



House of Commons
European Scrutiny Committee

**Eleventh Report of
Session 2009–10**

**Documents considered by the Committee on 9 February 2010,
including the following recommendations for debate:**

EU pre-accession funding for Croatia

EU enlargement: pre-accession finance

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 9 February 2010*

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. 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).

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1 EU pre-accession funding for Croatia

(31099) 15365/09 + ADD 1 COM(09) 590	Commission Annual Report on the Instrument for Structural Policy for Pre-accession (ISPA) in 2008
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<i>Legal base</i>	—
<i>Document originated</i>	29 October 2009
<i>Deposited in Parliament</i>	9 November 2009
<i>Department</i>	International Development
<i>Basis of consideration</i>	EM of 24 November 2009
<i>Previous Committee Report</i>	None; but see (30090)14904/08: HC 19–viii (2008–09), chapter 18 (25 February 2009) and HC 19–iii (2008–09), chapter 5 (14 January 2009)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; for debate in European Committee B, along with Commission Communication 14685/09 and Commission 2008 Annual Report 5271/10

Background

1.1 Prior to 2007, there was a trio of pre-accession support programmes:

- PHARE, which provided assistance in adopting the *acquis communautaire* (the entire body of European laws, including treaties, regulations and directives) through improving administrative capacity and supporting related investment;
- SAPARD (Special Accession Programme for Agriculture and Rural Development), which finances agricultural and rural development; and
- ISPA (Instrument for Structural Policies for Pre-Accession), which finances major infrastructure projects in the transport and environment sectors.

1.2 Both ISPA and SAPARD were designed to lay the groundwork for the countries concerned to be able properly to implement structural and cohesion funds upon accession.

1.3 From 1 January 2007, the Instrument for Pre-Accession replaced these and the other similar existing instruments (Turkey pre-accession instrument and CARDS).¹ The IPA will provide a total amount of €11.468 billion over the 2007–13 Financial Perspective.

¹ The Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme supported western Balkans countries (Albania, Bosnia and Herzegovina, Croatia, Macedonia, and the then Federal Republic of Yugoslavia) to make progress on post-conflict stabilisation and accession to EU membership, as part of the Stabilisation and Association Process. €5.13 billion (£3.50 billion) has been provided under CARDS between 2000 and 2006.

1.4 ISPA is implemented by the Decentralised Implementation System (DIS) under which EC Delegations must endorse procurement documents before tenders are launched or contracts signed. So too PHARE.

1.5 SAPARD, however, is implemented in a fully decentralised manner under the Extended Decentralised Implementation System (EDIS), which involves administrations in candidate countries fully managing EU pre-accession funds.

1.6 Having been awarded Candidate Country status in June 2004, Croatia has benefited from ISPA as of 1st January 2005. Following the accession of Bulgaria and Romania on 1 January 2007, Croatia is now the sole ISPA beneficiary.

1.7 The 2007 Commission Report, which we considered on 14 January and 25 February 2009, noted various challenges: much attention was paid to the transformation of the relevant unit of the Ministry of Finance into a separate government agency — the Central Finance and Contracting Agency — in order to improve the recruitment and retention of additional suitably experienced staff (as recommended by the Commission's auditors in 2006); tenders were launched only at the end of the year, and very little progress was apparent regarding the disbursement of funds. In sum:

- no new ISPA projects were adopted in 2007;
- Six projects had been approved;
- 100% of the ISPA funds set aside for Croatia had been committed;
- progress in implementing ISPA measures was slow, amounting by the end of 2005–07 to €6.2 million, or 10.5% of budgetary commitments.

1.8 There were a number of reasons for the slow speed of *Project Implementation*: above all the Implementing Agency had suffered from a lack of suitably experienced staff and poor management; final beneficiaries lacked experience in preparing and running international tenders; the excessively bureaucratic procedures established by the Croats to manage and monitor the project implementation process also adversely affected the speed of project implementation, and the Commission on a number of occasions had suggested that these procedures be streamlined.

1.9 With regard to *Project Monitoring*, the Commission highlighted the need to accelerate the tendering and contracting processes and to ensure that the technical assistance contracts for the preparation of future project pipelines were contracted out as soon as possible in order to prevent later problems with IPA fund absorption. However, on the basis of the number of tenders launched by the end of the year, the Commission expected a significant increase in payments in 2008.

1.10 On *Financial Management and Control*, the Commission noted that the principal requirements are close to those applicable to the Cohesion and Structural Funds but that, due to the slow progress in project implementation, no ISPA audits were carried out in 2007. However, an advisory audit by DG Regional Policy in April 2007 on the CFCU had been concerned by the high staff turnover and, consequently, the insufficient level of checking documents prior to submission to the EC Delegation for endorsement.

Nonetheless, the Commission noted that the current aim was for Croatia to achieve EDIS (i.e., ex-post control only) by the end of 2009. This was notwithstanding that, under *Contribution to Community Policies* and regarding *Public Procurement*, the Report said:

“From the start of ISPA, the fulfilment of legal requirements for sound, fair and transparent public procurement as enshrined in the PRAG² has proved to be a major challenge. In many cases, ensuring compliance with EU procurement principles has led to delays in the implementation of ISPA projects. The Commission services — especially the EC Delegation in Zagreb — had to intervene frequently, not only to check that procedures were correctly applied but also to rectify errors, to liaise with dissatisfied bidders, and to explain to the implementing agency how the procedures concerned should be implemented. Regularly, the quality of the tender documents needed to be improved resulting in the very late announcement of tenders. The cumulative effect of these interventions was additional delays to the implementation process.”

1.11 Furthermore, looking at the ISPA contribution to the implementation of environmental policy and compliance with EU standards, the Commission said that the environmental authorities also faced problems, with the high staff turnover cancelling out of any benefits received through training and experience, which had wider implications for the introduction of IPA, “with its greater number of bodies and a stream of additional projects”, and where “the provision of sufficient financial and human resources for implementation (including monitoring, inspection, the provision of permits and reporting) needs to be ensured.”

1.12 In an uncharacteristically brief Explanatory Memorandum of 11 November 2008, the Minister of State at the Department for International Development (Mr Gareth Thomas) expressed the view that once the new structure was fully staffed, the remaining projects should be implemented quickly. He also said that as ISPA had stopped programming, there were minimal policy implications for the UK. He was concerned to see that the allocated funds were spent appropriately and that there were no further delays.

Our assessment

1.13 We shared the Minister’s concern but were by no means as sanguine as he apparently was. We noted that the best way of ensuring the integrity of EU enlargement policy was to ensure that candidate countries were fully able to take on the responsibilities of EU membership, and fulfil the values that underpin the EU, before accession takes place; and that this lesson should be learned with regard to planned future accessions. We further noted pressure for the conclusion of negotiations on Croatia’s membership application by the end of 2009 — even though the Commission judged that reform efforts still needed to be pursued in particular in the all-too-familiar areas of the judiciary and public administration, the fight against corruption and organised crime, the promotion of minority rights, including refugee return, the pursuit of war crime trials, and access for ICTY³ to documents.

2 The Practical Guide to PHARE, ISPA and SAPARD contract procedures.

3 International Criminal Tribunal for the former Yugoslavia.

1.14 Also, recalling what the Report had to say about the Commission ensuring close coordination among the three pre-accession instruments, PHARE, SAPARD and ISPA, with the PHARE Management Committee playing a special role, we noted that, previously, the Commission had accordingly produced a single Report on all 3 instruments; given the sums of money involved both in Croatia and more widely and, as the Commission themselves pointed out, the implications for effective implementation of the successor IPA, we felt that this was of more than historical interest, and asked the Minister to provide the answer to this question as soon as possible.

1.15 It also seemed to us that it could by no means be assumed that, as the Minister put it, “once the new structure is fully staffed the remaining projects should be implemented quickly”, or that proper EDIS accreditation by the end of the second half of 2009 was realistic. Plainly, performance in 2008 would be vital. Again, given the then pressure for accession at the end of 2009 and experience hitherto in the region, we felt that this too was of more than academic interest. We therefore asked the Minister also to provide this information as soon as possible. In the meantime we retained the document under scrutiny.

1.16 In his response of 6 February 2009, the Parliamentary Secretary at the Department for International Development (Mr Michael Foster) provided relevant information about the 2007 Progress Reports on the other pre-accession instruments. He said that he shared the Committee’s concern over the timeliness of information from the Commission and that he would continue to press for earlier reports to be made available. He acknowledged that Croatia’s performance in managing funds had fallen “well short of what is required”, and said that “progress must be made on this, as on other areas, before accession can be contemplated and without regard to any presumed timetable.”

Our assessment

1.17 We judged this to be an adequate response, and cleared the document.

1.18 We also considered it to be relevant to the debate that we had already recommended on the new Instrument for Pre-Accession and the related Multi-Annual Financial Framework⁴ (which debate took place on 23 March 2009).⁵

The 2008 Commission Annual Report

1.19 In a very sketchy Explanatory Memorandum of 24 November 2009, the Parliamentary Secretary at the Department for International Development (Mr Michael Foster) notes only that:

- by the end of 2007 the Commission had committed 100% of the funds set aside for Croatia, with €29.5 million (£26.3 million) focused on the environment sector and €29.3 million (£26.1 million) on the transport sector;

4 See headnote: (30090)14904/08: HC 19–viii (2008–09), chapter 18 (25 February 2009) and HC 19–iii (2008–09), chapter 5 (14 January 2009).

5 See <http://www.publications.parliament.uk/pa/cm200809/cmgeneral/euro/090323/90323s01.htm> for the record of that debate.

- implementation was slow during 2007, but has since picked up; and
- in 2008 a total of €7.88 million (£7.04 million) in payments were made, representing 13.3% of ISPA funding, compared with €124, 629 (£111,393) for 2007;
- tendering and contracting has now been completed for 3 out of the 6 ISPA projects.

1.20 In the Report, however, the Commission notes that:

- tendering and contracting is “still slower than desirable [which] reflects continuing poor management and coordination, as well as a shortage of suitable staff”;
- the transformation of the Implementing Agency, from within the Ministry of Finance , into the separate Central Finance and Contracting Agency, with higher salary levels than in the civil service, “does not seem to have had the immediate effect that was anticipated”, with the CFCA still having trouble recruiting and retaining suitable staff ;
- preparations for the introduction of the IPA has diverted the attention of some of the key bodies involved in implementing the ISPA projects due to the necessity to reorganise their staff and to obtain accreditation for the management of IPA funds;
- the principal requirements for both the financial management and control and the treatment of irregularities are close to those applicable to the Cohesion Fund and the Structural Funds;
- the key elements relate to the establishment of internal financial control systems and procedures that can ensure transparent and non-discriminatory procurement procedures, the accuracy of declared expenditure, adequate internal audit capability, sufficient audit trail and appropriate treatment of irregularities;
- due to the slow progress in ISPA project implementation it was decided that no ISPA audits would be carried out in Croatia during 2008;
- under the system of ex-ante approval, priority is given to ensuring that sufficient control procedures are put in place regarding project implementation and payments;
- the management of pre-accession funds carries an inherent risk since the funds are delivered by a variety of organisations and systems;
- eligibility of expenditure is determined by compliance with rules and conditions fixed at Community and national level which can lead to complexity and risk of misinterpretation;
- notwithstanding the lack of audits thus far, and all the other difficulties highlighted, the Croatian authorities plan to submit an application for the waiving of *ex-ante* controls during the second half of 2010 for ISPA projects.

The Government’s view

1.21 The Minister comments as follows:

“As ISPA has stopped programming, there are minimal policy implications for the UK from the 2008 annual report. However, we are concerned to see that the allocated funds are spent appropriately and that there are no further delays. We are working with the European commission and Member states to ensure that this happens.

“The European Court of Auditors published a report in December last year which reviewed ISPA and judged that there had been a coherent strategy, and that ISPA projects did increase compliance with EU standards or improve the links to the Trans-European network. The Court highlighted the significant delays and recommended corrective action to the Commission. In reply, the Commission agreed with the Court’s recommendations, and noted that many of the reasons for the delays in the early stages of ISPA had been addressed. As selection of ISPA projects will be evaluated in an ex post evaluation exercise.”

1.22 The Minister concludes by noting that no date has yet been agreed for a Council discussion of the ISPA.

Conclusion

1.23 **We are surprised, and disappointed, that — beyond general expressions of concern that the allocated funds are spent appropriately and that there are no further delays, and of working with the Commission and Member States to ensure that this happens — the Minister does not directly address the important considerations highlighted in the Commission Report and set out in paragraph 1.20 above.**

1.24 **We are particularly puzzled as to the basis upon which, with only three of the six ISPA projects underway and the Central Finance and Contracting Agency still plainly struggling to do its job effectively, the Croatian authorities are minded to seek the waiving of *ex-ante* controls. We can also see nothing in this Report to substantiate the statement that the Minister attributes to the Commission that “many of the reasons for the delays in the early stages of ISPA had been addressed”.**

1.25 **The Committee has taken a sustained interest in the lessons identified by the accession of Bulgaria and Romania, and that they should be effectively incorporated into subsequent accessions, and specifically that of Croatia. This has hitherto focused on issues at the heart of a properly functioning governance system based on the effective implementation of laws by an accountable, independent and effective judiciary and bureaucracy. But Bulgaria has shown itself also to be delinquent with regard to the proper spending of post-accession funding. The question thus arises as to what safeguards there will need to be in place prior to Croatia’s accession in order to ensure that there is no such possibility arising there after accession. Against that background, neither this Report nor the Minister’s response is at all reassuring.**

1.26 **Elsewhere in this Report we consider the latest Annual Report, for 2008, on the post-2007 arrangements under the IPA and a Commission Communication detailing the proposed breakdown of the overall IPA envelope, by country and by sector, for the period 2011–13. The Report says that “the overall objective on monitoring is to enhance the relevance, effectiveness, efficiency, impact and sustainability of the assistance to the western Balkans and Turkey”. This is entirely appropriate. But, once**

again, “no programme level evaluation was carried out during 2008 as the implementation of the first and second year of IPA only began in 2008 so no lessons can be identified”.

1.27 In the case of Croatia, this does not hold: as this ISPA Report notes, staff have been diverted away from implementation of current support under the pre-2007 regime due to the necessity to reorganise their staff and to obtain accreditation for the management of IPA funds.

1.28 As noted at the outset, the IPA amount to €11.47 billion over the 2007–13 Financial Perspective. All in all, we are still unable to see clear indications that lessons are being identified in the pre-2007 processes and that they are being implemented either in the present accession negotiations or more widely in the post-2007 pre-accession finance arrangements. We therefore recommend that this Report is debated, along with the Commission Report on the IPA 2008 Annual Report and the 2011–13 MIFF, in the European Committee.

2 EU enlargement: pre-accession finance

(a) (31030) 14685/09 COM(09) 543	Commission Communication: Instrument for Pre-Accession Assistance (IPA): Multi-annual Indicative Financial Framework for 2011–2013
(b) (31255) 5271/10 + ADD 1 COM(09) 699	Commission 2008 Annual Report on the Implementation of the Instrument for Pre Accession Assistance (IPA)

<i>Legal base</i>	—
<i>Document originated</i>	(a) 14 October 2009 (b) 23 December 2009
<i>Document deposited</i>	(a) 23 October 2009 (b) 15 January 2009
<i>Department</i>	International Development
<i>Basis of consideration</i>	(a) EM of 12 November 2009 (b) EM of 3 February 2010
<i>Previous Committee Report</i>	None; but see (30162) 15620/08 and (30303) 17210/07: HC 19–vii (2008–09), chapter 1 (11 February 2009); also see (29154) 14862/07: HC 16–xvi (2007–08), chapter 9 (19 March 2008) and HC 16–viii (2007–08), chapter 18 (16 January 2008); (28022) 15122/06: HC 41–ii (2006–07), chapter 16 (29 November 2006); and (27653–55) HC 34–xxxvii (2005–06), chapter 52 (11 October 2006)
<i>Discussed in Council</i>	(a) To be determined (b) To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Not cleared; for debate in European Committee B along with Commission Annual Report 15365/09

Background

2.1 From 1 January 2007, all pre-accession assistance has been delivered by the Instrument for Pre-accession Assistance (IPA) — one of a small number of new Instruments for EU External Assistance (the other relevant ones being the European Neighbourhood and Partnership Instrument, the Development Cooperation Instrument and the Instrument for Stability) which replaced a plethora of instruments and budget lines. The IPA replaces PHARE (implementing the *acquis communautaire*, economic restructuring and political capacity-building), ISPA (environmental and transport projects) and SAPARD (agriculture and rural development). All involved a staged, quality-assured process, which, over time,

seeks to ensure that candidate countries are prepared for and finally enabled to access post-accession funding effectively and efficiently on their own. This is called EDIS — Extended Decentralised Management System.

2.2 The purpose of IPA is thus to provide financial support for countries seeking EU membership. It is presently available to candidates (Turkey, Croatia and Macedonia) and to pre-candidates (Albania, Bosnia and Herzegovina, Montenegro, Serbia and Kosovo under United Nations Security Council Resolution 1244). IPA assistance helps to strengthen democratic institutions and the rule of law, reform public administration, carry out economic reforms, promote respect for human as well as minority rights and gender equality, support the development of civil society and advance regional co-operation, and contribute to sustainable development and poverty reduction. The IPA consists of five different components:

I. *Transition Assistance and Institution Building*, aimed at financing institution-building measures and associated investment;

II. *Cross-Border Co-operation*, to support cross-border cooperation at borders between candidate/potential candidate countries and between them and the EU countries. It may also fund participation of beneficiary countries in Structural Funds' trans-national co-operation programmes and the European Neighbourhood and Partnership Instrument Sea Basins programmes, as appropriate;

III. *Regional Development*, which finances investments and associated technical assistance in areas such as transport, environment and regional competitiveness;

IV. *Human Resources Development*, designed to strengthen human capital and help combat exclusion;

V. *Rural Development*, which emulates post-accession Rural Development programmes by financing rural development-type measures that are similar in nature though smaller in scale.

2.3 Components I and II are open to all beneficiary countries. Components III, IV and V are open to candidate countries only, and are designed to mirror Structural, Cohesion and Rural Development funds in preparation for managing such funds upon accession, through a learning-by-doing process. This requires that the country has the administrative capacities and structures to take responsibility for the management of assistance. For potential candidate countries, regional, human resources and rural development-type measures will be implemented through the Transition Assistance and Institution Building component.

2.4 Components I and II are overseen by the IPA Management Committee (made up of Member State representatives and chaired by the Commission), components III and IV by the Structural Actions Management Committee (COCOF), component IV by them and the European Social Fund Committee, and component V by the Rural Development Committee.

2.5 The overall political priorities for pre-accession are set out in the Accession and European Partnerships, the annual progress reports and the enlargement strategy paper

contained in the enlargement package presented by the Commission to the Council and European Parliament each year.

2.6 The Multi-Annual Indicative Financial Framework (MIFF), which is established and presented annually to the Council and the European Parliament, in accordance with Article 5 of IPA Regulation (EC) No 1085/2006, is a breakdown of the overall IPA envelope — €11.47 billion (£10.18 billion) over the financial perspective 2007–2013 — by country and by component, for a three year rolling period.

2.7 In determining the allocations between components, the Commission says that due account is taken of the readiness of the decentralised management systems necessary for the implementation of components III, IV and V in the current candidate countries.

2.8 The figures are subject to change, according to how countries move through the enlargement process towards accession. For example, as and when Croatia accedes to the EU, it would then receive Structural Funds rather than IPA, and Croatia's allocation would be shared among the remaining IPA recipients.

Previous consideration

2.9 On 16 January 2008, we considered the second MIFF for the IPA, with funding allocations for 2009–2011 (details of allocations for 2007 and 2008 were included in the MIFF for reference). Allocations were set out for each country (in current prices and in euros) under each component, as well as allocations to regional programmes and to administrative costs. The main criteria used included:

- the Commission's commitment to ensure that no country would receive less funding under IPA in 2007 than they did under previous instruments in 2006.
- for pre-candidate countries in the western Balkans (in 2004 prices), the MIFF sets out to reach €23 (£16) per capita by 2010. As candidate countries, Croatia and Macedonia will receive at least €30 (£21) per capita by 2008.
- a gradual increase in per capita levels for Turkey over 2007–2011, taking into account the size of the country and the ability of its institutions to make good and timely use of IPA funding.

2.10 The MIFF also commented briefly on the allocations between different components. In particular, the document noted that allocations for components 3–5 had been determined taking account of countries' progress towards implementing the necessary systems for managing these funds.

2.11 In his Explanatory Memorandum of 6 December 2007, the then Parliamentary Under-Secretary at the Department for International Development (Mr Gareth Thomas) welcomed the IPA's objectives and the support thus provided to candidate and pre-candidate countries, and was content with the approach taken by the Commission on the basis for the allocations between countries and components.

2.12 He also noted, as “a key challenge in the region”, that many of the beneficiary governments were still in the process of developing the necessary systems to programme,

spend and monitor IPA assistance. This, he said, had been taken into consideration by the Commission in preparing the MIFF; the IPA also provided support to governments to develop these systems and make effective use of IPA funding; he would continue to work with the Commission to ensure that IPA assistance was allocated and spent in order to achieve maximum impact.

