose procedures have changed under the Lisbon Treaty (Annex 4). Annex 5 provides a list of decision-making procedures.

### The Government’s view

10.5 The Minister for Europe (Chris Bryant) emphasises the uncontroversial nature of the contents of the Communication and assures us that each of the proposals listed will be subject to the usual scrutiny procedure. In addition he comments as follows:

“There are no new policy implications as the Communication seeks to inform the Council and Parliament of technical procedural and interinstitutional decision-making changes brought about by the Lisbon Treaty. Proposals listed as ongoing in the legislative process have been scrutinised previously. Where proposals lapse and are retabled the normal scrutiny arrangements will apply.

“Scrutiny Committees are aware of moves to the ordinary legislative procedure through their scrutiny of the Lisbon Treaty and engagement in Parliament’s decision to approve the EU (Amendment) Act 2008, which implements the Treaty in UK law.”

### Conclusion

10.6 **We thank the Minister for his helpful summary of and brief comments on the Commission Communication. We agree that it contains no suggestions for changes in the law but helpfully sets out the implications of the Treaty changes for ongoing legislative proposals which originated before the Treaty of Lisbon came into force on 1 December 2009. We are happy to clear the document from scrutiny.**

## ADDENDUM: Annex 1

Following the entry into force of the Lisbon Treaty the Commission has modified with effect from 2 December 2009 the following proposals for legislation to reflect a change in legal base.

1. Proposal for a Council Regulation on the Community patent [based on article 308 EC] [COM(2000) 412]:

*article 118 TFEU*

2. Proposal for a Council Regulation amending Regulation (EC) No 2100/94 as regards the term of office of the President of the Community Plant Variety Office [based on article 308 EC] (COM(2005) 190):

*article 118 TFEU*

3. Proposal for a European Parliament and Council Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights [based on article 95 EC] (COM(2005) 276):

*article 118 TFEU*

4. Proposal for a Regulation of the European Parliament and of the council amending, as regards information to the general public on medicinal products for human use subject to medical prescription, Regulation (EC) No 726/2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency [based on article 95 EC] (COM(2008) 662):

*article 114 et article 168, paragraphe 4(c) TFEU*

5. Proposal for a Directive of the European Parliament and of the Council amending, as regards information to the general public on medicinal products subject to medical prescription, Directive 2001/83/EC on the Community code relating to medicinal products for human use [based on article 95 EC] (COM(2008) 663):

*article 114 et article 168, paragraphe 4(c) TFEU*

6. Proposal for a Regulation of the European Parliament and of the Council amending, as regards pharmacovigilance of medicinal products for human use, Regulation (EC) No 726/2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency [based on article 95 EC] (COM(2008) 664):

*article 114 et article 168, paragraphe 4(c) TFEU*

7. Proposal for a Directive of the European Parliament and of the Council amending, as regards pharmacovigilance, Directive 2001/83/EC on the Community code relating to medicinal products for human use [based on article 95 EC] (COM(2008) 665):

*article 114 et article 168, paragraphe 4(c) TFEU*

8. Proposal for a Directive of the European Parliament and of the Council amending Directive 2001/83/EC as regards the prevention of the entry into the legal supply chain of medicinal products which are falsified in relation to their identity, history or source [based on article 95 EC] (COM(2008) 668):

*article 114 et article 168, paragraphe 4(c) TFEU*

9. Proposal for a Council decision on a Critical Infrastructure Warning Information Network (CIWIN) [based on article 308 EC and article 203 Euratom] (COM(2008) 676):

*article 196, paragraphe 2 TFEU et article 203 Euratom*

10. Proposal for a Directive of the European Parliament and of the Council on labelling of tyres with respect to fuel efficiency and other essential parameters [based on article 95 EC] (COM(2008) 779):

*article 194, paragraph 2 TFEU*

11. Proposal for a directive of the European Parliament and of the Council on the energy performance of buildings (recast) [based on article 175, paragraph 1, EC] (COM(2008) 780):

*article 194, paragraph 2 TFEU*

12. Proposal for a Council Regulation amending Regulation (EC) No.1934/2006 establishing a financing instrument for cooperation with industrialized and other high-income countries and territories. [based on article 181 A EC] (COM(2009) 197):

*article 207, paragraphe 2 et article 209, paragraphe 1 TFEU*

13. Proposal for a Regulation of the European Parliament and of the Council on the European Earth observation programme (GMES) and its initial operations (2011–2013) [based on article 157, paragraph 3 EC] (COM(2009) 223):

*article 189, paragraph 2 TFEU*

14. Proposal for a Regulation of the European Parliament and of the Council concerning measures to safeguard security of gas supply and repealing Directive 2004/67/EC [based on article 95 EC] (COM(2009) 363):