2.13 For our part, we noted that, as elsewhere in that same Report of 16 January 2008 (and several earlier ones), a theme common to a variety of development-related topics that we considered there was the effectiveness of the assistance provided, which in turn depended not just on developing the necessary systems, but also on:

- a determination and capacity to make changes where experience showed this to be necessary; and
- ensuring that this overall process was subject to regular parliamentary scrutiny, since it is UK and other European taxpayers’ money, as well as their expectations, that are at stake.

2.14 We looked forward to hearing from the Minister in due course on how this requirement would be met in the case of the IPA (and the other new financial instruments), and in the meantime cleared the document.

2.15 In line with our thoughts on other related documents in this Report, we also drew this Communication to the attention of the International Development Committee.⁶

2.16 In a subsequent letter of 12 March 2008 the Minister provided information on “the specific issues of effectiveness, evaluation and future scrutiny”, as follows:

Effectiveness

Changes had been made to the IPA that built on the lessons learnt from previous instruments and addressed the concerns raised by the Court of Auditors, which should result in a significant improvement in the effectiveness of the instrument. Significant changes include:

- Better project design, monitoring, evaluation and lesson learning, to be scrutinised by an internal Quality Support Group;
- Increased recognition of the role of beneficiary governments, e.g. through greater involvement in the development of projects; supporting projects aimed at improving the policy and planning capacity of beneficiary governments, to ensure that they can make good use of assistance from the EU and other donors;
- Increased emphasis on ensuring that IPA assistance complements rather than duplicates the work of other donors.

⁶ See headnote: (29154) 14862/07: HC 16–viii (2007–08), chapter 18 (16 January 2008). Also see chapters 12–17 inclusive of that same Report.

In response to EM 10984/06,⁷ where the Committee had sought assurance that lessons had been learned on specific issues raised by the Court of Auditors — “ensuring sustainability”; “supporting co-financing”; “improving contracting rates” and “promoting additionality and catalytic effects”: the design of the new instrument incorporated strengthened procedures on all these issues.

The UK would continue to work closely with the Commission to extend good practice and maximise the effectiveness of IPA assistance. The Commission’s commitment to improve donor coordination in-country and across the region was particularly welcome.

Evaluating the effectiveness of IPA

The IPA Implementing Regulation included a number of measures to promote monitoring, evaluation and lesson learning. Each year, the Commission would formally monitor their programmes and carry out audits and evaluations. For 2007, €5 million (£3.7 million) had been allocated to monitoring, audit and evaluation work. These programmes should promote effective implementation and evaluation of projects, as well as ensure appropriate external scrutiny. The evaluation reports would also be a vital basis for ensuring that lessons are learned for future projects.

The 2007 evaluation programme would include an ex-ante evaluation of the IPA with a focus on the three year forward plans known as Multi-Annual Indicative Planning Documents. There would also be evaluations of a selection of projects funded under previous instruments in Albania, Bosnia and Herzegovina and in the wider region.

Future Reporting to Parliament

The UK would continue to work hard to support the Commission to improve the delivery of the IPA. This would include strengthening our presence in Brussels. The Commission would prepare annual reports on IPA, and the Minister’s accompanying Explanatory Memoranda would provide the Committee with “regular reports on the progress that has been made on the IPA, including the outcome of evaluations as these become available.”

2.17 In reporting the Minister’s letter to the House, the Committee observed that the challenges facing the IPA were in many ways more daunting than those handled by its predecessor financial instruments, in that those who to be assisted included the first prospective Muslim member country and the war-torn and ethnically-riven countries of the western Balkans. The Committee also noted that there was much in the Minister’s letter that sounded encouraging, particularly the fact that €5 million had been allocated to monitoring, audit and evaluation (though it was not clear if that is for the IPA alone, or all the Commission’s technical assistance work) and that the UK presence in Brussels was to be strengthened in order to support the Commission in the delivery of the IPA. We looked

⁷ European Court of Auditors’ Special Report on the PHARE programme in Bulgaria and Romania: (27641) 10984/06: see HC 34–xxxvi (2005–06), chapter 16 (19 July 2006).

forward to receiving the annual reports to which the Minister refers, and in the meantime drew his letter to the attention of the International Development Committee, as we had done on 16 January 2008 in relation to the Commission's Communication.⁸

2.18 A year ago, we considered Commission Communication 17210/08, which updated the IPA MIFF to include the period 2010–2012, which included a breakdown of allocations for the whole of 2007–12 by country and component.

2.19 At the same meeting we also considered the Commission's IPA Annual Report for 2007 (15620/08), which outlined how the money allocated to IPA 2007 would be spent in the beneficiary countries and also described the main developments in, and the December 2007 General Affairs and External Relations and European Council Conclusions concerning, the enlargement process, which provides the IPA with its strategic framework.

2.20 The Communication also set out the mechanisms for monitoring and evaluation. It noted that no monitoring of IPA projects was carried out during 2007, as the IPA 2007 programmes were generally only adopted at the end of the year and the actual implementation only started in 2008. There was correspondingly limited evaluation.

2.21 Finally, it looked at donor coordination with Member States' bilateral programmes, the European Investment Bank and other International Financial Institutions, and drew attention to agreement amongst them that:

- enhanced coordination between the Commission, EU Member States and non-EU donors was a priority and essential for greater effectiveness;
- ownership of assistance by beneficiary countries was vital in order to maximize the impact;
- the capacities of the beneficiary countries to assume ownership needed to be strengthened.

2.22 In his accompanying Explanatory Memorandum of 29 January 2009, the Parliamentary Under-Secretary at the Department for International Development (Mr Michael Foster) said that a single coherent pre-accession funding instrument that provides was "a huge step forward." But, the IPA having been launched only launched in 2007 and having encountered some delays in project development, the 2007 Annual Report was produced too early to judge the performance of IPA and was therefore largely descriptive. The UK was working closely with the Commission and the recipient countries to ensure that the funds were put to the best possible use. DFID had four offices in the western Balkans, all of whom worked closely with the Commission delegations, and had also created a new post based in UKREP Brussels devoted to monitoring the IPA. He had encouraged the Commission to reduce the number of projects in each successive annual programme, as he expected that concentration on fewer larger projects would have more transformative impact; the trend had been positive in 2008 and looked set to continue in 2009. The prospective allocation of IPA funds showed a steady rise across all countries. The EC was by far the biggest donor to the region. The size of the EC budget made it more

8 See headnote: (29154) 14862/07: HC 16–xviii (2007–08), chapter 9 (19 March 2008).

important than ever for DFID country offices “to engage actively with the Commission and for the UK to play an active role on the IPA Management Committee.”

Our assessment

2.23 We felt that there should be sufficient evidence regarding performance of the IPA by the time the next Annual Report was prepared for it to be analytical as well as descriptive, and said that we would accordingly expect a somewhat more substantial Explanatory Memorandum, with a full assessment of how the outcomes compared with the template — what was going well and less well, and why; and what steps were being taken to address any failings. Though the mechanisms were seemingly in place, the importance of ensuring that they worked as intended was highlighted by the experience in Romania and, particularly, Bulgaria, which had been the subject of several Committee Reports and three European Committee debates in the previous year.

2.24 In the meantime, in view of the experience hitherto, the degree of interest in the next stage of the enlargement process, the sums involved and the present economic challenges and budgetary pressures facing the Union, we felt that a debate in the European Committee would be appropriate.⁹ That debate took place on 23 March 2009.¹⁰

2.25 We also, as before, drew this chapter of our Report and the documents to the attention of the International Development Committee.

The IPA MIFF for 2011–13

2.26 Commission Communication 14685/09 sets out, as before, a breakdown of the overall IPA envelope proposed by the Commission, by country and by sector for a three year rolling period. The figures remain subject to change, according to how countries move through the enlargement process towards accession. The prospective allocations of funds shows a steady rise across all countries, with the figures continuing to be calculated on the basis of per capita allocations, with all countries to receive €23 (£20.43) per head by 2010. The EU remains by far the biggest donor to the region.

The Government's view

2.27 The Parliamentary Secretary at the Department for International Development (Mr Michael Foster) comments in the same words as a year ago: “the UK is working closely with the Commission and the recipient countries to ensure that the funds are put to the best possible use”. DFID offices in the western Balkans “work closely with the Commission Delegations”, and there remains a full time staff member in the UK Representation to the EU in Brussels devoted to monitoring IPA. But now there are only three DFID offices in the region: in countries where DFID is no longer present, the Minister says that his Department continues “to work closely with the FCO in monitoring IPA.”

2.28 Once again he also says that:

9 See headnote: (30162) 15620/08 and (30303) 17210/07: HC 19–vii (2008–09), chapter 1 (11 February 2009).

10 See <http://www.publications.parliament.uk/pa/cm200809/cmgeneral/euro/090323/90323s01.htm> for the record of the debate.

“The size of the EC budget in the western Balkans and Turkey makes it more important than ever for DFID country offices to engage actively with the Commission, and for the UK to play an active monitoring role in Brussels and on the IPA Management Committee.”

The 2008 Annual Report on the implementation of the IPA

2.29 The Report reiterates that:

“... the aim of IPA is to transfer know-how and experience to beneficiary countries, by enhancing ownership and responsibility of the implementation of assistance on the countries’ side.”

2.30 During the lifetime of the instrument, the Commission says that:

“... it is therefore expected that decentralised management — i.e. national authorities of beneficiary countries assuming full ownership in programming and implementation — should become the norm in the management of IPA.”

2.31 The Commission goes on to note that:

“The prompt achievement of this objective will depend on the administrative capacities of individual recipient countries, and on their capacity to ensure that the appropriate management and control systems are in place. Each country should therefore have specific strategies, action plans and timetables in place for moving towards this objective, while at the same time preparing national authorities to have adequate capacity for the increased related responsibilities.”

2.32 This annual report is again mainly a descriptive document that sets out how IPA funds are structured and how they should be managed. The report also describes broadly how the money allocated to IPA 2008 will be spent in the beneficiary countries, and describes the main evolutions of the enlargement process.

2.33 It also provides an overview in the beneficiary countries of progress under each to the five IPA components: potential candidate under components 1 and 2 (transition assistance and institution building), and candidate as well as potential candidate countries under components 3–5 (regional development, human resources development, rural development).

The Government’s view

2.34 In his Explanatory Memorandum of 3 February 2010, the Parliamentary Secretary at the Department for International Development (Mr Michael Foster) describes the introduction of a single coherent funding instrument for the pre-accession region as “a huge step forward”; and 2008 as “a transition year, with the focus being on: (i) ensuring that framework agreements were ratified by partner country parliaments, and (ii) that national authorities were fully accredited to be able to manage decentralised IPA funds.” He continues as follows:

“These processes were a necessary consequence of the transition from CARDS to IPA as the EC funding mechanism for the region, and regrettably they have delayed implementation of IPA, especially in Bosnia and Herzegovina, Turkey, and Croatia.

“Implementation of the 2007 programme began in 2008 in Albania, the former Yugoslav Republic of Macedonia, Kosovo and Montenegro. There were significant delays to implementation, however, in Bosnia and Herzegovina, Turkey, and Croatia. In Bosnia and Herzegovina the tax exemption provisions of the IPA framework agreement were not implemented by Bosnia and Herzegovina’s Parliament until December 2008, meaning that the IPA could not begin to be implemented until 2009. In Croatia, delays were caused by the Commission carrying out a thorough investigation of Croatia’s capacity to manage decentralised funds. The Commission was eventually only satisfied with the Croats’ responses at the end of 2008. This meant that financing agreements could not be signed, and that there was therefore no implementation of IPA in Croatia in 2008. In Turkey, the Framework agreement was again not ratified by the Turkish Parliament until 24th December 2008, leading to a substantial delay in implementation.

“As a result of the limited implementation of IPA programmes during 2008, monitoring and evaluation has not been extensive. Under decentralised management arrangements, beneficiary countries need to set up an IPA monitoring committee, with assistance from sub-committees monitoring specific sectors. The first meetings of these committees for Croatia, the former Yugoslav Republic of Macedonia and Turkey took place during 2008.

“The Commission are planning to conduct more retrospective evaluations (which will provide greater scrutiny on programming to ensure that projects match priorities), and more thematic evaluations. They are also planning to introduce the Results Orientated Management system (ROM), across all IPA programmes. ROM is an objective and systematic monitoring tool that is managed by an outside agency, and already used to good effect elsewhere in the Commission. The combination of all three should lead to better monitoring and a sharper and more useful set of evaluations.

“In 2009 the Commission launched an evaluation of their Turkey programme, to see whether the IPA planning and projects did indeed focus on furthering the goal of eventual accession. They are now rolling out this type of evaluation to Serbia, Montenegro, Bosnia and Herzegovina, Albania and Kosovo. These evaluations will report this summer, and should give us a much better sense of how well directed the IPA funds have been. In addition, the Commission will be producing a meta-evaluation of the IPA. This will be the first comprehensive official document that details how the IPA has worked so far, and is also expected in the summer.

“We continue to monitor the IPA closely in the region and in Brussels, and we have a DFID staff member based permanently in Brussels devoted to this agenda. Partly as a result of UK pressure, the Commission are moving away from an inefficient project based approach, towards a more multi year and sector wide approach. We are jointly organising, with the Commission, some workshops in Sarajevo in March to help

accelerate this change. We expect that this will lead to positive changes to the IPA for the last three years of the Financial Perspective (2011 — 2013).”

2.35 The Minister concludes by noting that the timetable for further consideration of the matters raised in the IPA report “is currently unclear, pending further discussion between the Spanish Presidency and the Commission.”

Conclusion

2.36 There is a disturbing *pro forma* ring about the Minister’s comments on the MIFF report. We were told a year ago that a new post had been created in Brussels; what we would have expected now was an indication of the difference it had made, not a repetition of last year’s words. For example, the Minister said then that he had encouraged the Commission to reduce the number of projects in each successive annual programme, as he expected that concentration on fewer larger projects would have more transformative impact; the trend had been positive in 2008 and looked set to continue in 2009. But he makes no mention of whether or not it did, and what impact DFID in Brussels and in the region may have had on this element of the process.

2.37 We also find it curious that, it being now as much as it was a year ago, “more important than ever for DFID country offices to engage actively with the Commission”, the Minister’s Department has reduced its presence in the region by 25%. It is difficult to see how this can be reconciled with the need to ensure that over £10 billion of taxpayers’ money, to which the UK makes a very substantial contribution, is spent properly and effectively, particularly bearing in mind the priorities agreed by the donor community referred to in paragraph 2.21 above.

2.38 Elsewhere in this Report we consider the latest report on the implementation of one of the pre-2007 pre-accession funding mechanisms — the ISPA — which, now being the only remaining beneficiary, focuses on Croatia.¹¹ As we note there, it is not encouraging.

2.39 Here, the Minister looks forward— three and a half years after the IPA was introduced — to the first evaluations and what he describes as “the first comprehensive official document that details how the IPA has worked so far”. Oddly, there is no mention of the country that sees itself as being nearest to accession, Croatia, in which there is plainly much that is not going according to plan. Our concern is not with Croatia *per se*, but with the need to be sure that the situation that was allowed to develop in Bulgaria, even after accession, with regard to the proper use of EU funds cannot again come to pass. Bearing in mind this recent history, the key role of the progress towards decentralised management (c.f paragraphs 2.29–2.31 above) and the picture painted here and in the ISPA annual report, it is by no means clear that satisfactory progress is being made.

2.40 It is conceivable that these mid-2010 evaluations will show that great strides have been made in 2009. Even so, and particularly since Croatia is intent on applying to

11 See chapter 1 above.

move to decentralised management this year, a debate in the European Committee would be appropriate, so as to enable the Minister to provide the House with the level of assurance that there should have been by now that all was on the right track, but which is not yet apparent.

2.41 We therefore recommend that these documents be debated in the European Committee, along with the 2008 Report on the implementation of the ISPA.

3 Terrorist finances

(31305) 17702/09 COM(09) 703	Draft Council Decision on the conclusion of an Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Programme
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<i>Legal base</i>	Articles 82(1)(d), 87 (2)(a) and 218(6)(a) TFEU; consent; QMV
<i>Document originated</i>	17 December 2009
<i>Deposited in Parliament</i>	8 February 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister's letter of 4 February 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	10 February 2010
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information awaited

Background

3.1 Following the September 2001 terrorist attacks, the United States Department of the Treasury developed a Terrorist Finance Tracking Program (TFTP) to identify, track, and pursue terrorists and their financial supporters. The TFTP uses payment information carried by SWIFT (the Society for Worldwide Interbank Financial Telecommunications), a Belgian company, which is the world's main system for passing international payment instructions between financial institutions. This information is provided on the basis of an administrative subpoena requiring that the US branch of SWIFT should provide the US Treasury with specified financial transaction record data, which are stored in the United States. This data is held by the US Government in a highly secure database and is used exclusively for terrorist finance tracking purposes.

3.2 These arrangements were disclosed in public in 2006, and concerns were raised in the EU about the use made of the information by the US and about the protection of personal data. To address these concerns, the US Treasury gave a set of unilateral undertakings,

known as Representations, to the EU in June 2007. These specified a series of commitments and safeguards to ensure the protection of EU-originating personal data processed under the TFTP and that the data would be used exclusively for counter-terrorism purposes.¹²

3.3 The EU appointed an “Eminent European Person”, Judge Bruguière, to oversee the use of EU-originated payment information by the TFTP. In December 2008 Judge Bruguière presented his first annual report on the processing of EU originating personal data by the US Treasury. This report concluded that the US Treasury has been vigilant from the outset in respecting the safeguards included in the Representations and notably the strict counter terrorism purpose limitation. Judge Bruguière’s report also concluded that the TFTP has generated since its implementation, and continues to generate, significant value for the fight against terrorism both in the USA and beyond. Moreover the US Government has readily shared this intelligence with third countries — Member States being the principal non-US beneficiary of TFTP lead information.¹³

3.4 Changes to the operation of the SWIFT system from the beginning of 2010 have placed most payment information outside the scope of US administrative subpoenas. This would lead to such information being unavailable to the TFTP, seriously impairing its scope and coverage.

3.5 In November 2009 we cleared from scrutiny a draft Council Decision to authorise the signing, but not the conclusion, of an agreement, referred to as the SWIFT Agreement, between the EU and the US in order to allow transfer of SWIFT data to the US Treasury for the purposes of the TFTP. The agreement would make financial payment messaging data stored in the EU available to the US, subject to strict compliance with safeguards for the protection of personal data and is intended to maintain the availability of data stored in the EU to the TFTP and so ensure that the TFTP continues both to have coverage of all regions and to support counter-terrorism authorities in the US and EU.

3.6 The agreement would:

- enable the US to request financial payment messaging data from designated providers in the EU;
- have data protection safeguards based on those contained in the Representations, but strengthened;
- include controls on the purposes for which EU-origin payment information may be used (which is limited to the prevention, investigation detection or prosecution of defined terrorist activities), the manner in which information may be used (which limits access to cleared personnel, requires a reason to believe the subject of a search has a connection to terrorism and prohibits data-mining techniques) and protection of personal data;

12 For the exchange of letters about the representations see <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:166:SOM:en:HTML>, pages 17–17.

13 The report has not been published, but for a Commission announcement about its findings see <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/264&format=HTML&aged=0&language=EN&guiLanguage=en>.

- require the US to provide information originating from the TFTP to counter-terrorism authorities of concerned Member States; and
- strengthen review arrangements to monitor US compliance with these requirements to include two Member State data protection authorities.

3.7 The agreement was to come into operation provisionally on 1 February 2010, pending its entry into force, once “the Parties have exchanged notifications indicating that they have completed their internal procedures for this purpose.”

3.8 In reporting our decision to clear the draft Council Decision we noted:

- the Government’s endorsement of the assessment that the TFTP is a valuable counter-terrorist tool;
- the data-protection safeguards built into the proposed agreement;
- the temporary nature of the agreement, designed to last for no more than a year;
- the Commission’s intention to make a Recommendation regarding a long-term agreement in early 2010, which would be subject to greater democratic scrutiny;
- that although this temporary agreement would be signed before the Lisbon Treaty took effect, it would be concluded under the Article 217 of that Treaty and would require the assent of the European Parliament; and
- the Government’s support for the draft Council Decision, despite its reservation in relation to the operation of the EU-US Agreement on Mutual Legal Assistance in criminal matters.¹⁴

The document

3.9 This present draft Council Decision is the one anticipated to conclude, on the EU’s part, the SWIFT Agreement. Unlike the Council Decision on signature of the agreement the present proposal is subject to qualified majority voting, rather than unanimity, and to the European Parliament’s consent. It is also necessary, if it wishes the UK to take part in conclusion of the agreement, for the Government to opt-in to the process.

The Government’s view

3.10 We have yet to receive from the Exchequer Secretary to the Treasury (Sarah McCarthy-Fry), an Explanatory Memorandum on the new document.

A scrutiny issue

3.11 However, there is meanwhile a scrutiny issue we wish to address. During the passage of the European Union (Amendment) Act 2008 Parliament was assured that it would have eight weeks to scrutinise any Government intention to opt-in to any EU matter. That has

14 (31170): see HC 5–ii (2009–10), chapter 16 (25 November 2009).

not happened on this occasion. In her letter the Minister argues the Government's case, a case which she also made to the House on 4 February 2010,¹⁵ saying:

- the Swift Agreement was signed, on 30 November 2009, prior to the entry into force of the Lisbon Treaty in order to avoid any interruption in the programme and the associated risks to national security that recommencing the negotiation under the terms of the Treaty would have entailed;
- in the Council authorisation of signature of the agreement by unanimity it was implicit that all Member States would opt into the agreement;
- the appropriate procedure for allowing us to scrutinise the draft Council Decision on signature was completed in the normal manner, albeit in a truncated time frame;
- the present draft Council Decision has a legal base in Title V of the Treaty on the Functioning of the European Union;
- decisions under Title V will normally be taken through Qualified Majority Voting and, as such, are subject to the UK's opt-in for Justice and Home Affairs;
- whilst the Protocol regulating the opt-in generally permits three months for the Government to notify its decision to participate in such a measure, the Council is not required to give three months where it believes that the measure needs to be adopted as a matter of urgency;
- the Council takes such a view in this case and is therefore expediting adoption as soon as the European Parliament gives its assent, which could be as early as 9 February 2010; and
- this means that on this occasion the Government is unable to grant [sic] to Parliament the agreed period of eight weeks to scrutinise the matter.

3.12 The Minister continues that:

- the Government has been an extremely vocal advocate of the need to conclude the interim agreement and has lobbied its EU counterparts extensively on the matter, as it sees the programme as an important tool in fighting terrorism;
- a decision not to opt into the agreement would therefore unnecessarily jeopardise the potential for a long-term agreement by suggesting that the UK is no longer committed to the programme;
- furthermore, the agreement itself is temporary, and will run only until 1 December 2010;
- between now and then, a permanent agreement will be negotiated which will be subject to Parliamentary scrutiny and a UK opt-in in the usual fashion; and

15 *Hansard*, cols 455–461.

- as a result, the Government has decided not to exercise its right to the three-month period to notify its decision, and will go ahead and opt-in to this agreement.

Conclusion

3.13 In the absence of an Explanatory Memorandum we are unable to give clearance to the document, although, given that it was implicit in agreeing to signature of the SWIFT Agreement conclusion of the agreement would follow, we think it unlikely that we will be unable to clear the draft Council Decision quickly once we have the Memorandum.

3.14 However, turning to the scrutiny issue, and despite the Minister's letter and her statement to the House, there are still a number of issues which disturb us. The first issue concerns the normal timetable for scrutinising a document:

- the document was issued by the Council on 18 December 2009, but was not deposited soon afterwards, as is the normal practice;
- if the document had been deposited in a timely manner, we would have expected to see an Explanatory Memorandum by the middle of last month;
- this would have enabled us to have at least some time to consider the question of the opt-in before Council consideration.

We would like an explanation from the Minister about this.

3.15 The second issue arises from an apparent inconsistency in the Minister's letter of justification for overriding Parliament's interest, where she says that:

- on the one hand, the Council is not required to give three months to the Government for consideration of an opt-in, where it believes, as it does in this case, that the measure needs to be adopted as a matter of urgency; and
- on the other, the Government decided not to exercise its right to the three-month period.

The Government is within its rights to waive its three months entitlement. But we are not sure why the Minister thinks that excuses ignoring the eight week commitment to Parliament. We should be grateful for the Minister's further comment.

3.16 Finally, the preamble to the draft Council Decision says that the SWIFT Agreement is in operation provisionally from 1 February 2010. We should like to hear from the Minister why, if this is the case, there is a need to ignore the Government's commitment to Parliament.

4 Transfer of passenger name records concerning flights from the EU to the US

(31238) 17697/09 COM(09) 702	Draft Council Decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) (2007 PNR Agreement)
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<i>Legal base</i>	Articles 82(1)(d), 87(2)(a) and 218(6)(a) TFEU; QMV; consent
<i>Document originated</i>	17 December 2009
<i>Deposited in Parliament</i>	8 January 2010
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 21 January 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally and politically important
<i>Committee's decision</i>	Not cleared; further information requested

Background

4.1 The Agreement was signed by the EU and the US on 30 June 2007 and has been applied provisionally from that date. This proposal for a Council Decision seeks to conclude the Agreement.

4.2 The Council Decision to sign the Agreement¹⁶ was not deposited for scrutiny. The reasons for this were outlined in the letter of the Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) to Lord Roper dated 29 January 2009: policy officials believed that there was an exception in putting third country agreements forward for scrutiny. The Minister's letter accepted the assertion that the Council Decision authorising signature of the Agreement should have been deposited for scrutiny, and apologised that it was not deposited.

Opt-in

4.3 The proposal was published by the Commission on 17 December. The UK has three months from the date of its presentation to the Council to decide whether to opt in, so until 17 March. Under the new procedures set out in Article 218 of the Treaty on the Functioning of the European Union (TFEU) for this type of agreement, the Council must obtain the consent of the European Parliament before the Agreement can be concluded.

The 2007 PNR Agreement and US Letter

4.4 This short Agreement of nine Articles lays down principles governing the transfer of passenger name records (PNR) data held by air carriers in the EU to the United States Department of Homeland Security (DHS) on flights to and from the US. Attached to the Agreement is a “US Letter to EU” (the DHS letter), which contains “assurances” explaining DHS’s policy on safeguarding PNR data. Passenger Name Record (PNR) data is booking information held by airlines about their passengers which can be useful to law enforcement authorities in identifying criminals and criminal activity. (PNR is different from Advanced Passenger Information (API), which is data derived from passports.)

The Agreement

4.5 Under the terms of the Agreement air carriers, whose reservation systems are located within the EU and which operate flights to and from the US, must make available to the DHS PNR data for passengers flying to and from the US. This should be made available normally 72 hours before a flight, or earlier in case of a specific threat. As of January 2008, that data should be transmitted (the “push” method) to DHS by airlines that have the technical capacity to do it, rather than allowing the DHS to electronically access the PNR from air carriers’ reservation systems in advance of the flight (the “pull” method).

4.6 DHS is required to process PNR from the EU and treat EU passengers (“data subjects”) in accordance with applicable U.S. laws, constitutional requirements and without unlawful discrimination. For the application of the Agreement, “DHS is deemed to ensure an adequate level of protection for PNR data transferred from the European Union. Concomitantly, the EU will not interfere with relationships between the United States and third countries for the exchange of passenger information on data protection grounds.”

4.7 Further, DHS “expects that it is not being asked to undertake data protection measures in its PNR system that are more stringent than those applied by European authorities for their domestic PNR systems. DHS does not ask European authorities to adopt data protection measures in their PNR systems that are more stringent than those applied by the U.S. for its PNR system. If its expectation is not met, DHS reserves the right to suspend relevant provisions of the DHS letter while conducting consultations with the EU with a view to reaching a prompt and satisfactory resolution.”

4.8 The exclusive remedy if the EU determines that the U.S. has breached this Agreement is the termination of this Agreement and the revocation of the adequacy determination referenced in paragraph 6. The exclusive remedy if the U.S. determines that the EU has breached this agreement is the termination of this Agreement and the revocation of the DHS letter.

The US letter

4.9 This letter, appended to the Agreement as published in the Official Journal, is intended to explain how DHS handles the collection, use and storage of PNR. Importantly, “None of the policies articulated [in the letter] create or confer any right or benefit on any person or party, private or public, nor any remedy other than that specified in the Agreement

between the EU and the U.S. on the processing and transfer of PNR by air carriers to DHS”.

Purpose limitation

4.10 DHS uses PNR “strictly” for the purpose of:

- i) terrorism and related crimes;
- ii) serious crimes, including organised crime, that are transnational in nature; and
- iii) flight from warrants or custody for these crimes.

EU-sourced PNR may also be processed under US law where it is necessary for the protection of the vital interests of the data subject or other persons, in criminal judicial proceedings, “or as otherwise required by law.

Sharing PNR with third countries

4.11 The purpose limitation of the use of PNR by the DHS extends to sharing it with third countries. It will provide PNR data to other domestic government authorities in support of counterterrorism, transnational crime and public security related cases they are examining or investigating, according to law, and pursuant to written understandings and U.S. law on the exchange of information between U.S. government authorities. Access, the DHS letter states, shall be strictly and carefully limited to the cases described above in proportion to the nature of the case. And any such exchange of data will occur pursuant to express understandings between the parties that incorporate data privacy protections comparable to those applied to EU PNR by DHS.

Sensitive personal data

4.12 The DHS employs an automated system which filters sensitive EU PNR data (i.e. personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and data concerning the health or sex life of the individual) and deletes the information. However, the letter states that, in an exceptional case where the life of a data subject or of others could be imperilled or seriously impaired, DHS officials may use sensitive data. DHS will maintain a log of access to any sensitive data and will delete the data within 30 days once the purpose for which it has been accessed is accomplished and its retention is not required by law. DHS will also provide notice normally within 48 hours to the European Commission that sensitive data has been accessed.

Access and redress

4.13 The letter states that DHS has made a policy decision to extend administrative Privacy Act protections to PNR data stored in the Automated Targeting System, regardless of the nationality or country of residence of the data subject, including data that relates to European citizens. Consistent with U.S. law, DHS also maintains a system accessible by individuals, regardless of their nationality or country of residence, for providing redress to

persons seeking information about or correction of PNR. Furthermore, PNR furnished by or on behalf of an individual shall be disclosed to the individual in accordance with the US Privacy Act and the US Freedom of Information Act (FOIA). FOIA permits any person (regardless of nationality or country of residence) access to a U.S. federal agency's records, except to the extent such records (or a portion thereof) are protected from disclosure by an applicable exemption under the FOIA. DHS does not disclose PNR data to the public, except to the data subjects or their agents in accordance with U.S. law.

4.14 In certain exceptional circumstances, DHS may exercise its authority under FOIA to deny or postpone disclosure of all or part of the PNR record to a first part requester, pursuant to Title 5, United States Code, Section 552(b). Under FOIA any requester has the authority to administratively and judicially challenge DHS's decision to withhold information.

Data retention

4.15 DHS retains EU PNR data in an active analytical database for seven years, after which time the data will be archived for eight years and may be accessed only with approval of a senior DHS official designated by the Secretary of Homeland Security and only in response to an identifiable case, threat, or risk. DHS "expects" that EU PNR data shall be deleted at the end of this period; questions of whether and when to destroy PNR data collected in accordance with this letter will be addressed by DHS and the EU as part of future discussions. Data that is related to a specific case or investigation may be retained in an active database until the case or investigation is archived.

The Minister's Explanatory Memorandum

4.16 The Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) deposited an Explanatory Memorandum in Parliament on 21 January.

4.17 In overview, the Minister explains that the Government welcomes the proposal to conclude the Agreement with the US on the processing of PNR data. She says that the UK, in common with other EU Member States, views the US as a key partner. A clear EU-US PNR agreement will play a vital role in removing legal uncertainty for air carriers flying to the US and will help ensure that, where appropriate, PNR information can be shared quickly and securely with all necessary data protection safeguards in place.

Purpose limitation

4.18 That said, the terms of the Agreement are not consistent with what the UK would want under an EU PNR proposal (for flights into the EU); the UK would like to have the ability to collect and process PNR data for a range of purposes broader than terrorism and serious crime (for example immigration offences). However, the Minister reports that it has subsequently become clear during EU PNR negotiations that most Member States are hostile to the use of PNR for purposes other than the prevention of terrorism and serious crime. The UK Government is willing to abide by the terms laid down in the scope of this Agreement, as it values the legal protection on PNR data transfer that this Agreement provides, but will continue to lobby for a broader scope during EU PNR negotiations.

Impact on UK law

4.19 In terms of the impact of the Agreement on national law, the Minister states that:

- the UK has the ability to obtain passenger, crew and service data from carriers in advance of all movements into and out of the UK under the Immigration Act 1971, the Immigration, Asylum and Nationality Act 2006 and the powers of the HMRC Commissioners' Directions under the Customs and Excise Management Act 1979. Section 36 of the Immigration, Asylum and Nationality Act 2006 also creates a duty for the UK Border Agency, the police and HM Revenue and Customs to share that data among themselves where it is likely to be of use for immigration, customs, or police purposes.
- the Immigration and Police (Passenger, Crew and Service Information) Order 2008 (SI 2008/5) specifies the travel-related data that an immigration officer or a police officer can require from ships, aircraft and trains, entering and leaving the United Kingdom. The data are divided into:
 - a) mandatory data which includes Advance Passenger Information (API) which must be collected and supplied when requested, and;
 - b) additional data which includes PNR and must be supplied only to the extent to which the carrier knows the data.

This Agreement does not therefore have an impact on UK law.

Fundamental rights

4.20 Concerning fundamental rights, the Minister acknowledges that the Agreement provides for the processing and transfer of personal data and therefore engages Article 8 of the European Convention on Human Rights (right to respect for private and family life). However, any interference with Article 8 rights would be justified under Article 8(2) of the Convention because the Agreement:

- restricts the purposes for which data can be processed to purposes included within Article 8(2) (the prevention of and combating of terrorist offences, serious crime and flight from warrants or custody for such crimes);
- provides that the DHS is deemed to ensure an adequate level of protection for PNR data transferred from the EU;
- has been entered into with regard to Article 6(2) of the Treaty on European Union on respect for fundamental rights, and in particular to the fundamental rights to privacy and the protection of personal data; and
- states that the onward data transmission to a third country is only done on a case-by-case basis. Apart from in emergency circumstances, any such exchange of data would occur pursuant to express undertakings incorporating data privacy protections comparable to those applied by the US to the PNR data.

Subsidiarity

4.21 The Minister is confident that this is a proper area for Europe-wide action. The legislation will establish the legal principles for processing and transfer of PNR data from the EU to the US, and encourage collaboration on the development of PNR systems in individual Member States. It does not therefore infringe the principle of subsidiarity.

Data protection and sensitive personal data

4.22 Data protection was a key issue during negotiations. The data protection regime which will apply to PNR data transferred to DHS under the Agreement is considered to be comparable to EU standards. That said, the Minister says that UK Government welcomes the decision to allow sensitive personal data to be used in exceptional circumstances under this Agreement. UK officials have found sensitive personal data contained in PNR to be useful operationally, often helping to rule passengers out of investigations.

Opt-in

4.23 The Minister states that the UK is “keen to opt in”. If it did so, however, it would not thereafter be able to conclude any PNR agreement with the US which would conflict with the terms of the EU-US Agreement. The UK is satisfied that this will not have an adverse effect on future relations with the US.

4.24 There is an existing Memorandum of Understanding (MoU) between the UK Border Agency’s Joint Borders Operations Centre (JBOC) and DHS’s National Targeting Center. This is designed to strengthen the operational capability of the US and the UK by exchanging critical passenger information to help verify travel documents, detect false identities, determine admissibility, carry out customs checks and identify persons traveling between our countries who may pose a security risk. Various forms of information may be exchanged under the MoU in relation to persons of interest, for example information on immigration history, details of known or suspected immigration abuse or offences, details of prior refusals of entry to the UK or US, Advance Passenger Information¹⁷ and PNR. The UK-US MoU specifically provides for any transfer of PNR data under it also to be consistent with the terms of the 2007 EU-US PNR agreement. The Government considers that any constraint presented by that agreement to co-operation at national level is likely to be marginal.

Conclusion

4.25 This is a Decision which the Government has to opt into for it to become binding upon or applicable in the UK. The Government has three months within which to do so; this period expires on 17 March. The Government has given an undertaking to both Houses that it will not decide whether to opt into a proposal until eight weeks have elapsed since the proposal’s publication; this is to give sufficient time for Parliamentary scrutiny of the decision to opt in. The eight-week period expires on 12 February.

¹⁷ Full name (given names as on passport) including last name, gender, date of birth, nationality, passport number and expiry date, where passport was issued and country of residence.

4.26 We are concerned by the timing of the deposit of the Minister's Explanatory Memorandum. The proposal was published by the Commission on 17 December 2009 and yet the Explanatory Memorandum was deposited only on 20 January 2010. This delay contravenes the undertaking in Baroness Ashton's statement on JHA opt-ins that the Government will place an Explanatory Memorandum before Parliament "as swiftly as possible following publication of the proposal and no later than ten working days after the publication of the proposal". It leaves us with four weeks, rather than the agreed eight weeks, for scrutiny of the opt-in decision. We understand that the Minister will be writing to us with an explanation for the delay.

4.27 We regret that the Council decision to sign the Agreement in July 2007 was not deposited for scrutiny and note that it has been provisionally applied for over a year and a half. This limits the role Parliamentary scrutiny can play in influencing draft EU legislation.

4.28 We recognise that Agreement serves an important and legitimate aim, but several aspects of it leave us concerned. We are particularly disappointed that the handling, use and storage of PNR by the Department of Homeland Security (DHS) is not incorporated in the legally binding Agreement (unlike, say, in the PNR Agreements with Canada and Australia) but in assurances in a non-binding letter attached to it. The effect of this is that data protection safeguards applied by DHS can be unilaterally changed. In which circumstances we wonder what value can be placed on the deeming provision in paragraph 6 of the Agreement: "for the application of this Agreement, DHS is deemed to ensure an adequate level of protection of PNR data transferred from the European Union".

4.29 The letter states that DHS has extended the US Privacy Act to PNR data on European citizens. This means that European passengers, or data subjects, can access the records held by DHS, unless such records are protected from disclosure under the US Freedom of Information Act (FOIA). We ask the Government to confirm whether there are currently any exceptions under the Privacy Act or FOIA which would prevent an EU passenger from accessing his or her PNR records held by DHS, and if so, what the exceptions are.

4.30 We are also concerned by the retention periods of PNR data of seven years in an active file followed by eight years in a dormant file and question why such a long period is justified; and by the sharing PNR with third countries of PNR data for "public security related cases", which is not defined, as well as terrorism and transnational crime, and without the specification of any provisions governing the handling, use and storage of PNR by competent authorities in those third countries.

4.31 We would be grateful for a progress report of the negotiations with the European Parliament on giving its consent to the Conclusion of this Agreement.

4.32 We are keeping the document under scrutiny pending the Minister's answers to the questions above.

5 European Protection Order

(31237) 17513/09 + ADDs 1–2 —	Draft Directive on the European Protection Order
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<i>Legal base</i>	Article 82(1)(d) TFEU; QMV; co-decision
<i>Deposited in Parliament</i>	8 January 2010
<i>Department</i>	Justice
<i>Basis of consideration</i>	EM of 15 January
<i>Previous Committee Report</i>	None
<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

5.1 The Stockholm Programme, adopted in December 2009 by the European Council, called on the EU to examine “how to improve legislation and practical support measures for protection of victims and to improve implementation of existing measures”. This proposal follows this request up, and is an initiative of several Member States.¹⁸ Its central purpose is to assist victims who have obtained a protection order in one Member State and who subsequently move to another Member State. In the UK protection orders are often used in domestic violence cases, although not exclusively so. Examples are non-molestation orders, occupation orders (regulating who can occupy a property), restraining orders and injunctions.

Legal basis and opt-in procedure

5.2 The proposal’s legal base is Article 82(1)(d) of the Treaty of the Functioning of the European Union (TFEU). Article 82(1) TFEU provides that “The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to...(d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.” Under the TFEU, measures in the field of “Freedom Security and Justice” (FSJ — formerly JHA) are no longer adopted by a unanimous vote of the Member States without the participation of the European Parliament, but by QMV on the basis of the ordinary legislative procedure (formerly co-decision) with the European Parliament.

5.3 Measures adopted under Title V are not applicable to or binding upon the UK unless it decides to opt into them within three months of their presentation to the Council, or at any stage after their adoption. If the UK does not opt into a proposal within the three-month

¹⁸ Belgium, Bulgaria, Estonia, France, Italy, Hungary, Poland, Portugal, Romania, Finland and Sweden.

timeframe, it can nevertheless participate in the negotiations with a view to an acceptable text being adopted, and then opt into the legislation once it has been adopted.

5.4 The Committee has eight weeks from the publication to scrutinise whether the UK should opt into the measure, during which time the Government has agreed not to take a decision on opting in.

The draft Directive

Preamble

5.5 The recitals state the European Protection Order's (EPO) aim of ensuring protection for citizens of the EU when they exercise their right to move and reside freely within the EU. They note that the recognition of protection orders in other Member States will avoid the need for the victim to start new proceedings or to have to produce evidence in the State to which they have moved, when they will have already produced this evidence to obtain the original order.

Articles

5.6 Article 1 deals with definitions.

“European protection order’ means a judicial decision relating to a protection measure issued by a Member State and aiming at facilitating the taking by another Member State, where appropriate, of a protection measure under its own national law with a view to the safeguard of the life, physical and psychological integrity, freedom or sexual integrity of a person.

“Protection measure’ means a decision adopted by a competent authority of a Member State imposing on a person causing danger one or more of the obligations or prohibitions referred to in Article 2(2), provided that the infringement of such obligations or prohibitions constitutes a criminal offence under the law of the Member State concerned or may otherwise be punishable by a deprivation of liberty in that Member State.

“Protected person’ means the person whose life, physical and psychological integrity, freedom, or sexual integrity are the object of the protection stemming from a protection measure adopted by the issuing State.

“Issuing State’ means the Member State in which a protection measure has been originally adopted, constituting the basis for issuing a European protection order.

“Executing State’ means the Member State to which a European protection order has been forwarded with a view to its recognition.

“State of supervision’ means the Member State to which a judgment, as defined in Article 2 of the Framework Decision [...] on the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation

measures and alternative sanctions,¹⁹ or a decision as defined in Article 4 of the Framework Decision [...] on the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention,²⁰ has been transferred.”

5.7 Article 2 describes the scope of the EPO. It can be issued at any moment when the protected person intends to leave or has left the issuing State (the Member State the victim is leaving). There must already be in place a national protection order in the issuing State which imposes obligations or prohibitions as set out in the Article.