*article 194, paragraph 2 TFEU*

15. Proposal for a Council Decision concerning the conclusion, on behalf of the European Community, of the Additional Protocol to the Cooperation Agreement for the Protection of the Coasts and Waters of the North-East Atlantic against Pollution [based on

article 175, paragraph 1, article 300, paragraph 2, indent 1, and paragraph 3, indent 1] (COM(2009) 436):

*article 196, paragraph 2 and article 218, paragraph 6(a) TFEU*

16. Proposal for a Council Decision on the signing of the ‘Terms of Reference for the International Partnership for Energy Efficiency Cooperation’ (IPEEC) and the ‘Memorandum concerning the hosting by the International Energy Agency of the Secretariat to the International Partnership for Energy Efficiency Cooperation’ by the European Community [based on article 175, paragraph 1, and article 300, paragraph 2, indent 1, and paragraph 3, indent 1] (COM(2009) 438):

*article 194, paragraph 2 et article 218, paragraph 6(a) TFEU*

## 11 Financial services

(31177) 15615/09 —	Opinion of the European Central Bank of 26 October 2009 on a Draft Regulation on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board and a draft Council Decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board
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<i>Legal base</i>	—
<i>Basis of consideration</i>	Minister’s letter of 14 January 2010
<i>Previous Committee Report</i>	HC 5–iv (2009–10), chapter 6 (15 December 2009)
<i>To be discussed in Council</i>	None planned
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

### Background

11.1 In September 2009 the Commission published proposals for a system of Community regulation and supervision of financial services, which included a draft Regulation to establish a European Systemic Risk Board and a draft Council Decision to give the European Central Bank some tasks in support of the proposed Board. The Commission proposes that:

- the Bank would provide the resources for the Board’s Secretariat;
- the Secretariat would assist in the preparation of Board meetings and the collection and processing of information, including statistical information; and
- it would prepare analysis necessary to carry out the Board’s tasks and support its Advisory Technical Committee.

11.2 We considered these legislative proposals on a number of occasions and they were debated on the Floor of the House on 1 December 2009.<sup>27</sup> The Council has agreed a general approach on the proposals and they are now to be considered by the European Parliament.

11.3 In October 2009 the European Central Bank sent the Council an Opinion on the Commission’s proposals to establish a European Systemic Risk Board and to entrust the Bank with tasks in support of the Board. When we considered this document, in December 2009, we asked to hear from the Government whether it supported or opposed the 13 amendments suggested by the Bank before considering it further. Meanwhile the document remained under scrutiny.<sup>28</sup>

## The Minister’s letter

11.4 The Financial Services Secretary to the Treasury (Lord Myners) now tells us of the Government’s view of each of the amendments suggested by the Bank. He says that, in relation to:

### *Amendments to the draft Regulation*

- amending a recital to note that the Bank is to support the European Systemic Risk Board but “without prejudice to the principle of the independence of the ECB in the performance of its tasks pursuant to the Treaty”, the Government supports the Commission and Council view that provisions in the proposals do not undermine the Bank’s independence;
- removing the reference to ensuring “a sustainable contribution of the financial sector to economic growth” from the European Systemic Risk Board’s objectives, as this is not considered to be the motivation behind enhanced macro-prudential oversight, the Government is open on this issue, but supports the Council position to retain this reference;
- adding the Advisory Technical Committee to the list of key institutional aspects of the European Systemic Risk Board, the Government supports this amendment and it has been accepted by the Council;
- minor amendments to reflect past declarations and decisions, including the conclusions from the agreement at the ECOFIN Council of 9 June 2009 and the European Council of 18–19 June 2009, the Government believes this is an issue of drafting rather than substance;
- an amendment to reflect that the Advisory Technical Committee will assist the European Systemic Risk Board on a permanent basis, not just “where requested”, the Government supports this amendment and it has been accepted by the Council;

27 (30950)-(30957) 13645/09, 13648/09, 13652/09–13654–09, 13656/09–13658/09: see HC 19–xxviii (2008–09), chapter 6 (21 October 2009), HC 19–xxx (2008–09), chapter 2 (4 November 2009) and HC 5–i (2009–2010), chapter 2 (19 November 2009) and *HC Deb*, 1 December 2009, cols. 989–1026.