5.8 Article 3 describes the obligation on the executing State to recognise the EPO, in accordance with the provisions of the Directive. Article 3(2) states that this Directive will not alter the obligation to respect fundamental rights and legal principles under Article 6 of the TEU.

5.9 Article 4 concerns the designation of authorities competent to issue and recognise an EPO. Article 4(1) refers to judicial authorities (and Article 1(1) states that the EPO is “a judicial decision relating to a protection measure”). Under Article 4(2), Member States can also designate non-judicial authorities.

5.10 Article 5 concerns the circumstances in which an EPO can be issued. It provides that a judicial authority of the issuing State, or another competent authority referred to in Article 4(2), shall, only at the request of the protected person, issue an EPO, after verifying that the protection measure meets all the requirements set out in Article 3(1). The protected person or his legal representative may submit a request for the issuance of an EPO either to the competent authority of the issuing State or to the competent authority of the executing State. If such a request is submitted in the executing State, its competent authority shall transfer this request as soon as possible to the competent authority of the issuing State in order, where appropriate, to issue the EPO.

5.11 Article 6 sets out the form and content of the EPO. It must contain:

- the identity and nationality of the protected person;
- the use of any technological instruments, if any, that have been provided to the protected person to carry out the immediate enforcement of the protection measure;
- the identity of the competent authority of the issuing State;
- the identification of the protection measure on the basis of which the EPO is adopted;
- a summary of the facts and circumstances which have led to the imposition of the protection measure in the issuing State;
- the obligations or prohibitions imposed in the protection measure underlying the EPO on the person causing danger, their length and the express indication that their

19 2008/947/JHA.

20 2009/829/JHA.

infringement constitutes a criminal offence under the law of the issuing State or may otherwise be punishable by a deprivation of liberty;

- the identity and nationality of the person causing a danger;
- where appropriate, other circumstances that could have an influence on the assessment of the danger that confronts the protected person;
- the express indication, where applicable, that a judgement, as defined by Article 2 of Council Framework Decision 2008/947/JHA,²¹ or a decision on supervision measures, as defined by Article 4 of Council Framework Decision 2009/829/JHA,²² has already been transferred to another Member State and the identification of the competent authority for the enforcement of such a judgment or decision.

5.12 Article 7 sets out the procedure for transmitting an EPO.

5.13 Article 8 lists the obligations on the competent authority in the executing State. These include:

- recognising the order when it is received and taking all measures that would be available under its national law in a similar case to ensure the protection of the protected person, unless it decides to invoke one of the grounds for non-recognition in Article 9;
- informing inform the person causing danger, where appropriate, of any measure taken in the executing State;
- taking any urgent and provisional measure needed in order to ensure the continued protection of the protected person;
- immediately notifying the competent authority of the issuing State and, if the issuing State is different from the State of supervision, the competent authority of the State of supervision, of any breach of the protection measure underlying the EPO and described therein (there is a standard form of notice for this attached to the draft Directive).

5.14 Article 9 sets out four grounds for non-recognition of an EPO:

- the EPO is not complete or has not been completed within the time limit set by the competent authority of the executing State;
- an EPO has not been previously adopted in the issuing State imposing obligations on the person causing danger;
- the protection derives from the execution of a penalty or measure that is covered by amnesty according to the law of the executing State;

21 See footnote 19.

22 See footnote 20.

- there is immunity conferred under the law of the executing State on the person causing danger, which makes it impossible to adopt the protection measures.

In order to invoke either of the first two grounds the competent authority must first contact its sister authority in the issuing State to ask for any additional information which could cure these defects.

5.15 Article 10 concerns subsequent decisions in the issuing State. It retains jurisdiction to take any subsequent decision relating to the EPO concerning the renewal, review and withdrawal of the protection measure; the modification of the protection measure; the issuing of an arrest warrant or any other enforceable judicial decision having the same effect; and the initiation of new criminal proceedings against the person causing the danger. Where a judgment, as defined in Article 2 of the Framework Decision on the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions,²³ or a decision on supervision measures as defined in Article 4 of the Framework Decision on the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention,²⁴ has already been transferred to another Member State, subsequent decisions shall be taken in accordance with the relevant provisions of those Framework Decisions.

5.16 Article 11 provides that the competent authority of the executing State may revoke recognition of an EPO where there is evidence that the protected person has left the territory of the executing state.

5.17 Article 12 (“Time limits”) provides that an EPO shall be recognised “without delay”.

5.18 Article 13 (“Governing law”) provides that decisions made by the competent authority of the executing State are to be governed by its national law.

5.19 Article 14 (“Obligations of the authorities involved”) is tied to Articles 8 and 10 above. It provides that where the competent authority of the issuing State has modified the protection measure, it must inform the competent authority of the executing State. It further provides that, where appropriate, the competent authority of the executing State is to take necessary measures to give effect to the modified protection measure if those measures would be available under national law in a similar case.

5.20 Article 15 recommends that competent authorities in Member States concerned should consult each other in order to facilitate the smooth and efficient application of this Directive.

5.21 Article 16 requires that the EPO be translated into the official language or one of the official languages of the executing State. Any Member State may state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the institutions of the Union.

²³ See footnote 19.

²⁴ See footnote 20.

5.22 Article 17 states that costs resulting from the application of this Directive shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

5.23 Under Article 18 Member States may continue to apply bilateral or multilateral agreements or arrangements which are in force upon the entry into force of this Directive, or conclude bilateral or multilateral agreements or arrangements after the entry into force of this Directive, “insofar as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate the procedures for taking protection measures”.

5.24 In Article 19 the implementation date for the draft Directive has still to be agreed.

5.25 Annex I to the draft Directive appends the standard form to be used for an EPO (Article 6); annex II the standard form to be used to report a breach of an EPO (Article 8(1)(d)).

The Government’s Explanatory Memorandum

5.26 The Parliamentary Under-Secretary of State at the Ministry of Justice (Lord Bach) deposited an Explanatory Memorandum in Parliament on 15 January 2010. In it he states the Government’s general policy as being very supportive of the idea of the EPO and the goal of providing protection for people exercising their free movement rights. The Government attaches importance to the protection of victims and believes they should have a central role in justice systems — including, of course, the criminal justice system. However, in the Government’s view, some changes to the text will be necessary.

Impact on national law

5.27 The intention behind the EPO is to bridge two domestic protection systems. The Minister comments that this proposal will require minimal changes on the part of Member States. Under Article 8, the executing State is required to take, where appropriate, all measures that would be available under its national law in a similar case to ensure protection. The mechanics of the mutual recognition are not yet clear in the text (see Article 8 below). As the UK already offers protection orders in a very wide range of circumstances, the Minister does not expect that the UK would need to alter its law substantially to be able to adopt protection measures that it would not normally recognise.

5.28 However, the Government’s initial view is that legislation would be needed to enable magistrates’ courts to convert domestic orders into EPOs and to convert foreign EPOs into domestic orders. This would impose some burden on magistrates’ courts, but these are unlikely to be considerable. The Government will continue to monitor the impact on UK law as the text develops.

Fundamental Rights Analysis

5.29 In the current draft, Article 8(1)(b) requires the executing state to inform the person causing danger of the new protection order “where appropriate”. The Government will want to ensure that the wording of this provision is compliant with Article 7 ECHR. It wants to avoid the possibility that the person against whom the protection order is made

being punished retrospectively for breaching an order of which he was unaware at the time of the breach. The Government will also want to consider further whether any data protection issues arise. It will also want to give thought to the possibility of the person causing the danger having some mechanism to object to the measures taken against him in the executing state following the issue of an EPO.

Subsidiarity and proportionality

5.30 The Government has deposited a “detailed statement” on compliance with the principles of subsidiarity and proportionality, which was prepared by the Presidency.²⁵ It is satisfied that this proposal complies with the principle of subsidiarity. The EPO deals with continued protection of vulnerable people who move across borders. Mutual recognition of protection orders in different Member States can only be achieved at EU level. There is currently no other instrument which deals with the recognition of protection orders between Member States from the perspective of the protected person.

5.31 The Government believes that this proposal is also in accordance with the principle of proportionality. It is not proposing harmonisation of the systems of protection in Member States, beyond requiring all Member States to be able to take all protection measures which would be available under their national law in a similar case when someone presents an EPO.

5.32 Although the Government currently knows how many domestic protection orders are made in the UK each year (around 31,000 in England and Wales), it does not have data regarding the number of cross-border cases which this instrument will apply to. Courts in England and Wales are open to all applicants, regardless of their nationality, so the Government would not refuse to grant protection to someone moving to the UK from another Member State. At paragraph 1.2.1 (page 9) of the detailed statement it states that no data is currently available but the Presidency estimates that even if only 1% victims with EU protection measures wish to move and continue their protection, that would equate to 1,180 cases per year. It will consult interested organisations to research whether they have evidence of dealing with cross border cases. However, the Government feels that protecting EU citizens from crime is important in principle and that volume of cases should not be the only consideration in evaluating this measure. Ensuring that EU citizens know that continuous protection is available when they move between Member States is an important factor in strengthening their confidence in criminal justice systems and public authorities across the EU and in safeguarding EU citizens’ right to free movement.

Policy implications

5.33 The Government will be seeking clarification of the scope of the following provisions.

5.34 It notes that Article 1(2) of the EPO is drafted to cover any protection measure, whether granted in civil or criminal proceedings, provided that infringement of the protection measure constitutes a criminal offence. In the UK the majority of protection orders are made in civil proceedings, but their breach can often be a criminal offence (for

25 17513/09 ADD2 REV1.

example, a non-molestation order). The Government is considering legal base and will revert to both Committees as soon as possible. The Government believes that it may be particularly relevant that the purpose of this instrument is ultimately to protect people from criminal offences.

5.35 This definition will also have an impact on how many UK protection orders are covered by this instrument. The majority (around 75%) are currently orders made in civil proceedings and for most, breach is a criminal offence. Article 1(2) as currently drafted captures this type of proceedings.

5.36 The Government has no objections to Article 2 (scope) in principle, but it will look carefully at the criteria to consider whether they capture the relevant UK protection orders to which this could apply, and allow the UK to recognise EPOs transmitted to the UK from other Member States which fall into these categories.

5.37 The Government is broadly content with the obligation to recognise the EPO under Article 3.

5.38 In Article 5 (issue of an EPO) the Government feels it is important that an EPO is only issued at the request of the protected person as it is for the protected person to determine whether the EPO is a measure they wish to pursue. The Government will want to examine the drafting of Article 5, particularly Article 5(3), to ensure that the wording is clear.

5.39 In Article 6 (form and content of the EPO) the Government will consider the information requested in the EPO in relation to data protection issues (particularly in light of inclusion of details about the person causing the danger), but is otherwise broadly content.

5.40 The Government will want to consider the detail of Article 7 (transmission procedure) carefully, bearing in mind that a written record of transmission might potentially provide a means for the person causing the danger to locate the protected person when they would not otherwise know their whereabouts.

5.41 Article 8 (“Measures in the executing State”), Article 10 (“Subsequent decisions in the issuing State”) and Article 11 (“Grounds of revocation”) are Articles that the Government believes need to be looked at together because they deal with the related roles of the issuing and executing States. Article 14 (“Obligations of the authorities involved”) is also closely linked with these provisions.

5.42 The Government’s initial view is that the mechanics of executing an EPO are not clear in these provisions. There are several ways of achieving mutual recognition: Member States can accept the foreign order directly; they can recognise an EU-wide generic order, or can issue their own domestic order based on the foreign order. The Government will reflect on this further, and work to ensure that the mechanics are clear in the text.

5.43 The current draft provides that the executing State must take any “urgent and provisional measures needed to ensure the continued protection of the protected person” (Article 8(1)(c)). However, the issuing State retains jurisdiction for all subsequent actions and all legal proceedings for breach of the order (Article 10). The Government is unable, at present, to see strong advantages to the issuing State retaining jurisdiction over

proceedings. For example, if the order is breached, it seems probable that it would be inefficient for the victim to have to travel back to the State of his or her former residence for legal proceedings about a breach that occurred elsewhere. And there are concerns that it may be cumbersome for a court in the issuing State to obtain the relevant evidence. There could also be the risk of duplicate proceedings in the executing State if the breach of the order were also a criminal offence in itself, for example, if the victim were assaulted. The Government's current view is that, once the executing State has accepted the EPO, it would be preferable for all subsequent actions to be determined by and to occur in the executing State. The issues get even more complex if the executing State issues its own order, since it would be likely that it would wish to enforce its breach. The Government will therefore wish to discuss the approach taken in the text with EU partners to understand the reasoning behind the current approach.

5.44 In addition the Government will want to explore Article 8(1)(b) of the proposal, namely that the person causing the danger will be informed only "where appropriate". The Government believes that it is important that someone knows they have an order against them and the terms of the order to ensure compliance with Article 7 ECHR.

5.45 The Government is content with the principle that there should be the option to refuse to recognise an EPO in Article 9, but will want to give further thought to what grounds would be appropriate.

5.46 Under Article 12 (time limits) the Government will consider these obligations, with a view to avoiding being overly prescriptive.

5.47 In Article 13 the Government agrees that it is appropriate for the decisions of the competent authority in the executing State to be made under its national law.

Regulatory impact assessment

5.48 The Presidency has prepared an impact assessment (paragraph 3, page 10 onwards of the Explanatory Memorandum and paragraph 5, page 31 onwards of the Detailed Note). The Government will be looking further at any potential impact on the UK but its initial view is that any substantial regulatory impact would be restricted to the public sector within the civil and criminal justice systems. It will consider this further, including the implications for legal aid.

Financial implications

5.49 A financial note is attached to the Detailed Statement page 48 onwards. In the current draft there is an obligation to inform the protected person of the possibility of obtaining an EPO. Depending on how this obligation is implemented, the Government anticipates that there would be some cost involved (for example in producing a leaflet or amending current court forms) and it is looking into initial costings. There will also be costs associated with issuing, modifying, varying or terminating the EPO, and in the possibility of committal hearings as well as criminal sanctions if breached. Initial thinking suggests that it is probable that many of these costs may fall on civil justice as the majority of protection orders will probably be issued in civil proceedings, and we will consider the financial impact and relationship with civil legal aid further.

5.50 In addition, there will be translation costs when an EPO is transmitted to another Member State. The Government's initial view is that as the text stands, costs should be low as a high volume of applications for an EPO is not expected.

Consultations

5.51 The Government is consulting relevant groups who represent victims and those people who are likely to utilise protection orders, groups who are involved in family justice and those who advocate on behalf of defendants and have an interest in the criminal law. The consultation will seek views on the current text, and how this instrument might best work for vulnerable UK citizens. Consultation will close before any decisions on opt-in are taken so that the views expressed can be considered and shared with Parliament.

Timetable

5.52 The Government is not yet aware of the proposed timetable for adoption of this measure. Working groups started in January and the Spanish see this as a priority during their Presidency. It will be subject to co-decision with the European Parliament, which has not yet set a timetable.

Opt-in

5.53 The UK has a three-month period in which to decide whether to opt in to this proposal. During this period the Government will be following the Parliamentary scrutiny process and the timetables that have been agreed with Parliament. The Scrutiny Committees have until the 8 March (8 weeks from publication of the document) to present a view and the Government will wait for these views before coming to a decision on opt-in.

5.54 However, the Government's initial view is that victims of domestic violence and other crimes should be able to move across the EU with confidence that they will be protected, wherever they are, and we want to work with our European partners towards achieving this. A measure to provide continuous protection to victims that does not require them to apply to another court for protection fits with the UK's domestic agenda on victims. The objectives of the measure are ones that the Government can support.

Conclusion

5.55 **We thank the Minister for his detailed Explanatory Memorandum.**

5.56 **This is a Decision to which the Government has to opt-in for it to become binding upon or applicable in the UK. The Government has three months within which to do so; this period expires on 6 April. The Government has given an undertaking to both Houses that it will not decide whether to opt into a measure until eight weeks have elapsed since its publication; this is to give sufficient time for Parliamentary scrutiny of the decision to opt in. The eight-week period expires on 2 March 2010.**

5.57 **Given this timeframe, we would be grateful for a quick response from the Government on the following.**

- The question of legal base. It seems to us that there is a strong argument based on domestic protection proceedings to say that this proposal is directed at judicial cooperation in civil matters, the criminal penalty being a consequence of the breach of a civil order. We would be grateful if the Government could confirm whether it has adopted this argument in working group discussions, and if so, what the reactions of other Member States were. In our view it is essential that the distinctions between chapters 3 and 4 of Title V TFEU are not blurred.
- We would be grateful for the results, even if preliminary, of the Government’s consultation process.
- We agree with the Government that it makes more sense for the executing State to have jurisdiction of the EPO once transmitted by the issuing State. We also agree with the Government that the “person causing danger” must in all circumstances be informed of the EPO and would like to know if he would have a right to be heard if an EPO were to be executed in the UK. We would be grateful for an update on these aspects of the negotiations.

6 Biodiversity beyond 2010

(31270) 5614/10 COM(10) 4	Commission Communication: <i>Options for an EU vision and target for biodiversity beyond 2010</i>
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<i>Legal base</i>	—
<i>Document originated</i>	19 January 2010
<i>Deposited in Parliament</i>	25 January 2010
<i>Department</i>	Environment, Food and Rural Affairs
<i>Basis of consideration</i>	EM of 4 February 2010
<i>Previous Committee Report</i>	None, but see footnote 26
<i>To be discussed in Council</i>	No date set
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

6.1 The Commission says that biodiversity is integral to sustainable development, and that, together with climate change, its loss is the most critical global environmental threat. It notes that in 2001 the EU set itself the target of halting biodiversity loss by 2020, and that the Commission adopted in 2006 a Biodiversity Action Plan²⁶ to speed up progress.

26 (27531) 9769/06: see HC 34–xxxiii (2005–06), chapter 10 (28 June 2006).

However, it also points out that, despite this, there are clear indications that the EU will not achieve its target, and that the Council has called for an new vision and target, contributing to international discussions on a global vision beyond 2010 as part of a plan to implement the United Nations Convention on Biological Diversity.

The current document

6.2 Following consultations, the Commission has now put forward this Communication as a first step towards that objective, with the aim of stimulating further informed debate by identifying the issues at stake and the steps needed to realise ambitious EU goals.

The case for biodiversity protection

Biodiversity trends

6.3 The Commission says that global biodiversity remains under severe threat, with more than 60% of the Earth's ecosystems, including marine biodiversity (which accounts for about 90% of the planet's biomass), having been degraded in the last 50 years as a result of habitat destruction, over-exploitation, unsustainable practices, population growth, pollution and, increasingly, climate change. It adds that there is mounting evidence that many ecosystems have already reached the point of no return, and that, although the limits are still being defined, this would have far-reaching consequences. More specifically, it comments that, despite some improvements, the overall situation in Europe has continued to deteriorate, with grasslands, wetlands, estuary and coastal habitats at greatest risk, and that appropriate forms of land and maritime management are needed to maintain and enhance important ecosystems.

Implications of biodiversity loss

6.4 The Commission observes that, in addition to its intrinsic value, biodiversity provides food and water, offers natural protection from floods and storms, and helps to regulate the climate, adding that ecosystems characterised by high species diversity are more productive, stable and resilient, as well as being less vulnerable to external stresses and pressures and providing an important means of mitigating the impact of climate change. It suggests that the economic costs associated with biodiversity loss — equivalent to €50 billion annually — have until recently been largely overlooked, and that a proper evaluation of ecosystem services is therefore essential, noting also that these often provide similar benefits, but at a significantly lower cost, to man-made technological solutions. Finally, the Commission highlights the extent to which biodiversity is essential to the livelihoods of millions around the world, and in reducing poverty and achieving the millennium development goals.

Achievements and shortcomings of current policy

6.5 The Commission states the biodiversity is a key EU environmental priority, with its objectives being integrated in the Sustainable Development Policy. It points out that the target set for 2010 was a prime catalyst for the Biodiversity Action Plan, leading to such measures as the implementation of the Birds and Habitats Directives, the development of

the Natura 2000 network, and being integral to the Water Framework Directive and the Marine Strategy Framework Directive, as well as to measures to reduce pollution. In addition, it identifies the role of the Sustainable Consumption and Production Action Plan in reducing the impacts of economic activity on biodiversity.

6.6 However, the Commission says that, despite these achievements, several factors have prevented the EU from achieving its 2010 target, and need to be addressed for the period beyond that date. These include:

- gaps in the implementation of Natura 2000;
- a number of major policy gaps, notably on soils and invasive species, and the need for better coordination on infrastructure development and planning;
- gaps in knowledge and data at Member State, EU and global levels, as a result of the lack of a comprehensive approach, and uneven reporting by Member States: it says that work is now gathering pace to develop a baseline and related indicators within the EU which are likely to be the most advanced in the world, with the European Environmental Agency completing in June 2010 the first EU biodiversity baseline, launching a Biodiversity Information System for Europe, and producing a strategic plan to fill the gaps, and that, at a global level, the EU is supporting efforts to establish an Intergovernmental Platform on Biodiversity and Ecosystem Services, aimed at integrating these into policy making, with a decision due in spring 2010 whether or not to establish the System;
- the need to improve the integration of biodiversity concerns into other policies, bearing in mind that biodiversity is a good indicator of their environmental impact: it also notes that action to address problems in other areas has been incompatible with biodiversity objectives, with the benefits of resilient systems being often overlooked, one priority area in particular being the need to reform the Common Fisheries Policy;
- funding needs for biodiversity in the EU must be properly assessed, taking into account the welfare benefits delivered by ecosystems;
- the issue of equity should be considered within the EU and at a global level, since the uneven spread of biodiversity means that the burden of tackling the challenge is currently spread unequally: it suggests that this should involve payments for ecosystem services to those whose land provides such services;
- the EU is committed to securing a successful outcome to the UN Convention on Biological Diversity, and to making a success of the negotiations on reducing emissions from deforestation.

Options for after 2010

A vision for 2050

6.7 The Commission suggests that there is a broad consensus that the main features of the new EU long-term vision for biodiversity should include a clear time-frame up to 2050,

reflecting the urgency of the situation and the need for action. It accordingly suggests that this should involve preserving and valuing the world's biodiversity and ecosystem services, and, as far as possible, restoring their intrinsic value, so that they can continue to support economic prosperity and human well-being and avert catastrophic changes linked to biodiversity loss. It notes that discussions are under way at global level on a target for 2020, and it suggests that the EU should have a target aimed at securing progress towards turning the vision into a reality which should be measurable, achievable and cost-effective, and contribute towards meeting the EU's international commitments on biodiversity.

Levels of ambition

6.8 The Commission suggests the following four levels of ambition for a 2020 headline target:

- significantly reducing the rate of loss of biodiversity and ecosystem services in the EU by 2020;
- halting the loss of such services by 2020;
- halting the loss of such services by 2020, and restoring them as far as possible;
- halting the loss of these services by 2020, restoring them as far as possible, and stepping up the EU's contribution to averting global biodiversity loss.

It says that these approaches will bring different benefits and costs, and require the development of more or less stringent policy actions and instruments, building on a common policy baseline which includes existing EU nature conservation and other biodiversity-related legislation, as well as legislation in other relevant policy areas, such as climate and energy, the Common Agricultural Policy and the Common Fisheries Policy. It adds that all four options require the establishment of a scientific baseline on the current state of biodiversity and ecosystem services, and that research relating to the economics of biodiversity and ecosystem services, to the development of indicators, and to defining the pressure which biodiversity can withstand before becoming irreversible also needs to be stepped up.

6.9 The Communication concludes by noting that the setting of a post-2010 vision and target is not an end in itself, but rather marks the start of a process of putting an new EU biodiversity strategy in place by the time the current target runs out. It stresses that there is no easy way to tackle biodiversity loss effectively, and that there is a need for an evidence-based, integrated approach which focuses on the main pressures by specific sectors, such as land-use change, over-exploitation, invasive species, pollution and climate change, with sub-targets being devised for each kind of pressure, sector or ecosystem, combined with cost-effective action at the appropriate level. It adds that it is already clear that action will be needed at various different levels, and that the approach in the Biodiversity Action Plan to establish partnerships with Member States remains fully relevant, and will require an effective governance framework involving all those concerned at different levels.

The Government's view

6.10 In his Explanatory Memorandum of 4 February 2010, the Minister for Marine and Natural Environment at the Department for Environment, Food and Rural Affairs (Mr Huw Irranca-Davies) says simply that the UK supports the need to develop a post-2010 global target for biodiversity under the auspices of the Convention on Biological Diversity, and the need for an EU vision and target for biodiversity beyond 2010 as part of this framework. He regards this Communication as a welcome input to the debate, and as outlining several useful options for a 2020 headline target. He also says that the Communication illustrates the breadth of the issue, and that action taken to tackle biodiversity loss is relevant to a wide-range of policy areas and interests.

Conclusion

6.11 **This Communication seeks to identify the main issues arising in relation to biodiversity loss, and to indicate the issues which need to be addressed in this area after 2010. To the extent that it deals with an area of obvious interest, we think it right to draw it to the attention of the House, but, as the document is in very general terms, we see no need to hold it under scrutiny. We are therefore clearing it.**

7 Prevention from sharp injuries in the hospital and healthcare sector

(31086) 15305/09 COM(09) 577	Draft Council Directive implementing the Framework Agreement on prevention from sharp injuries in the hospital and healthcare sector concluded by HOSPEEM and EPSU
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<i>Legal base</i>	Article 139(2)EC; QMV
<i>Department</i>	Work and Pensions
<i>Basis of consideration</i>	Minister's letter of 29 January 2010
<i>Previous Committee Report</i>	HC 5–ii (2009–10), chapter 5 (25 November 2009)
<i>To be discussed in Council</i>	8 March 2010
<i>Committee's assessment</i>	Politically and legally important
<i>Committee's decision</i>	Cleared

Background

7.1 According to the Commission, injuries caused by needles and other sharp instruments are one of the most common and serious risks to healthcare workers, particularly in relation to such blood-borne diseases as viral hepatitis and AIDS. Although existing Community legislation lays down general preventive principles and measures, the European Parliament called upon it in July 2006 to submit an appropriate legislative

proposal, but, before doing so, it embarked — as required under Article 138(2) of the Treaty — on a consultation with management and labour (the European social partners²⁷ in the hospital and healthcare sector), asking them if they intended to negotiate a framework agreement. HOSPEEM and EPSU subsequently signed such an Agreement in July 2009 establishing minimum provisions for the prevention of sharp injuries, and in accordance with Article 139(2) of the Treaty, they requested the Commission to put this forward for a Council Decision in order to make it legally binding across the Community.

7.2 The Commission duly put forward this document in October 2009, and, as it interprets the term “Council Decision” in the context of Article 139 as referring to either a Directive, Regulation or Decision, it decided that a Directive would be the most appropriate approach to pursue. The Agreement itself is annexed to the proposal, and provides for an integrated approach to risk assessment and prevention, training, information and awareness-raising and monitoring.

7.3 The Government told us that the proposal was supported by key stakeholders, and that many of the measures are already covered by existing health and safety legislation, as well as by healthcare specific legislation, codes of practice and guidelines. It also said that, although the Commission is not required to prepare an Impact Assessment on proposals to implement social partner agreements, the Government itself had carried out a preliminary Impact Assessment in 2008 on draft proposals to amend the Biological Agents Directive to prevent the risk of sharp injuries to workers. This showed that these would be effectively cost-neutral, and it added that the Department of Health had also estimated that the costs of the new proposal should be minimal.

7.4 In our Report of 25 November 2009, we said that this struck us as a useful initiative, but that we had considerable doubt whether it is consistent with the provisions of the EC Treaty to use a Directive to implement it, concerns which mirrored those raised in our Report of 19 November 2009 on the draft Directive implementing the revised Framework Agreement on parental leave.²⁸ In particular, we pointed out that:

“Despite what the Commission says in its explanatory memorandum, neither Article 249 nor any other provision of the EC Treaty gives it discretion to set aside the express requirement of Article 139(2) that agreements between the social partners are to be implemented either by a collective agreement or by ‘a Council decision on a proposal from the Commission’. A Decision is mentioned because a Decision, not a Directive, is the means by which a separate agreement made at Community level is made binding on those to whom it is addressed.

“In addition, Article 139(2) does not refer to the adoption of ‘measures’, which would be expected if the choice of legal instrument was intended to be left open, as can be seen from other Articles under this Title of the EC Treaty. Nor does it refer to cooperation of any kind with the European Parliament, stating simply that the Council shall act by QMV and, by clear inference, alone. A reference to the role of the European Parliament would be expected under this Title of the EC Treaty if a

27 The European Hospital and Healthcare Employers’ Association (HOSPEEM) and the European Federation of Public Services Unions (EPSU).

28 (30873) 12761/09: see HC 5–i (2009–10), chapter 5 (19 November 2009).

Directive had been contemplated by Article 139(2) EC, as Article 137(2) EC and many other provisions under this Title attest. Indeed, Article 137(2) EC would be the correct legal base for a Directive on the prevention from sharp injuries in the hospital and healthcare sector. The Directive on ‘the protection of workers from risks related to exposure to biological agents at work’²⁹ is a clear precedent for this.

“Our concern goes wider than the present proposal. Article 155 of the Treaty on the Functioning of the European Union (TfEU) re-enacts Article 139 EC word for word except for cross-references to Article 153 of the TfEU rather than to Article 137 EC. So it is important that the meaning of Article 155 TfEU be clarified.”

We therefore asked the Minister for a response to these concerns before considering this proposal further.

Minister’s letter of 29 January 2010

7.5 We have now received from the Parliamentary Under-Secretary of State at the Department for Work and Pensions (Lord McKenzie of Luton) a letter of 29 January 2010, in which he draws attention to the response which the Minister of State for Business, Innovation and Skills (Pat McFadden) provided on 17 November 2009 in relation to parental leave (Annex A), and reiterates that the Government is satisfied that it would be appropriate to implement an initiative of this kind by means of a Directive.

Conclusion

7.6 Since it is clear that we and the Government take a different view on this issue, we do not propose to pursue the matter further, but we think it right to draw the position to the attention of the House. Also, since the substance of this proposal does not give rise to any significant issues, we see no need to continue to hold it under scrutiny, and we are therefore clearing it.

Annex A: Extract from Letter of 17 November 2009 from Pat Mcfadden on the Framework Agreement on Parental Leave

“I agree with the Commission and consider that the term ‘Council decision’ in Article 139(2) EC is to be understood in its general meaning as referring to the legally binding instruments provided for in Article 249. It is usual practice for a Council decision referred to in Article 139(2) EC to be construed as any type of decision made under Article 249 EC and it commonly leads to a Council Directive. We therefore consider that the proposal to implement the Framework Agreement by means of a Directive is compatible with the Treaty.

“Looking first at the wording of Article 139, this doesn’t refer specifically to Article 249, and if it was confined narrowly in this way we would expect the Treaty to say so explicitly. On a practical level, a Decision under Article 249 would not be capable of implementing the social partner agreement. A Decision would not work in this context as it would not have the effect of leaving aspects to Member States to implement as a Decision sets out the means by which the desired result is to be achieved. No measures are required to incorporate it into national law. It is clear that the framework agreement is intended to be applied indirectly by means of provisions to be transposed into national law by Member States. The Council is therefore making a ‘decision’ in the wider sense to make binding the provisions of the agreement concluded between social partners, and determining the most appropriate legally binding instrument.

“As a matter of practice there are a number of existing Directives which implement Framework Agreements in this way which indicates that this is common practice. For example, the existing Parental Leave Directive (which this proposal seeks to amend), the Fixed-Term Work Directive 99/70/EC and Part-Time Work Directive 97/81/EC have all been given effect on the same basis. The recitals of these Directives provide that the proper instrument for implementing the Framework Agreement is a Directive (see recitals 11, 15, and 14 respectively).

“I am therefore satisfied that the proposal to implement the Framework Agreement by means of a Directive is the appropriate measure, and this approach is compatible with the Treaty.”

8 EU Special Representatives

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| (31295) | Council Decision extending the mandate of the European Union Special Representative for Moldova |
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| (31296) | Council Decision extending the mandate of the European Union Special Representative for Afghanistan |
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| — | |
| (31298) | Council Decision amending and extending the mandate of the European Union Special Representative for Central Asia |
| — | |
| — | |
| (31290) | Council Decision extending the mandate of the European Union Special Representative for the crisis in Georgia |
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| (31297) | Council Decision amending and extending the mandate of the European Union Special Representative for the Middle East peace process |
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| (31299) | Council Decision amending and extending the mandate of the European Union Special Representative for the South Caucasus |
| — | |
| — | |
| (31291) | Council Decision amending and extending the mandate of the European Union Special Representative for Kosovo |
| — | |
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| (31300) | Council Decision amending and extending the mandate of the European Union Special Representative for Bosnia and Herzegovina |
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| (31301) | Council Decision amending and extending the mandate of the European Union Special Representative for the former Yugoslav Republic of Macedonia (FYROM) |
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| (31302) | Council Decision amending and extending the mandate of the European Union Special Representative for the African Great Lakes Region |
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| (31303) | Council Decision amending and extending the mandate of the European Union Special Representative for Sudan |
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| (31304) | Council Decision amending and extending the mandate of the European Union Special Representative for the African Union |
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<i>Legal base</i>	Articles 28, 31 (2) and 33 TEU; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 3 February 2010
<i>Previous Committee Report</i>	None; but see (30336) and (30351–4) —: HC 19–iv (2008–09), chapter 2 (21 January 2009) and (30377–82) —: HC 19–vi (2008–09), chapter 14 (4 February 2009)
<i>To be discussed in Council</i>	22 February 2010 Foreign Affairs Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; further information requested

Background

8.1 EU Special Representatives (EUSRs) are appointed to represent Common Foreign and Security Policy where the Council agrees that an additional EU presence on the ground is needed to deliver the political objectives of the Union. They were established under Article 18 of the 1997 Amsterdam Treaty and are appointed by the Council. The aim of the EUSRs is to represent the EU in troubled regions and countries and to play an active part in promoting the interests and the policies of the EU.

8.2 An EUSR is appointed by Council through the legal act of a Council Decision (formerly a Joint Action). The substance of his or her mandate depends on the political context of the deployment. Some provide, *inter alia*, a political backing to an ESDP operation, others focus on carrying out or contribute to developing an EU policy. All EUSRs carry out their duties under the authority and operational direction of the High Representative of the Union for Foreign Affairs and Security Policy (HR; Catherine Ashton). Each is financed out of the CFSP budget implemented by the Commission. Member states contribute regularly e.g. through seconding some of the EUSR’s staff members.

8.3 In June 2005 the Political and Security Committee decided that EUSR mandates should in principle be extended for 12 months rather than the previous arrangement of 6 months. This was put into effect in February 2006. The UK supported this proposal, as it enables extensions to be based on a more thorough reporting cycle. The renewed mandates now also ask EUSRs to prepare progress reports in mid-June and mandate implementation reports in mid-November.

8.4 The European Union currently has 12 Special Representatives (EUSRs) dealing with: Afghanistan, the African Great Lakes Region, the African Union, Bosnia and Herzegovina, Central Asia, Georgia, Macedonia, Kosovo, the Middle East, Moldova, the South Caucasus and Sudan.

8.5 Some EUSRs are resident in their country or region of activity, while others work on a travelling basis from Brussels.

8.6 The history, mandate and activities of each of them is helpfully summarised by the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) in his two Explanatory Memoranda of 3 February 2010. His comments on each one are in italics beneath the summary.

8.7 The Minister begins, however, by explaining that, the earlier decision of the PSC notwithstanding, on this occasion the Council Decisions are to be extended, not for the usual twelve months, but only until 31 August 2010, or until the establishment of the European External Action Service (EEAS), whichever is the earlier; and that the HR intends to revert to the matter in the light of further work on the EEAS.

Moldova

8.8 This Council Decision extends the appointment of Mr Kalman Mizsei as the EUSR in Moldova. The EU Special Representative's mandate is focused on strengthening the EU's contribution to the resolution of the Transnistria conflict in close coordination with the Organisation for Security and Co-operation in Europe (OSCE). The political instability of 2009 made progress very difficult.

8.9 The EUSR also makes contributions towards EU policy in other areas, including improving EU-Moldova relations, the strengthening of democracy and the rule of law, and assisting in the fight against trafficking of weapons, other goods and people. The EUSR's role also complements the work of the EU Delegation. The negotiations of a new EU-Moldova Association Agreement begin in January 2010, which will also focus on these areas.

“The Government supports the work of the EUSR and the extension of the mandate because we would like to see resolution of the conflict in Transnistria. Resolution would remove a barrier to Moldova's reform and gradual integration with the EU. Resolving Transnistria, and Moldovan reform and integration would in turn promote greater stability in the region, thereby supporting our objectives in Ukraine. Since his appointment, the EUSR has actively contributed to maintaining international pressure for dialogue. The EUSR has also played a key role in implementing the EU's Border Assistance Mission (EUBAM). The Mission aims to provide effective control of the Ukrainian-Moldovan border, particularly the Transnistrian segment. As the Transnistrian regime derives much of its income from smuggling across the Moldovan-Ukrainian border, the Mission has put pressure on it for the first time. 2009 will also be an important year for Moldova as the EU negotiates a successor to the European Neighbourhood Policy (ENP) agreement.”

Afghanistan

8.10 This Council Decision extends the appointment of Mr Ettore Sequi as the EUSR in Afghanistan, although the Minister notes that there may be a change in the candidate for this role.

“The Government supports the extension of this mandate because of the important role of the EU in Afghanistan. The EU and Afghanistan's partnership, defined by the Strasbourg Declaration of 16 November 2005, means that EU commitments are kept under review by periodic meetings between the Afghan government and the EU. The EU is a major partner in Afghanistan, having disbursed or pledged \$7.5bn between 2002 and 2011. EU member states also provide approximately 16,000 troops to the

International Security Assistance Force and the EU has launched an ongoing Police Mission to Afghanistan (EUPOL) since June 2007.

“The EUSR will continue to play an important role in focusing the EU efforts described above, and ensuring that it dovetails with the work of other bilateral and multilateral partners. The Afghan government and international partners, particularly the UN, continue to place an emphasis upon the need for greater international coordination in Afghanistan, the EUSR is a key part of fostering this cooperation.

Central Asia

8.11 This Council Decision extends the mandate of the EUSR for Central Asia, Mr Pierre Morel. The EU established a Special Representative for Central Asia in September 2005 to ensure coordination and consistency of external EU actions in the region. Mr Pierre Morel was appointed in September 2006.

8.12 The EUSR’s mandate focuses on enhancing EU effectiveness and visibility in the region. It also aims to contribute to the strengthening of democracy, rule of law, good governance and respect for human rights and fundamental freedoms in Central Asia. It was amended by a Joint Action on 15 February 2007 to allow the EUSR to contribute to wider Common Foreign and Security Policy work on energy security, and to help develop bilateral energy cooperation with important producer and transit partners in Central Asia. It was refined in Joint Action 2007/113/CFSP of September 2007 following the adoption of a new EU Strategy for Central Asia at the June 2007 European Council. This action assigned to the EUSR an enhanced role in monitoring the implementation of the Strategy, making recommendations and reporting to relevant Council bodies on a regular basis. It also added specific tasking for the EUSR to contribute to the formulation of counter-narcotics aspects of the Common Foreign and Security Policy.

8.13 Pierre Morel’s mandate was amended most recently by Joint Action 2008/900/CFSP of 2 December 2008, which added water management aspects to his responsibilities.

“The Government welcomed the creation of an EUSR for Central Asia and the appointment of Jan Kubis in July 2005 (Joint Action 2005/588 of 28 July 2005) followed by Pierre Morel in October 2006 (2006/670/CFSP of 5 October 2006). As EUSR, Mr Morel has travelled extensively and contributed to EU discussions on policy towards the region, including on energy security and counter-narcotics. He has been effective in raising the profile of the EU in Central Asia.

“We expect that the EUSR to continue to provide a common focus for delivering EU messages not just on key human rights issues, but also on the benefits of regional co-operation and on potential EU assistance in helping the region to address some of its shared socio-economic difficulties. We and EU partners have every reason to believe that Pierre Morel will build on a significant record of achievement to date if he continues as EUSR for Central Asia. The Government therefore supports the extension.”

Crisis in Georgia

8.14 This Council Decision extends the mandate of the EUSR for the Crisis in Georgia, Ambassador Pierre Morel. The EU established a EUSR for the Crisis in Georgia in September 2008 to ensure coordination and consistency of external EU actions in the region. The EUSR's mandate is based on the objectives established by the conclusions of the extraordinary European Council meeting in Brussels on 1 September 2008 and the Council conclusions of 15 September on Georgia. The EUSR's role is to enhance the effectiveness and visibility of the EU in helping to resolve the conflict in Georgia.

“The Government welcomed the additional appointment of Ambassador Morel as EUSR for the Crisis in Georgia in September 2008. We support his reappointment: he has worked well with the other EUSRs and other partners. EUSR Morel has promoted good governance and respect for human rights. His personal commitment, and his good relationship with Russian Deputy FM Karasin, have enabled him to play a key role in support of the Geneva talks as a long-term process. EUSR Morel was instrumental in setting-up the Incident Prevention and Reporting Mechanisms (IPRM) for South Ossetia and Abkhazia, which provide a forum for discussing incidents on a local level.

“Following the most recent talks on 28 January 2010, EUSR Morel plans to review the IPRM mechanisms and look at how they might focus more on prevention. He will also continue to encourage the sides to discuss non-use of force and security arrangements. EUSR Morel will also encourage all parties to continue to build on progress made at the most recent round of talks by the working group looking at IDP issues. He intends to continue with the pattern of holding one-day talks every two months to ensure high-level participation from all parties. The next round will take place on 30 March.

“EUSR Morel maintains strong relations with the other international organisations working on the region. He also continues to maintain access to the separatist regions of Abkhazia and South Ossetia. With the OSCE and UN mandate renewals having been vetoed by Russia, the EU is the only major international presence in Georgia and it is essential to signal the EU's continued serious commitment to these issues. With the UN (Verbeke) and OSCE (Christopoulos) co-chairs having been replaced at the beginning of 2010, EUSR Morel is the only co-chair with significant experience of the region and established relationships with key players.

“Not renewing Morel's mandate would risk causing uncertainty about EU commitment to Georgia”.