28 See headnote.

- adding extra provisions to ensure the European Systemic Risk Board's independence from "Community institutions or any other public or private body", in addition to Member States, the Government supports this amendment and it has been accepted by the Council;
- another amendment to reflect that the Advisory Technical Committee will assist the European Systemic Risk Board on a permanent basis, not just "where requested", the Government supports this amendment and it has been accepted by the Council;
- a minor amendment to the terminology used, to refer to stakeholder "views" rather than "advice", the Government believes this amendment is an issue of drafting rather than substance;

### *Amendments to the draft Council Decision*

- clarifying that the Bank's performance of its tasks will not be hampered by its support of the European Systemic Risk Board nor by the tasks of the European Systemic Risk Board itself, the Government supports the Commission and Council view that provisions in the proposals do not undermine the Bank's independence;
- adding a new recital to clarify that macro-prudential supervision covers the financial system "as a whole", the Government is open on this issue, but does not believe it is a top priority;
- an amendment relating to the statistical support the Bank is called upon to provide to the European Systemic Risk Board, to enable the Secretariat to manage data collected by the Bank/Board, on behalf of and for the benefit of the Board, the Government supports the Board's Secretariat being able to function effectively and efficiently and having access to all the appropriate data it needs and believes that the Commission's text delivers this objective;
- changing the title of draft Article 4 from "Management" to "Functioning of the Secretariat", to more accurately reflect the Article's contents, the Government has no strong view on this amendment; and
- adding the Advisory Technical Committee meetings to the list of meetings that the head of the European Systemic Risk Board's Secretariat or its representative shall attend, the Government supports this amendment and it has been accepted by the Council.

## **Conclusion**

**11.5 We are grateful to the Minister for this response. We have no further questions to ask and now clear the document.**

## 12 EU policies until 2020

(31210) 16016/09 COM(09) 647	Commission Working Document: <i>Consultation on the Future “EU 2020” Strategy</i>
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<i>Legal base</i>	—
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister’s letter of 13 January 2010
<i>Previous Committee Report</i>	HC 5–vi (2009–10), chapter 7 (13 January 2010)
<i>Discussed in Council</i>	European Council 10–11 December 2009
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared (decision reported 13 January 2010)

### Background

12.1 In 2000 an action plan, known as the Lisbon Agenda or Lisbon Strategy, was launched to “make Europe, by 2010, the most competitive and the most dynamic knowledge-based economy in the world”. In 2005 the action plan was relaunched for the remainder of the decade as the Lisbon Strategy for Jobs and Growth.

12.2 This Commission Working Document has been published to seek the views of citizens, organisations and public authorities on the future “EU 2020” Strategy as a successor to the current Lisbon Strategy for Growth and Jobs. It sets out broad proposals for policies over the next ten years intended to enable the EU to make a full recovery from the economic crisis, while speeding up the move towards “a smarter, greener economy”. It describes the need for structural reform in the Union, proposes some policy priorities and highlights possible delivery mechanisms.

12.3 The document was sent to the relevant sectoral Councils on 7 December 2009 and discussed at the European Council on 10–11 December 2009. The European Council’s Conclusions recorded that it “takes note of the consultation launched by the Commission on the future strategy and looks forward to discussing an ambitious proposal as early as possible in 2010 with a view to full discussion in the European Council, including at its 2010 Spring meeting”.<sup>29</sup> The public consultation was to close on 15 January 2010 and the Commission intends to present a formal proposal for a strategy early this year, possibly following an informal European Council on 11 February 2010, with a view to adoption of the strategy at the Spring European Council.

12.4 When we considered this document, earlier this month, we said:

- whatever plan is adopted to follow on from the Lisbon Strategy for Jobs and Growth will be an important determinant for a range of EU policies in the years up to 2020;

29 See [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/111877.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111877.pdf).

- thus, while we were content to clear this present consultative document, we were clear that we would wish to recommend the Commission’s formal proposal, once published and deposited, for debate before the Spring 2010 European Council; and
- meanwhile, if the Government decided to respond to the call for comments on the Commission Working Document, we wished to see that response.<sup>30</sup>

## The Government’s view

12.5 The Government has responded to the Commission’s Working Document and the Economic Secretary to the Treasury (Ian Pearson) sends it to us. The response, a letter to the President of the Commission, welcomes the launching of a public debate on policies to facilitate the Union’s economic recovery, suggests that a new strategy should provide a framework for the steps needed at international, EU, national and regional levels to ensure that the Union leads the global economy of the future and raises the standard of living of its citizens and recalls the Prime Minister’s proposal, prior to the October 2010 for a new EU Compact for Jobs and Growth, addressing six key priorities:

- fiscal policy that protects the recovery and supports sustainable growth;
- creating new jobs and equipping our workforce with skills for the new economy;
- growing the innovative industries of the future;
- supporting Europe’s businesses to take advantage of the Single Market;
- opening up global markets to trade and investment; and
- a robust and competitive financial services sector.<sup>31</sup>

12.6 The Government’s response continues that it welcomes the focus of the Working Document on the interdependence between the Union’s economic, social and environmental objectives and draws attention, as an initial contribution to the public consultation its paper *The Future of EU Competitiveness: From economic recovery to sustainable growth* published in June 2009.<sup>32</sup> It adds that:

“The UK government believes that the EU’s strategy must enhance cooperation in a new era of global economic management, defined by the agreement reached at the Pittsburgh Summit of the G20. In order to identify, build support for and implement the reforms that Europe urgently requires, a new Compact for Jobs and Growth must bind the EU’s institutions and Member States into a common cause of generating strong, sustainable and balanced growth.