South Caucasus

8.15 This Council Decision extends the mandate of the EUSR for the South Caucasus. Peter Semneby was appointed EUSR for the South Caucasus on 20 February 2006. He is tasked with pursuing the following objectives: assisting Armenia, Azerbaijan and Georgia in carrying out political and economic reforms; preventing conflicts in the region and contributing to the peaceful settlement of conflicts, including through promoting the return of refugees and internally displaced persons; engaging constructively with main

interested actors concerning the region; encouraging and supporting further cooperation between States of the region, including on economic, energy and transport issues; and enhancing the effectiveness and visibility of the EU in the region.

“Working with and through the EU forms a key part of the UK’s engagement with the three South Caucasus countries, and the work of the EUSR forms an important part of this engagement. His high-level political work supports the countries’ involvement in the EU’s Eastern Partnership, which provides both a solid base for EU engagement — ensuring that we and our EU partners adopt a coherent approach to the South Caucasus — and is aligned with Government objectives in the region. The input of the EUSR will be an important factor in ensuring that the countries of the region meet the criteria for further integration under the proposed Association Agreements.

“We have also encouraged the EU to play a more substantive role in helping to prevent and resolve conflict throughout the region, including through targeted and practical funding of projects as well as maintaining high-level dialogue. EUSR Semneby has represented the EU in helping the Georgian government define its long term strategy for engaging with its separatist regions of Abkhazia and South Ossetia.

“The mandate of the EUSR for the South Caucasus was amended in October 2008 to reflect the appointment of an EUSR for the Crisis in Georgia and the establishment of the EU Monitoring Mission (EUMM) to Georgia. The work of the EUSR for the South Caucasus is complementary to, and wider ranging than, the work of the EUSR for the Crisis in Georgia and EUMM.”

Middle East Peace Process

8.16 This Council Decision extends the appointment of Marc Otte as the EUSR for the Middle East Peace Process.

8.17 There has been an EUSR for the Middle East Peace Process since 1996. The incumbent, Marc Otte, was appointed on 14 July 2003. The mandate of the EUSR is based on the EU’s policy objectives which include a two-state solution with Israel and a democratic, viable, peaceful and sovereign Palestinian state living side by side within secure and recognised borders enjoying normal relations with their neighbours in accordance with United Nations Security Council Resolutions 242, 338, 1397, 1402, 1850, 1860 and the principles of the Madrid conference.

8.18 The EUSR offers advice and conveys the position of the EU to all parties, thereby contributing to the implementation of EU policy on the process as agreed by the Council of Ministers. The EUSR also represents the EU in meetings of the Quartet (UN, EU, Russia and the US) at Envoy level.

“The role of an EUSR continues to be valuable to the EU’s support for the Middle East Peace Process.

“Current international focus is on supporting US efforts to launch credible negotiations and to that end the mandate is clear about the importance of the EUSRs role in marshalling EU efforts to encourage both sides to the negotiating table and keeping the EU squarely behind US efforts.

“Longer term the focus remains on how to achieve the well established MEPP objectives.

“The Government judges that the role of the EUSR remains an important tool of EU policy towards the Middle East Peace Process and therefore supports the renewal of the mandate .”

Kosovo

8.19 This Council Decision extends the appointment of Pieter Feith as the EUSR in Kosovo.

8.20 On 14 December 2007 the European Council underlined the EU’s readiness to play a leading role in strengthening stability in the western Balkans, including by contributing to a European Security and Defence Policy mission and to an International Civilian Office as part of the international presences in Kosovo. Joint Action 2008/123/CFSP adopted on 4 February 2008 established an EU Special Representative for Kosovo. Kosovo declared independence on 17 February 2008.

8.21 The mandate of the EUSR is based on the objective of securing a stable, viable, peaceful and multi-ethnic Kosovo, which will contribute to regional stability. His tasks include being the channel for the EU’s advice and support to the political process, promoting political coordination in Kosovo through the EU missions, ensuring a coherent public message, and contributing to the consolidation of human rights and fundamental freedoms in Kosovo.

8.22 The EUSR is combined with the International Civilian Representative (ICR) who is appointed by an International Steering Group (ISG, of which the UK is a member) and is the ultimate supervisory authority over the implementation of the UN Special Envoy’s Comprehensive Settlement Proposal (Kosovo committed itself to that proposal as part of its declaration of independence).

8.23 The ICR does not have a direct role in the administration of Kosovo, but retains strong corrective powers to ensure the successful implementation of the Settlement. The ICR’s mandate will continue until the ISG determines that Kosovo has implemented the terms of the settlement.

“The UK fully supports maintaining the office of the EUSR in Kosovo and we would welcome the continued appointment of Pieter Feith in this post.

“Pieter Feith has a long track record of crisis management in both NATO and the European Union and has been closely involved with Kosovo since he was a senior policy official in the NATO International Secretariat in the late 90s. He headed the successful EU-led Aceh Monitoring Mission in 2005 and 2006. In 2007 he was appointed Director of the EU’s Civilian Planning and Conduct Capability and is the Civilian Operation Commander for the civilian ESDP missions. He has proved highly capable in his role throughout the last year, supporting development of a stable, viable and prosperous Kosovo as it works towards its European perspective. In particular he has contributed to efforts to hold free and fair elections in line with international standards, has reached out to the non-majority community and supported dialogue in

the field of religious and cultural heritage. He is very well placed to continue to provide strategic policy leadership to the international community effort in Kosovo and to work closely with the NATO and EU missions there. He is also currently the International Civilian Representative (ICR) — UN Special Envoy Ahtisaari’s proposals envisaged the EUSR role and that of the ICR being held by the same person, post a resolution of Kosovo’s status. This double-hatting has proved effective, adding authority and political influence to enable the EUSR to achieve the EU’s objectives.”

Bosnia and Herzegovina

8.24 This Council Decision extends the appointment of Valentin Inzko as the EUSR in Bosnia and Herzegovina. The mandate of the EUSR is to assist in the creation of a stable, viable, peaceful and multi-ethnic Bosnia and Herzegovina (BiH), co-operating peacefully with its neighbours and irreversibly on track towards EU membership. To this end, the EUSR offers advice and facilitation in the local political progress, co-ordinates the activities of EU actors in BiH and provides EU actors and EU Heads of Mission with regular reporting on the local political situation.

8.25 The EU has appointed a EUSR to Bosnia and Herzegovina (BiH) since 2002. Since then, the EUSR has been combined with the (International Community’s) High Representative in Bosnia and Herzegovina. The Office of the High Representative (OHR) was created in 1995 to supervise implementation of the civilian aspects of the Dayton Peace Agreement.

8.26 The High Representative is appointed and overseen by the Peace Implementation Council (PIC). The PIC comprises some 40 nations and several international organisations including the UN, NATO, and the Organisation for Security and Co-operation in Europe (OSCE). Dr Valentin Inzko was himself appointed as EUSR in BiH on 11 March 2009 through Council Joint Action 2009/181/CFSP, replacing the previous EUSR Mr Miroslav Lajcak.

“The UK fully supports maintaining the Office of the EUSR in BiH. The last year has seen continued challenges in Bosnia and Herzegovina with slow reform progress, continuing ethnic nationalist rhetoric and challenges to decisions taken by the High Representative. We expect the next year to pose further challenges, as Bosnian parties campaign for elections in October 2010. The EUSR will have a key role to play in focusing debate on the reforms necessary for further EU integration and encouraging Bosnia and Herzegovina’s political leaders to work constructively together on achieving these reforms. The EUSR also plans to increase its outreach and communication programme in BiH, in order to further communicate the benefits of EU accession and the nature of the accession process to the general public in BiH. The Government supports this work.

“The Peace Implementation Council (PIC) meeting in November 2009 concluded that the 5 objectives and 2 conditions agreed as the criteria for closure of the Office of the High Representative (OHR) had not yet been completed. The PIC will continue to review progress against those objectives and conditions at its forthcoming meetings, including its next meeting in February 2010. It is worth noting that, as and when the PIC decides to close the Office of the High Representative (OHR), the EU Special

Representative will become the primary representative of the international community in BiH. This may necessitate a strengthening of the EUSR's mandate so that it is adequately equipped to deal with ongoing challenges in BiH. This EUSR mandate renewal does not prejudge a future PIC decision regarding closure of the Office of the High Representative."

Macedonia

8.27 This Council Decision extends the appointment of Erwan Fouéré as the EUSR in Macedonia.

8.28 The position is "double-hatted" with the post of Head of the European Union Delegation in Skopje. The EUSR was initially appointed under a Joint Action adopted on 17 October 2005, when the incumbent was already Head of the then EC Delegation; this was thus the first such "double-hatted" appointment. As with other such "double-hatted" EUSRs, Mr Fouéré was appointed EUSR and Head of Delegation by a simultaneous decision of the Council and the Commission; in his two mandates, Mr Fouéré reports to Baroness Ashton in her roles as the High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission.

8.29 His mandate is to contribute to the consolidation of the peaceful political process and the full implementation of the NATO-brokered Ohrid Framework Agreement, which would in turn facilitate further progress towards EU accession.

"The presence of a EUSR has provided an essential contribution to the consolidation of peace, stability and the rule of law in Macedonia. The EUSR plays a key role in ensuring that the necessary efforts and reforms take place for the full implementation of the 2001 Ohrid Framework Agreement (OFA), which ended fighting between the ethnic Albanian National Liberation Army and Macedonian security forces. These reforms are key for improving rights of ethnic Albanians through respect for minority languages, an increased role in the national parliament and an agenda for decentralization. The EUSR also offers advice and facilitates political progress, working to foster a climate of trust and dialogue conducive to implementing reforms necessary to progress towards the EU.

"We assessed in August 2009 that the following months would be an important time as the Macedonian government addressed key pieces of legislation and responded to the Commission's annual assessment of progress. The Macedonian government in fact made good progress with reforms, as the Commission concluded in its "Enlargement Strategy and Main Challenges 2009–2010". It assessed that Macedonia had substantially addressed the key priorities of its accession partnership, and recommended opening accession negotiations with the country. The Council agreed to address this recommendation in the first half of 2010.

"We judge that the political and security situation in Macedonia has been moving forward positively. However, some tensions remain in the political climate, particularly over implementation of the OFA, with one ethnic-Albanian party still boycotting Parliament and questioning the continuing validity of the Agreement.

“High Representative, Baroness Ashton, has included Macedonia in her proposal to extend all EUSR mandates. This will extend Fouéré’s mandate until the date of entry into force of the Council decision establishing the European External Action Service, or until 31 August 2001, whichever is earlier. The Government supports the proposal by the High Representative, which provides a pragmatic way to ensure political continuity of CFSP expertise and visibility in Macedonia in the transition to the European External Action Service.”

The African Great Lakes Region

8.30 This Council Decision extends the appointment of Roeland van de Geer as the EUSR for the Great Lakes.

8.31 The mandate of the EUSR is based on the policy objectives of the EU regarding the further stabilisation and consolidation of the post-conflict situation in the African Great Lakes Region, in particular, compliance with the basic norms of democracy and good governance, including respect for human rights and the rule of law.

“We welcome the extension of Roeland van de Geer’s appointment as the EUSR for the Great Lakes. We are satisfied with the way he has implemented his mandate and the UK has been able to work well with him. He can continue to make a valuable contribution to bringing peace and stability to the region.”

“Mr van de Geer was influential in taking forward the EU’s policies in the two areas of instability in the African Great Lakes region: eastern Democratic Republic of Congo and Burundi. He has been a part of the Great Lakes negotiations from the beginning of political reconciliation and is a trusted voice in the region. This year, he could also play an important role in co-ordinating the international community’s efforts to ensure that elections in the region are free, fair and peaceful.”

Sudan

8.32 This Council Decision extends the appointment of Torbyn Brylle as the EUSR in Sudan.

8.33 The mandate of the EUSR is to assist the Sudanese parties, the AU and the UN to achieve a political settlement of the conflict in Darfur through the Darfur Peace Agreement (DPA), the Comprehensive Peace Agreement (CPA), the South-South dialogue and the Eastern Sudan Peace Agreement (ESPA).

8.34 The mandate is also based on Council Joint Action 2007/677/CFSP on the EU military operation in the Republic of Chad and in the Central African Republic (EUFOR Tchad/RCA).

“We welcome the extension of Torbyn Brylle’s appointment as the EUSR for Sudan. The EUSR covers the whole of Sudan and has been working on and towards a number of areas: implementing the Comprehensive Peace Agreement; supporting and expanding the Darfur political process; and building on the peace process for the East of Sudan.”

“2010 will present significant challenges for the parties in Sudan and the international community with elections scheduled to take place in April and the referendum on Southern independence in January 2011. The EU will play an important role. We have also been working with Torben Brylle on EU/Sudan issues such as the deployment of an EU Election Observation Mission and on identifying ways forward following Sudan’s withdrawal from the Cotonou Agreement.

“The EUSR is also an important channel of contact with the African Union through EU/ AU dialogue and has engaged positively with the Mbeki led African Union Implementation Panel for Sudan, as well as with other international partners. He has played a key role in the E6 (P5 + EU) grouping of Envoys which has led to greater international co-ordination on Sudan..

“We have a close and helpful relationship with the EUSR and are in regular contact with him and his office. His balanced approach to Sudan is closely aligned with our own policy of treating the implementation of the Comprehensive Peace Agreement and Darfur as interrelated issues. This approach will be particularly important in the coming year elections in April and the referendum on possible Southern secession in January 2011.”

The African Union

8.35 This Council Decision extends the appointment of Koen Vervaeke as the EUSR/AU.

8.36 The mandate of the EUSR is based on the EU’s comprehensive policy objectives in support of African efforts to build a peaceful, democratic and prosperous future as set out in the EU Africa Strategy.

“We welcome the extension of Koen Vervaeke’s appointment as the EUSR to the AU. Mr Vervaeke has played an important role by working with the AU Commission on implementation of the Joint Africa EU Strategic Partnership, and has helped strengthen the political relationship between the EU and AU.

“Mr Vervaeke has been actively engaged with the Joint Africa EU Strategic Partnership (JAES) which has increased dialogue on key areas such as Peace and Security, helped promote an amplified African voice in international fora (e.g. climate change) and facilitated closer working on key areas such as energy.

“Having a double-hatted EUSR also facilitates EU co-ordination in Addis and EU engagement with other international partners.”

Financial Implications

8.37 The costs of EU Special Representatives are met from the CFSP budget, to which the UK currently contributes approximately 17%.

8.38 On the last two such renewals, the Minister has provided substantial information about the budget allocation and anticipated UK contribution. On this occasion, he only says that budget allocation for the duration of the EUSR mandates “has yet to be agreed.”

Timetable

8.39 The Minister expects these Council Joint Actions to be agreed at the 22 February Foreign Affairs Council.

Conclusion

8.40 We are, as on previous such occasions, grateful to the Minister for his very helpful Explanatory Memorandum, which once again illustrate very clearly the roles, wide range of challenges and activities, of the present European Union Special Representatives.

8.41 We note that the Minister is unable to provide any financial information on this occasion. We also note that that he has yet to receive texts of the proposed mandates for the EUSR to Macedonia and Afghanistan. He says in his Explanatory Memorandum that the current candidate may not be the new Special Representative. We further understand that, Afghanistan being a major UK priority, the Minister is pushing for a decision at the 22 February Foreign Affairs Council, and that, as well as their being a possible new EUSR, it is expected that the mandate will be significantly upgraded.

8.42 We understand that, these lacunae notwithstanding, the Minister has submitted what information is presently available in order to take account of the impending parliamentary recess. Regrettably, this means that there is insufficient time between now and the Foreign Affairs Council for the Minister to provide this additional information.

8.43 No other questions arise, and we have no wish to hold up the process. We accordingly clear the documents. But in so doing we ask the Minister to provide an Supplementary Explanatory Memorandum as soon as possible with the sort of financial information that he has provided on previous occasions and full information about the candidates and mandates of the EUSRs for Afghanistan and Macedonia.

8.44 Looking further ahead, we shall expect full and timely financial and other relevant information when all the mandates next come up for renewal, particularly about the way in which the EUSRs will interact with the prospective External Action Service.

8.45 In the meantime, we are again reporting these mandate extensions because of the wide interest in the House in the EU's Common Foreign and Security Policy.

9 General Budget 2010

(30860)	Draft General Budget of the European Communities for the financial year 2010
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<i>Legal base</i>	Article 272 EC; QMV; the special role of the European Parliament in relation to the adoption of the Budget is set out in Article 272
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister's letter of 29 January 2010
<i>Previous Committee Report</i>	HC 19–xxvii (2008–09), chapter 34 (14 October 2009), HC 19–xxxii (2008–09), chapter 14 (11 November 2009), HC 5–i (2009–10), chapter 18 (19 November 2009) and HC 5–iv (2009–10), chapter 13 (15 December 2009)
<i>Discussed in Council</i>	18 November 2009
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared (decision reported 14 October 2009); further information received

Background

9.1 The Commission's Preliminary Draft Budget (PDB) is the first stage in the Community's annual budgetary procedure. We reported on the 2010 PDB in June 2009³⁰ and it was debated in European Committee on 6 July 2009.³¹ The second stage is the adoption by the Council of the Draft Budget (DB). The 2010 DB was adopted on 10 July 2009 and we reported on it and subsequent developments in October, November (twice) and December 2009. On the last occasion we reported the likely outcome of the 2010 budget process following conciliation between the Council and the European Parliament on 18 November 2009. The 2010 PDB and the agreed 2010 DB were the basis of the 2010 Adopted Budget which was expected to be agreed in mid-December 2009.³²

The Minister's letter

9.2 The Economic Secretary to the Treasury (Ian Pearson) writes now to tell us about the European Parliament's second reading of the DB and its formal adoption of the 2010 General Budget on 17 December 2009. He says that:

30 (30692): see HC 19–xx (2008–09) chapter 2 (17 June 2009).

31 *Gen Co Deb*, European Committee, 6 July 2009, cols. 3–38.

32 See headnote.

- the final outcome was consistent with the agreement reached between the Council and European Parliament during conciliation on 18 November 2009;
- overall, commitment appropriations were set at €141.50 billion (£125.70 billion) and payment appropriations at €122.90 billion (£109.10 billion), corresponding to approximately 1.04% of EU GNI;
- this is below the level proposed by the Commission in its PDB and Amending Letters (in which, during the budget process, the Commission revises its original PDB) and €4.60 billion (£4.10 billion) below that proposed by the European Parliament in its first reading; and
- the European Parliament also agreed to the revision of the 2007–2013 Financial Framework, to finance the European Economic Recovery Plan,³³ and to the mobilisation of the Flexibility Instrument,³⁴ as agreed with Council.

The Minister then reminds us that the conciliation agreement set the overall totals for commitment and payment appropriations, that the Council's second reading determined the final level of expenditure for compulsory (mainly agriculture) expenditure and that the European Parliament had the final say on setting appropriations for non-compulsory expenditure, on 17 December 2009.³⁵

9.3 The Minister encloses with his letter annexes, which we reproduce, helpfully setting out an overview of the European Parliament's second reading, that is the 2010 Adopted Budget, the euro and sterling figures for the five budget categories and the changes in these at the main stages of the budget process. He then summarises the major points as follows.

Sub-Heading 1a (Competitiveness for growth and employment)

9.4 Commitment appropriations were set at €14.90 billion (£13.20 billion), €510 million (£453 million) higher than the Council's second reading after excluding provision of €500 million (£444 million) for the European Globalisation Adjustment Fund from the totals. No margin was left below the Financial Framework ceiling, which was surpassed by an additional €194.40 million (£172.60 million) mobilised from the Flexibility Instrument to finance the European Economic Recovery Plan and for nuclear decommissioning activity at Kozloduy in Bulgaria. Payment appropriations were set at €11.30 billion (£10.00 billion), €370 million (£329 million) higher than the Council's second reading, though some €1.20 billion (£1.10 billion) lower than the European Parliament's first reading.

9.5 The Minister says that in comparison to 2009 Budget payment levels the sub-heading as a whole received an increase of €318 million (£282 million) or 3% and relative to that budget the most significant changes in payments were for:

33 (30213) 16097/08: see HC 19-i (2008–09), chapter 4 (10 December 2008) and *HC Deb*, 20 January 2009, cols. 626–53.

34 The Flexibility Instrument permits up to €200 million (£182 million) to be budgeted each year above the ceilings of the Financial Framework, which funds can be carried over for up to two years.

35 EU expenditure is regarded as either "compulsory" or "non-compulsory". Compulsory expenditure is expenditure necessarily resulting from the Treaty or from acts adopted in accordance with the Treaty. The Council has the final say in fixing its total. The European Parliament has the final say in determining the amount and pattern of non-compulsory expenditure.

- the Social Policy agenda — an increase of €31 million (£28 million) or 21%;
- nuclear decommissioning — an increase of €110 million (£97.70 million) or 50%;
- the Seventh Research Framework programme — a decrease of €546 million (£485 million) or 8%; and
- EGNOS³⁶ and Galileo — a decrease of €307 million (£273 million) or 40%.

In addition, the adopted budget includes payment appropriations of €1.00 billion (£0.89 billion) for energy projects, as part of the European Economic Recovery Plan.

Sub-Heading 1b (Cohesion for growth and employment),

9.6 Commitment appropriations were set at €49.40 billion (£43.90 billion), €6 million (£5.30 million) higher than the Council's second reading, leaving a margin of €407,908 (£362,263) under the Financial Framework ceiling. Payment appropriations were set at €36.40 billion (£32.30 billion), €296 million (£263 million) higher than the Council's second reading and €2.50 billion (£2.20 billion) lower than the European Parliament's first reading.

9.7 The Minister says that in comparison to 2009 budget payment levels, the sub-heading as a whole received an increase of €1.40 billion (£1.20 billion) or 4% and relative to payment levels in that budget, the key changes were for:

- the Structural Funds — an increase of €1.80 billion (£1.60 billion) or 6.6%, including an increase of €3.20 billion (£2.80 billion) or 16.4% for the convergence objective, offset by reductions elsewhere; and
- the Cohesion Fund — a decrease of €427 million (£379 million) or 5.9%.

Heading 2 (Preservation and management of natural resources),

9.8 Commitment appropriations were set at €59.50 billion (£52.80 billion), €49 million (£44 million) higher than the Council's second reading. This total includes €420 million (£373 million) for the rural development and CAP "healthcheck" components of the European Economic Recovery Plan and leaves a margin of €456 million (£405 million) below the Financial Framework ceiling. Payment appropriations were set at €58.10 billion (£51.60 billion), €68 million (£60 million) higher than the Council's second reading, although €823 million (£731 million) lower than the European Parliament's first reading.

9.9 The Minister says that in comparison to 2009 budget payments levels the sub-heading as a whole received an increase of €5.60 billion (£5.00 billion) or 10.6% and relative to that budget the most significant changes in payments were for:

- rural development — an increase of €3.20 billion (£2.80 billion) or 31%;

- the European Fisheries Fund — a decrease of €80 million (£71 million) or 14.3%; and
- the Life+ (environment) programme — a decrease of €132million (£117 million) or 38%.

Sub-Heading 3a (Freedom, security and justice)

9.10 Commitment appropriations were set at €1.00 billion (£0.89 billion), €32 million (£28 million) higher than the Council's second reading, leaving a margin of €18.50 million (£16.40 million) under the Financial Framework ceiling. Payment appropriations were set at €738.60 million (£695.90 million), €47 million (£42 million) higher than the Council's second reading and €55 million (£49 million) lower than the European Parliament's first reading.

9.11 The Minister says that in comparison to 2009 budget payment levels the sub-heading as a whole received an increase of €121.10 million (£107.50 million) or 19.6% and that relative to that budget the most significant changes were for:

- solidarity and management of migration flows — an increase of €53.40 million (£47.40 million) or 18%; and
- decentralised agencies — an increase of €74.40 million (£66.10 million) or 53.3%.

Heading 3b (Citizenship)

9.12 Commitment appropriations were set at €668 million (£593 million), €34 million (£30 million) higher than the Council's second reading, leaving no margin under the Financial Framework ceiling. Payment appropriations were set at €659.40 million (£585.60 million), €45 million (£40 million) higher than the Council's second reading and €9 million (£8 million) lower than the European Parliament's first reading.

9.13 The Minister says that in comparison to 2009 budget payments levels the sub-heading as a whole received a decrease of €19.60 million (£17.40 million) or 2.9% (although this does not account for potential future mobilisation of the EU Solidarity Fund, which may result in an increase to overall payments under this sub-heading) and relative to that budget the most significant changes were for:

- “other actions” in the education and culture area — an increase of €9.60 million (£8.50 million) or 44%;
- public health and consumer protection programme — a decrease of €17.30 million (£15.40 million) or 21.4%; and
- communication actions — a decrease of €7.30 million (£6.50 million) or 7.7%.

Heading 4 (EU as a global player)

9.14 Commitment appropriations were set at €8.10 billion (£7.20 billion), including the Emergency Aid Reserve. This total was €207 million (£184 million) higher than the

Council's second reading and leaves a margin of €875,530 (£777,558) under the Financial Framework ceiling. Payment appropriations were set at €7.80 billion (£6.9 billion), also including the Emergency Aid Reserve. This total was €316 million (£281 million) higher than the Council's second reading (if the Emergency Aid Reserve is included) and €35 million (£31 million) lower than the European Parliament's first reading.

9.15 The Minister says that in comparison to the 2009 budget payments levels the heading as a whole received a decrease of €536 million (£476 million) or 6.4% and relative to that budget the most significant changes were for:

- democracy and human rights — an increase of €10.10 million (£9.00 million) or 6.8%;
- the Instrument for Pre-Accession Assistance — a decrease of €522.60 million (£464.10 million) or 22.7%; and
- other actions and programmes (development and relations with ACP states) — a decrease of €98.40 million (£87.40 million) or 17.7%.

Heading 5 (Administration)

9.16 Commitment appropriations were set at €7,889.10 million (£7,006.30 million), €60 million (£53 million) higher than the Council's second reading, leaving a margin of €72.90 million (£64.70 million) under the Financial Framework ceiling. Payment appropriations were set at €7,888.60 million (£7,005.90 million), higher than the Council's second reading by €60 million (£53 million) and than the European Parliament's first reading by €24 million (£21 million). This largely reflects the additional financing requested in Amending Letter No 3,³⁷ required for changes to the functioning of the European Council and the Council following the entry into force of the Lisbon Treaty. However, due to underspend in the Council's administration budget in 2009, it was possible to finance this while still reducing the overall level of administration spend in 2009 and 2010. The Minister says that in comparison to 2009 budget levels, the heading as a whole received an increase of €187.80 million (£166.80 million) or 2.4%.

The Government's view

9.17 The Minister comments that, as he has said previously, the Government believes, that through tough negotiation and close engagement with like-minded Member States, it achieved the best possible outcome in negotiations on the 2010 budget. He reminds us that:

- a key priority was the full financing of the remaining tranche of €2.40 billion (£2.10 billion) for the European Economic Recovery Plan without any overall increase to the Financial Framework spending envelope;
- not only did final agreement on the 2010 budget incorporate the full outstanding sum, but it did so within the overall Financial Framework envelope (despite calls from the European Parliament for an increase to that envelope);

37 (31190) 16763/09: see HC 5–iv (2009–10), chapter 13 (15 December 2009).

- in addition, this was achieved through reallocating substantial sums to the competitiveness and growth heading, and away from areas of the budget that are lower value for money; for example over €1.00 billion (£0.89 billion) was moved from the agriculture heading for this purpose and the administration heading was also reduced; and
- as a result the 2010 budget delivers the fiscal stimulus that EU leaders have agreed is necessary, while respecting the overall spending limits set in 2005.

9.18 The Minister comments further that:

- even though the 2010 budget provides this important fiscal stimulus, and is therefore larger than the 2009 budget, the Government also made some progress in negotiations on its objective to limit increases to the overall budget size;
- the final budget was below the level proposed by the Commission in its PDB and Amending Letters and, at €4.60 billion (£4.10 billion) lower than that proposed by the European Parliament at its first reading, saving the UK taxpayer nearly £450 million;
- the lowest percentage increases in payments levels between the PDB and the adopted budget were in agriculture (0.1%) and administration (0.5%), the highest in citizenship, freedom, security and justice (2.8%) and the external actions heading (1.6%);
- perhaps inevitably, accommodating the full remaining tranche of the European Economic Recovery Plan within the overall Financial Framework spending envelope has resulted in a 2010 budget with a smaller margin than the Government would like; and
- it will need to push hard throughout the year for strong budget discipline, including through reprioritisation of funds to meet urgent and unforeseen demands throughout the year, to avoid serious pressure on this margin.

Conclusion

9.19 **We are grateful to the Minister for this report on the final outcome of the negotiations on the 2010 Budget.**

Annex: Table 1: Summary of 2010 PDB, Council's 1st Reading, EP 1st Reading, Council's 2nd Reading and EP 2nd Reading (Adopted Budget) — EUR million

Heading	FF Ceiling (1)	2010 PDB		Council 1 st Reading (4)		EP's 1 st Reading (4)		Council's 2 nd Reading (5)		Adopted Budget (5)		Diff: 2010 PDB & Adopted Budget	
		CA(2)	PA(3)	CA	PA	CA	PA	CA	PA	CA	PA	CA	PA
1. Sustainable Growth	63,555	62,152	47,365	62,052	46,663	64,255	51,418	63,734	47,061	64,249	47,727	2,097	362
1a. Competitiveness for Growth and Employment (6)	14,167	12,269	10,982	12,170	10,574	14,367	12,568	13,852	10,972	14,362	11,342	2,093	360
Margin	—	119	—	218	—	-1,979	—	123	—	-194	—	—	—
1b. Cohesion for Growth and Employment	49,388	49,382	36,382	49,382	36,089	49,388	38,850	49,382	36,089	49,388	36,385	6	3
Margin	—	12	—	12	—	6.4	—	1	—	0.4	—	—	—
2. Preservation and Management of Natural Resources	59,955	59,004	58,075	58,640	57,583	59,808	58,959	59,450	58,068	59,499	58,136	495	61
Margin	—	1,109	—	1,473	—	305	—	539	—	456	—	—	—
3. Citizenship, Freedom, Security and Justice	1,693	1,629	1,360	1,608	1,306	1,674	1,462	1,608	1,306	1,674	1,398	45	38
3a. Freedom, Security and Justice	1,025	980	720	974	692	1,006	794	974	692	1,006	739	26	19
Margin	—	45	—	51	—	19	—	51	—	19	—	—	—
3b. Citizenship	668	649	640	634	614	668	668	634	614	668	659	19	19
Margin	—	19	—	34	—	0	—	34	—	0	—	—	—
4. European Union as a Global Partner (7)	7,893	7,921	7,665	7,832	7,405	8,141	7,823	7,934	7,472	8,141	7,788	220	123
Margin	—	221	—	310	—	0.4	—	208	—	0.9	—	—	—
5. Administration (8)	7,882	7,851	7,851	7,812	7,812	7,866	7,865	7,829	7,829	7,889	7,889	38	38
Margin	—	230	—	276	—	222	—	109	—	73	—	—	—
TOTAL (9)	140,978	138,557	122,316	137,944	120,770	141,745	127,526	140,555	121,737	141,453	122,937	2,896	621
Margin	—	1,761	—	2,374	—	-1,427	—	1,065	—	354	—	—	—
Appropriations for payment as % of GNI		1.18%	1.03%	1.17%	1.02%	1.2%	1.08%	1.19%	1.04%	1.2%	1.04%	—	—

Notes

- (1) As revised by the Council and European Parliament to finance the European Economic Recovery Plan. Margin calculations throughout the table for all stages prior to the adopted budget do not reflect the agreed, revised FF.
- (2) CA = commitment appropriations
- (3) PA = payment appropriations
- (4) Due to rounding, heading totals for Council's and EP's first readings may not fully match those in previous updates.
- (5) Council's 2nd reading incorporates Amending Letters 1 and 2; the European Parliament 2nd Reading/the adopted budget incorporates Amending Letters 1–3.
- (6) For consistency totals for sub-heading 1 incorporate the commitment appropriations related to the European Globalisation Adjustment Fund (€500m), however as it sits over and above the margin it is not incorporated in the margin totals shown. Totals for sub-heading 1 and 1a, and the margin calculations, also reflect the mobilisation of €195m from the Flexibility Instrument.
- (7) Commitments and payments totals for Heading 4 incorporate €249.8m in appropriations related to the Emergency Aid Reserve (EAR), however as it sits over and above the margin for Heading 4 it is not incorporated in the margin totals shown. Please note that in previous updates the amount was excluded from the payments total in Council's first and second readings; it is included here for consistency and to aid comparison.
- (8) For calculating the margin for Heading 5, account is taken of the footnote(1) of the Financial Framework 2007–2013 for an amount of €78m for the staff contributions to the pension scheme.
- (9) Due to rounding, the sum of the heading totals may not equal the total.

Table 2: Summary of 2010 PDB, Council's 1st Reading, EP 1st Reading, Council's 2nd Reading and EP 2nd Reading (Adopted Budget) — GBP million

Heading	FF Ceiling (1)	2010 PDB		Council 1 st Reading (4)		EP's 1 st Reading (4)		Council's 2 nd Reading (5)		Adopted Budget (5)		Diff: 2010 PDB & Adopted Budget	
		CA(2)	PA(3)	CA	PA	CA	PA	CA	PA	CA	PA	CA	PA
1. Sustainable Growth	56,443	55,197	42,065	55,108	41,441	57,065	45,664	56,602	41,795	57,059	42,386	1,862	321
1a. Competitiveness for Growth and Employment (6) <i>Margin</i>	12,582	10,896	9,753	10,808	9,391	12,759	11,162	12,302	9,744	12,755	10,073	1,859	320
	—	106	—	194	—	-1,758	—	109	—	-172	—	—	—
1b. Cohesion for Growth and Employment <i>Margin</i>	43,861	43,856	32,311	43,856	32,051	43,861	34,503	43,856	32,051	43,861	32,314	5	3
	—	11	—	11	—	5.7	—	0.9	—	0.4	—	—	—
2. Preservation and Management of Natural Resources	53,246	52,401	51,576	52,078	51,139	53,115	52,361	52,798	51,570	52,841	51,631	440	55
<i>Margin</i>	—	985	—	1,474	—	271	—	479	—	405	—	—	—
3. Citizenship, Freedom, Security and Justice	1,504	1,447	1,208	1,428	1,160	1,487	1,298	1,428	1,160	1,487	1,242	40	34
3a. Freedom, Security and Justice <i>Margin</i>	910	870	639	865	615	893	705	865	615	893	656	23	17
	—	40	—	45	—	17	—	45	—	17	—	—	—
3b. Citizenship <i>Margin</i>	593	576	568	563	545	593	593	563	545	593	585	17	17
	—	17	—	30	—	0	—	30	—	0	—	—	—
4. European Union as a Global Partner (7)	7,010	7,035	6,807	6,956	6,576	7,230	6,948	7,046	6,636	7,230	6,917	195	110
<i>Margin</i>	—	196	—	275	—	0.4	—	185	—	0.8	—	—	—
5. Administration (8)	7,000	6,972	6,972	6,938	6,938	6,986	6,985	6,953	6,953	7,006	7,006	34	34
<i>Margin</i>	—	204	—	245	—	197	—	97	—	65	—	—	—
TOTAL (9)	125,203	123,052	108,629	122,508	107,256	125,884	113,256	124,827	108,115	125,624	109,180	2,572	551
<i>Margin</i>	—	1,564	—	2,108	—	-1,267	—	946	—	314	—	—	—
Appropriations for payment as % of GNI	—	1.18%	1.03%	1.17%	1.02%	1.2%	1.08%	1.19%	1.04%	1.2%	1.04%	—	—

Notes

- (1) As revised by the Council and European Parliament to finance the European Economic Recovery Plan.
- (2) CA = commitment appropriations
- (3) PA = payment appropriations
- (4) Due to rounding, heading totals for Council's and EP's first readings may not fully match those in previous updates.
- (5) Council's 2nd reading incorporates Amending Letters 1 and 2; the European Parliament 2nd Reading/the adopted budget incorporates Amending Letters 1–3.
- (6) For consistency totals for sub-heading 1 incorporate the commitment appropriations related to the European Globalisation Adjustment Fund (£444m), however as it sits over and above the margin it is not incorporated in the margin totals shown. Totals for sub-heading 1 and 1a, and the margin calculations, also reflect the mobilisation of £173m from the Flexibility Instrument.
- (7) Commitments and payments totals for Heading 4 incorporate £221m in appropriations related to the Emergency Aid Reserve (EAR), however as it sits over and above the margin for Heading 4 it is not incorporated in the margin totals shown. Please note that in previous updates the amount was excluded from the payments total in Council's first and second readings; it is included here for consistency and to aid comparison.
- (8) For calculating the margin for Heading 5, account is taken of the footnote(1) of the Financial Framework 2007–2013 for an amount of £69m for the staff contributions to the pension scheme.
- (9) Due to rounding, the sum of the heading totals may not equal the total.

10 Greek financial statistics

(31253) 5175/10 + ADDs 1–6 COM(10) 1	Commission Report on Greek Government deficit and debt statistics
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<i>Legal base</i>	—
<i>Document originated</i>	8 January 2010
<i>Deposited in Parliament</i>	15 January 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 4 February 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	16 February 2010
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

Background

10.1 The Stability and Growth Pact adopted by the Amsterdam European Council in June 1997 emphasised the obligation of Member States to avoid excessive government deficits, defined as the ratio of a planned or actual deficit to gross domestic product (GDP) at market prices in excess of a “reference value” of 3%.³⁸ Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State.³⁹ These Opinions, which are not binding on Member States, are based on a recommendation from the Commission. The economic content of the programmes is assessed with reference to the Commission’s current economic forecasts. If a Member State’s programme is found wanting, it may be invited by ECOFIN, in a Recommendation, to make adjustments to its economic policies, though such Recommendations are likewise not binding on Member States. This whole procedure is essentially the Pact’s preventative arm.

10.2 On the other hand, the Pact also endorsed a dissuasive or corrective arm involving action in cases of an excessive government deficit — the excessive deficit procedure provided for in Article 126 TFEU and the relevant Protocol. This procedure consists of Commission reports followed by a stepped series of Council Recommendations (the final two steps do not apply to non-members of the eurozone). Failure to comply with the final stage of Recommendations allows ECOFIN to require publication of additional information by the Member State concerned before issuing bonds and securities, to invite the European Investment Bank to reconsider its lending policy for the Member State

³⁸ This obligation does not apply to Member States, including the UK, whilst they remain outside the eurozone, but they are required to endeavour to avoid excessive deficits.

³⁹ The 16 Member States (Austria, Belgium, Cyprus, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain) that have adopted the euro have Stability Programmes, whereas the other 11 Member States (including the UK) produce Convergence Programmes.

concerned, to require a non-interest-bearing deposit from the Member State concerned whilst its deficit remains uncorrected, or to impose appropriate fines on the Member State concerned.

10.3 The Commission's economic forecasts and recommendations, and therefore the Council's subsequent decisions, related to the Pact depend on economic and financial statistics from the Member States.

The document

10.4 This Commission Report is about Greek Government deficit and debt statistics. It is accompanied by six annexes on:

- methodological issues;
- quarterly non-financial and financial government statistics;
- reservations on the quality of the Greek data expressed by Eurostat between 2005 and 2009;
- action plan and list of recommendations as implemented by December 2009;
- debt of public hospitals of the Greek national healthcare system; and
- infringement procedure.

10.5 The report is broadly factual but delivers highly critical assessments of the Greek statistical system. It identifies two main problems which have had effects on debt and deficit reporting over the past few years, most notably in the context of the excessive deficit procedure:

- statistical weaknesses and unsatisfactory technical procedures in the Greek statistical institute, the NSSG, and in the several other services that provide data and information to the NSSG, including the General Accounting Office and the Ministry of Finance; and
- inappropriate governance — poor cooperation and lack of clear responsibilities between institutions, diffuse personal responsibilities and ambiguous empowerment of officials and absence of written instruction and documentation.

This poor practice has led to severe irregularities in the reporting of debt and deficit statistics under the excessive deficit procedure, including:

- instances of “deliberate misreporting”;
- a lack of respect for accounting rules and of the timing of the notification required under procedure; and
- the susceptibility of the Greek statistical system to political pressures and electoral cycles.

10.6 The Commission's overall assessment is that the current setup of the Greek statistical system "does not guarantee the independence, integrity and accountability of the national statistical authorities" and it outlines a list of broad goals which Greece should aim to achieve:

- clarifying and "personalising" the responsibilities of the different statistical entities involved;
- respecting the European Statistics Code of Practice;⁴⁰ and
- making the NSSG independent, through the revision of the current law on statistics.

However, it does not outline any explicit next steps.

10.7 The report, in various places, notes limits on Eurostat's authority to carry out audit and controls in Member States. Highlighting the shortcomings of monitoring instruments available to Eurostat with respect to the problems faced in Greece, the Commission concludes that in spite of the concerted and consistent efforts carried out by Eurostat services since 2004 to ensure Greece's respect of the applicable rules and methods, the situation can only be corrected by decisive action of the Greek government.

The Government's view

10.8 The Economic Secretary to the Treasury (Ian Pearson) says that:

- the report does not have any direct policy implications for the UK;
- the Government will, however, be monitoring the situation closely as this issue is of importance to all Member States; and
- although the Commission does not present any explicit next steps, the issue of Greece is likely to be dealt with at the forthcoming ECOFIN Council meeting, on 16 February 2010.

Conclusion

10.9 Although the continued inadequacy of these statistics is a matter of concern, there are no questions arising from the document which we wish to raise. But, whilst we are content to clear the document, we draw it to the attention of the House.

40 (26595) 9461/05: see HC 34–ii (2005–06), chapter 5 (13 July 2005), HC 34–viii (2005–06), chapter 18 (2 November 2005) and HC 34–xiv (2005–06), chapter 20 (11 January 2006).