“This will mean addressing the lessons of the current Lisbon Strategy through:

“Firstly, improved coordination and coherence between policy instruments ...

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30 See headnote.

31 See <http://www.number10.gov.uk/Page21117>.

32 See <http://www.berr.gov.uk/files/file51732.pdf>.

“Secondly, improved political ownership of and accountability for the structural reforms needed ...

“Thirdly, greater recognition of the importance of the wider global context ...

“And fourthly, stronger links between the strategy’s objectives and the delivery mechanisms available.”

## **Conclusion**

**12.7 We are grateful for this information about the Government’s response to the call for comments on the Commission Working Document. This confirms our view of the importance of the outcome of the debate the document has initiated and we take this opportunity to remind the Government that we will wish to recommend the Commission’s formal proposal, once published and deposited, for debate before the Spring 2010 European Council.**

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

### **Department for Business, Innovation and Skills**

(31200)  
16849/09  
COM(09) 655

Draft Council Regulation imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No. 384/96.

### **Department for Culture, Media and Sport**

(31211)  
17037/09  
COM(09) 657

Draft Council Decision on the Community position to be taken in the EU – Switzerland Joint Committee established in the Agreement between the European Community and the Swiss Confederation in the audiovisual field, establishing the terms and conditions for the participation of the Swiss Confederation in the Community program MEDIA 2007, as regards a Joint Committee decision updating Article 1 in Annex I of the Agreement.

### **Department for Environment, Food and Rural Affairs**

(31192)  
16810/09  
COM(09) 650

Draft Council Decision repealing Council Decision No. 2009/473/EC concerning the conclusion of an Agreement in the form of an Exchange of Letters on the provisional application of the Fisheries Partnership Agreement between the European Community and the Republic of Guinea.

### **Home Office**

(31233)  
17726/09  
COM(09) 687

Commission Report pursuant to Article 4 and Article 5 of the Council Decision of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration.

### **HM Treasury**

(31204)  
17047/09  
—

Draft Revision of the Rules of Procedure of the Court of Auditors.

# Formal Minutes

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**Wednesday 20 January 2010**

Members present:

Mr Adrian Bailey  
Mr David S Borrow  
Mr James Clappison  
Jim Dobbin  
Mr Greg Hands

Mr David Heathcoat-Amory  
Kelvin Hopkins  
Mr Bob Laxton  
Angus Robertson

In the temporary absence of the Chairman, Jim Dobbin was called to the Chair for the meeting.

## **1. Scrutiny of Documents**

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

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

Paragraphs 1.1 to 9.19 read and agreed to.

Paragraphs 9.20 to 9.23 read, amended and agreed to.

Paragraphs 10.1 to 13 read and agreed to.

*Resolved*, That the Report be the Eighth Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

[Adjourned till Wednesday 27 January at 2.30 pm.]

## Standing order and membership

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The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Standing Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at [www.parliament.uk](http://www.parliament.uk).

### Current membership

Michael Connarty MP (*Labour, Linlithgow and East Falkirk*) (Chairman)  
Mr Adrian Bailey MP (*Labour/Co-op, West Bromwich West*)  
Mr David S. Borrow MP (*Labour, South Ribble*)  
Mr William Cash MP (*Conservative, Stone*)  
Mr James Clappison MP (*Conservative, Hertsmere*)  
Ms Katy Clark MP (*Labour, North Ayrshire and Arran*)  
Jim Dobbin MP (*Labour, Heywood and Middleton*)  
Mr Greg Hands MP (*Conservative, Hammersmith and Fulham*)  
Mr David Heathcoat-Amory MP (*Conservative, Wells*)  
Keith Hill MP (*Labour, Streatham*)  
Kelvin Hopkins MP (*Labour, Luton North*)  
Mr Lindsay Hoyle MP (*Labour, Chorley*)  
Mr Bob Laxton MP (*Labour, Derby North*)  
Angus Robertson MP (*SNP, Moray*)  
Mr Anthony Steen MP (*Conservative, Totnes*)  
Richard Younger-Ross MP (*Liberal Democrat, Teignbridge*)