11 European Globalisation Adjustment Fund

(a) (31273) 5709/10 COM(10) 9	Draft Decision on the mobilisation of the European Globalisation Adjustment Fund
(b) (31274) 5710/10 COM(10) 8	Draft Decision on the mobilisation of the European Globalisation Adjustment Fund
(c) (31275) 5711/10 COM(10) 7	Draft Decision on the mobilisation of the European Globalisation Adjustment Fund
(d) (31276) 5736/10 SEC(09) 1619	Commission Communication on application EGF/2009/013 DE/Karmann received from Germany for a financial contribution from the European Globalisation Adjustment Fund
(e) (31277) 5737/10 SEC(09) 1620	Commission Communication on application EGF/2009/010 LT/Snaigė received from Lithuania for a financial contribution from the European Globalisation Adjustment Fund
(f) (31278) 5738/09 SEC(10) 21	Commission Communication on application EGF/2009/017 LT/Construction of buildings received from Lithuania for a financial contribution from the European Globalisation Adjustment Fund

<i>Legal base</i>	(a)-(c) Article 175 TFEU; Ordinary legislative procedure; QMV (d)-(f) —
<i>Documents originated</i>	(a)-(c) 22 January 2010 (d)-(e) 30 November 2009 (f) 18 January 2010
<i>Deposited in Parliament</i>	(a)-(f) 27 January 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Three EMs of 3 February 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>	Cleared

Background

11.1 Regulation (EC) No 1927/2006 established a European Globalisation Adjustment Fund (EGF) designed to counterbalance negative impacts of globalisation. Calls on the fund by Member States can be made where major structural changes in world trade patterns lead to serious economic disruption, notably a substantial increase of imports into the Community or a rapid decline in Community market share in a given sector or a delocalisation to third countries. Applications must meet a number of criteria related to demonstrating a link between world trade patterns and redundancies, to the number, location and impact of redundancies and to avoidance of undermining existing national policies or overlapping with other Community funding streams. Regulation (EC) No 546/2009 of June 2009 extended the scope to include negative impacts from the current economic downturn and to lower, in certain circumstances, the threshold for applications. The new criteria apply to applications received after 1 May 2009.

The documents

11.2 The draft Decisions, documents (a)-(c), are to approve applications from Lithuania and Germany for assistance from the EGF. The Commission Communications, documents (d)-(f), describe the detail of each application. The first case, documents (a) and (f), concerns an application from Lithuania, relating to redundancies in the building construction industry. The application was received on 23 September 2009 and was assessed under the specific intervention criteria of Article 2(b) of Regulation (EC) No 1927/2006, which require at least 500 redundancies to occur within a nine-month period of reference in a NACE 2 division in one region or two contiguous regions at NUTS II level.⁴¹

11.3 The application, ‘Case EGF/2009/017 LT/Construction of buildings’, relates to 1,612 redundancies in 128 enterprises between 16 October and 15 July 2008, of which 806 are targeted for assistance. It argues that:

- these redundancies are linked to the financial and economic crisis because the crisis has had a serious detrimental impact on demand and activity, as well as access to financial credits, in the construction sector;
- in each of the quarters of the reference period the volume of construction activity in Lithuania had decreased in comparison with the previous year — by 9.20% in the fourth quarter of 2008, 42.81% in the first quarter of 2009 and 48.04% in the second quarter of 2009;
- the slow-down in the industry in Lithuania in the first quarter of 2009 was the worst in any Member State;
- the whole country has been affected by redundancies in the construction sector — national unemployment is amongst the highest in the EU, rising sharply since the start of the economic and financial crisis to 16.7% in July 2009;

⁴¹ NACE is the acronym used to designate the various statistical classifications of economic activities developed since 1970 in the EU and NUTS is the EU’s Nomenclature of Territorial Units for Statistics used in relation to the Cohesion Funds.

- the increase in unemployment over the period July 2008 — July 2009 was 10.9%, the highest in the EU;
- the construction industry lost around 10% of its jobs in Lithuania in 2008 alone; and
- although there have been recent signs of improvement, there were almost four times as many construction workers unemployed in the second quarter of 2009 than there were vacancies in the industry.

11.4 The Commission judges that the application falls within the scope of the Regulation, that is that a direct and demonstrable link has been provided that these redundancies result from the global financial and economic crisis. It therefore proposes that the application be accepted with a proposed contribution from the EGF of €1,118,893 (£969,633) for a coordinated package of eligible personalised services. Lithuania has confirmed that this contribution would not replace measures that are the responsibility of companies, that the actions envisaged are not receiving funding from other EU financial instruments and that it would provide support for individual workers themselves.

11.5 The second case, documents (b) and (e), concerns another application from Lithuania relating to redundancies from the AB Snaigė refrigerator manufacturer and two of its suppliers. The application was received on 23 July 2009 and was assessed under the specific intervention criteria of Article 2(c) of Regulation (EC) No 1927/2006, which allow applicants to derogate from the requirements of Articles 2(a) and (b) in small labour markets or in exceptional circumstances, when redundancies have a major impact on employment and the local economy.

11.6 The application, ‘Case EGF/2009/010 LT/Snaigė’, seeks to derogate from Article 2(a), which provides a threshold for applications of at least 500 redundancies over a four-month period. This is because:

- although the total number of redundancies exceeded the threshold of 500 if the reference period were to be extended by around six weeks, the redundancies in fact occurred in two major waves, peaking in November 2008 and February-March 2009;
- there was, therefore, no one four-month period that captured at least 500 redundancies. Lithuania justifies the derogation by outlining the particularly severe economic and labour market situation in Alytus, where Snaigė is based; and
- it had already suffered from large-scale redundancies, particularly in the textile sector (the subject of an earlier application to the EGF in 2008).⁴²

The Commission assesses that the total number of job losses from Snaigė and its suppliers in a period slightly longer than that specified in Article 2(a) combined with the local economic situation to meet the criteria of Article 2(c).

42 (29948) 12819/08: see HC 16–xxxii (2007–08), chapter 14 (15 October 2008).

11.7 The application relates to 651 redundancies, of which 480 are targeted for assistance. It argues that:

- these redundancies are linked to the financial and economic crisis due to the impact of the crisis on the market for refrigerators and refrigerating equipment;
- Snaigė exports around 97% of its production — during the period 2006 to 2008 it shipped around 60,000 units per quarter to western European markets and around 36,000 per quarter to eastern European markets;
- however, in the fourth quarter of 2008 these numbers dropped to 10,108 and 3,561 respectively — a drop of 83% compared to the average quarterly sales during 2006–2008 to Western Europe and 90% to Eastern Europe;
- likewise, elsewhere in the EU the manufacture of electrical equipment declined by over 22% in the first quarter of 2009 and by 27.5% in April 2009 alone;
- while the unemployment rate for Lithuania as a whole increased from 6.4% in August 2008 to 16.7% in July 2009, it increased in Alytus from 4.1% in June 2008 to 11.4% in June 2009; and
- the redundant workers from Snaigė and its suppliers account for around 1.3% of the working age population of Alytus.

11.8 The Commission judges that the application falls within the scope of the EGF, that is that a direct and demonstrable link has been provided that these redundancies result from the global financial and economic crisis. It therefore proposes that the application be accepted with a proposed contribution from the EGF of €258,163 (£223,724), for a coordinated package of eligible personalised services. Lithuania has confirmed that this contribution would not replace measures that are the responsibility of companies, that the actions envisaged are not receiving funding from other Community financial instruments, and that it would provide support for individual workers themselves.

11.9 The third case, documents (c) and (d), concerns an application from Germany relating to redundancies in the automotive industry. The German application was received on 13 August 2009 and was assessed under the specific intervention criteria of Article 2(a) of Regulation (EC) No 1927/2006, which require at least 500 redundancies over a four-month period in an enterprise in a Member State, including workers made redundant in its suppliers or downstream producers.

11.10 The application, ‘Case EGF/2009/013 DE/Karmann’, relates to 2,476 redundancies in different parts of the Karmann automotive manufacturing group, of which 1,618 occurred during the reference period, 803 before and 55 after. 1,793 redundant workers are targeted for assistance from the EGF. The application argues that:

- these redundancies are linked to major structural changes in world trade patterns due to a significant reduction in the EU market share in the automotive manufacturing industry;
- specifically, the EU’s market share (in terms of the number of cars produced) reduced from 32.1% in 2000 to 25.8% in 2008, to the advantage of Brazil, Russia,

India and China, whose market share increased from 8.9% to 21.2% in the same period;

- the effect of this trend has been exacerbated by the global financial and economic crisis, and the ensuing reduction in demand for motor vehicles since the second half of 2008;
- although the unemployment rate in the three areas concerned, Osnabruck and Nordhorn in Niedersachsen and Rheine in Nordrhein-Westfalen, is currently below the German average, the increase of unemployed is above the average;
- specifically, the average increase for Germany as a whole from June 2008 to June 2009 was 8%, compared to an increase over the same period of 18.2% in Rheine, 19.4% in Osnabruck, and 27.3% in Nordhorn;
- redundancies from Karmann were expected to lead to a further rise of 6.5% in the three areas; and
- in addition, the global economic and financial crisis has led to a reduction in the number of job vacancies, by 36.5% in Osnabruck from June 2008 to June 2009, and by 67.1% in Rheine.

11.11 The Commission judges that the application falls within the scope of the EGF, that is that the redundancies result from major structural changes in world trade patterns that have led to a serious economic disruption, affecting employment and the local economy. It therefore proposes that the application be accepted with a contribution from the EGF of €6,199,341 (£5,372,349), for a coordinated package of eligible personalised services. Germany has confirmed that this contribution would not replace measures that are the responsibility of companies, that the actions envisaged are not receiving funding from other Community financial instruments, and that it would provide support for individual workers themselves.

The Government's view

11.12 The Economic Secretary to the Treasury (Ian Pearson) says that, as with all applications to the EGF, the Government will seek to ensure that the intervention and eligible actions criteria set out in EGF Regulation have been respected in these applications ahead of the Council reaching a final decision on them. On the financial implications the Minister says that:

- the EGF is financed from in-year transfers from areas of expected low implementation within the EU Budget and transfer proposals have been presented to the Budgetary Authority (the Council and the European Parliament), drawing on funds expected to be unspent in the 2010 appropriations for the European Social Fund;
- unspent funds in one year's Budget are used to finance the following year's, thus reducing the amount of funding required from Member States in that year;

- if the Budgetary Authority agrees to these applications, and any subsequent transfer, the amount required from Member States to fund the 2011 EU Budget would be correspondingly higher;
- taking these cases in isolation the net cost to the UK over the 2010 and 2011 period would be around €152,058 (£131,773) for the first Lithuania application, around €35,084 (£30,404) for the second one and around €280,830 (£243,367) for the German one; and
- if approved by the Budgetary Authority, based on previous agreed applications these current applications would bring total expenditure under the EGF since its implementation in January 2007 to €127,572,141 (£110,554,017).

Conclusion

11.13 Whilst there are no questions we wish to ask on them, in clearing these documents we draw them to the attention of the House as further examples of how the EGF is being used.

12 Towards the integration of Maritime Surveillance

(31028) 14365/09 + ADD 1 COM(09) 538	Commission Communication: <i>Towards the integration of Maritime Surveillance: A common information sharing environment for the EU maritime domain</i>
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<i>Legal base</i>	—
<i>Document originated</i>	15 October 2009
<i>Deposited in Parliament</i>	23 October 2009
<i>Department</i>	Defence
<i>Basis of consideration</i>	EM of 4 February 2010
<i>Previous Committee Report</i>	None: but see (29068) 14631/07 and (29119) 14176/07 HC 16–viii (2007–08), chapter 2 (16 January 2008)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

Background

12.1 In the introduction to this Communication, the Commission notes that in its earlier Communication on the Integrated Maritime Policy for the European Union, it undertook to “take steps towards a more interoperable surveillance system to bring together existing monitoring and tracking systems used for maritime safety and security, protection of the

marine environment, fisheries control, control of external borders and other law enforcement activities.”⁴³

The Commission Communication

12.2 The Commission then notes that the 8 December 2008 General Affairs Council encouraged the Commission to work towards interoperability between national and Community systems so as to increase the cost effectiveness of maritime surveillance operations, and that this approach towards further integration of maritime surveillance was confirmed in the roadmap for the development of the European Border Surveillance System (EUROSUR), which foresees the gradual creation of a Common Information Sharing Environment for the EU maritime domain, as well as in the recent updating of the Community vessel traffic monitoring and information system.⁴⁴

12.3 The Commission then defines some key considerations thus:

- “The aim of integrated maritime surveillance is to generate a situational awareness of activities at sea impacting on maritime safety and security, border control, the marine environment, fisheries control, trade and economic interests of the European Union as well as general law enforcement and defence so as to facilitate sound decision making.
- “Maritime situational awareness is the effective understanding of activity associated with the maritime domain that could impact the security, safety, economy, or environment of the European Union and its Member States. On the basis of clearly defined user needs and rights, it assists the authorities responsible for monitoring and surveillance activities in preventing and managing in a comprehensive way all such situations, events and actions related to the EU maritime domain.
- “The EU maritime domain encompasses the EU Member States’ Territorial waters, Exclusive Economic Zones and Continental Platforms as defined by the 1982 United Nations Convention on Law of the Sea as well as all maritime-related activities carried out therein, on the seabed, subsurface, surface and above the sea such as installations, cargo, small boats and vessels flagged, owned, managed by or bound to the EU. Beyond the above, it also comprises any Search and Rescue Area and any Area of Operations that has been designated for an EU Maritime Operation under civil or military authority.”⁴⁵

12.4 The Commission rationalises the need to share maritime surveillance information as follows:

“Different sectoral authorities dealing with monitoring and surveillance of actions at sea gather data and operational information so as to establish the best possible maritime awareness picture for their own use. For many user communities, at

43 See headnote: see (29068) 14631/07.

44 Directive 2009/17/EC amending Directive 2002/59/EC establishing a Community monitoring and information system, OJ No. L 131, 28.5.09, p.101. The Commission also notes as “equally relevant” Regulation (EC) No 725/2004 of 31 March 2004 on enhancing ship and port facility security, OJ No. L 129, 29.4.04, p.6.

45 “While all of the areas included in the ‘EU Maritime Domain’ have a direct or indirect impact on EU policy and interests, not all of them are subject to EU competence.”

present, this picture does not include complementary information gathered by other sectoral users due to the lack of mutual exchange. Developing the necessary means to allow for such data and information exchange should enhance the different users' awareness picture. Such enhanced pictures will increase the efficiency of Member States' authorities and improve cost effectiveness."

12.5 Against this background, the Commission says that the objective of this Communication is "to set out guiding principles for the development of a common information sharing environment for the EU maritime domain and to launch a process towards its establishment", and that to achieve this, "enhanced coordination and coherence between the European Commission, the Member States and those interlocutors whom the European defence community may indicate for this purpose, should be established."

12.6 The Communication recognises the integration of maritime surveillance faces a number of challenges:

- Diverse user and operator communities: national authorities responsible for defence, border control, customs, marine pollution, fisheries control, maritime safety and security, vessel traffic management, accident and disaster response, search and rescue as well as law enforcement are collecting information for their own purposes, and policies on information exchange are limited;
- Diverse legal frameworks: surveillance systems have been developed on the basis of sectors specific, international and EU legislation;
- Cross border threats: threats faced by Member States in the EU maritime domain often require an improved trans-national and sometimes even a trans-sectoral approach, in particular with regard to the high seas;
- Specific legal provisions: both international and EU legislation frame maritime surveillance activities on the high seas and with regard to the processing of personal, confidential or classified data.

12.7 Given these challenges, the Commission says that:

"the definition and implementation process for the establishment of the common information sharing environment can only be successful in full consultation and coordination with all the relevant user and operator communities and in full respect of the principle of subsidiarity. Neighbouring third countries should be involved, whenever deemed appropriate."

12.8 The Commission then sets out four guiding principles for the way forward:

- an approach interlinking all user communities;
- building a technical framework for interoperability and future integration;
- information exchange between civilian and military authorities; and
- specific legal provisions.

12.9 Looking ahead, the Commission proposes that it should test and develop its four guiding principles towards the integration of maritime surveillance chiefly through 2 Pilot Projects involving a number of Member States in the Mediterranean Sea and its Atlantic Approaches; and in the North European sea basins. These would run for 2 years. The work would be taken forward under the guidance of the Member States Expert Working Group on the Integration of Maritime Surveillance. The European Defence Agency’s “Wise Pen Team” report on maritime surveillance, once issued, would also be taken into account. The 7th R and D Framework Programme would also be used to call for proposals to develop GMES service capabilities for maritime surveillance and a “demonstration programme aiming at large scale integration, validation and demonstration of a systems-of-systems solution for maritime border surveillance.”

12.10 The Commission concludes by characterising a situation of growing need to detect, identify, track and intercept illegal migration and illegal fishing as well as the prevention of accidents at sea, safeguarding the environment and facilitating trade. Noting that, should it be possible to develop a properly integrated approach to maritime surveillance, the availability of more tools and more information should improve the effectiveness of the responsible authorities, reduce operating costs and “positively affect national security, maritime security and safety, the protection of the marine environment, border control and, in general, law enforcement”. With all this in mind, the Commission invites the Council (and European Parliament and social partners) to

- Support the objectives presented in this Communication;
- Sustain the proposed approach within their respective areas of responsibility.

The Government’s view

12.11 In her Explanatory Memorandum of 4 February 2010, the Minister for International Defence and Security (Baroness Ann Taylor) begins by noting the Communication states that “obstacles to the exchange of monitoring and surveillance data for the purpose of setting up a common information sharing environment should be identified in EU and national legislation”, and that it “stresses that in removing these obstacles due consideration must be given to data confidentiality, intellectual property rights, the protection of personal data as well as the ownership of the data in accordance with national and international law.” She continues as follows:

“International data sharing is key to ensuring that the UK is included in both EU and international frameworks as well as ensuring that we can continue to exert influence in their governance and development. As part of the Cabinet Office Maritime Security project, both UK and EU data sharing and data protection laws are being examined to identify where information can be shared on a need to know basis while ensuring that reliable assurances are sought to ensure disclosed data will be afforded appropriate protection. Within the maritime domain this pertains explicitly to EU Directive 2002/59/EC 27 June 2002 — Establishing a Community Vessel Traffic Monitoring and Information System, EU Directive 2009/17/EC 23 April 2009 amending Directive 2002/59/EC and The Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004.”

12.12 The Minister then says that the UK:

“recognises that monitoring of the Maritime Domain,⁴⁶ be it for safety, security, the environment, or trade, is too complex to be accomplished by any one nation: a problem recognised globally. The same holds true for the national position; no single department or entity has the capacity or capability to deliver what is required to counter the very real threats we face both in territorial waters and internationally. Improving the focus of knowledge and speed with which this information is shared both intra and inter governmentally is crucial to the safety, security, and economic wellbeing of the UK.”

12.13 The Minister then describes the current UK arrangement as ad hoc:

“... there is no definitive (National or Global) maritime picture and any action taken is incident driven (as noted by the House of Commons Defence Committee in their sixth report of session 2008–09).⁴⁷ Current arrangements provide insufficient warning to identify and respond to maritime risks and threats as they develop and before they impact upon the UK. Benchmarking against a number of countries⁴⁸ suggests that the business process is most effective when key departmental representatives are intimately involved. The Communication on the EU Approach to Integrated Maritimes Surveillance has already concluded that centralisation, within nations, preferably via a single national coordination mechanism is the best option. The added benefits of a co-ordinated and centralised approach are: greater coordination of departmental activity, the opportunity for sharing resources, comprehensive planning ability and significantly enhanced situational awareness and combined analysis. A coordinated approach would also provide a single focus for EU, NATO and other international maritime situation awareness initiatives (of which there are many).”

12.14 The Minister then explains that, to address this gap, the Government will establish a multi-agency National Maritime Information Centre (NMIC):

“The creation of the NMIC will act as the single point of contact for UK national maritime surveillance information data exchange with EU and other key partners. It will ensure knowledge is disseminated, analysed and acted upon in a coordinated manner. The model can be achieved without the need for significant change to departmental structures or approaches and will be taken forward by:

- “Integrating existing maritime surveillance systems. This will promote greater knowledge of maritime activity and offer greater efficiency, cost effectiveness & a better service to Government Departments.
- “Coordinating Maritime Information Centrally. This will allow risk evaluation & anomaly detection to achieve early warning of critical threats to the UK, its

46 “Defined as: All areas and things of, under, relating to, adjacent to, or bordering on the sea, or ocean including all maritime related activities, infrastructure, people, cargo and vessels and other conveyances.”

47 “The Defence Contribution to UK National Security and Resilience, May 2009.”

48 “Singapore, Sweden and Italy.”

territories and partners. It will also develop greater understanding of the maritime domain to detect developing threats & trends.

- “Establishing a UK Information Maritime Hub. This will allow people, processes and systems to exploit information better. It will promote awareness, understanding, planning and foster trust between agencies and departments in order to make faster and better decisions in support of National Security requirements.”

12.15 The Minister further explains that:

“Following multi-agency consideration, ministers have agreed that the creation of a federated hub on an existing secure government site at the Northwood Permanent Joint HQ offers the best value for money; bringing together those departments and agencies⁴⁹ who require greater coordination of maritime knowledge and drawing on their existing strengths without the financial burden of creating a entirely new centre. It will enable rapid deployment (initial operating capability within six months) and will allow for gradual further development and enhancement of capability over time; maximising cost effectiveness with sufficient flexibility to adapt to future threats and requirements.”

12.16 With regard to the Financial Implications, the Minister says that full costs for the EU have not been specified; that there are a number of research projects that are running to develop the integration of Maritime Surveillance; and that one of the aims of this Communication is “to ensure we minimise duplication.”

12.17 She says there will be “nil impact on business.”

12.18 Regarding Subsidiarity, the Minister says that there has been “broad consultation across government and with the shipping industry, primarily through the Chamber of Shipping, regarding the UK’s maritime security work and its relation to the wider EU policy”, and that the proposed EU approach “will not give the EU primacy over UK maritime surveillance.”

12.19 With regard to the new UK arrangements, the Minister says that the initial cost of establishing the NMIC will be approximately £367,000, which she says will be shared between the participating departments and agencies, “enabling the Centre to be functional within six months”, though she expects that elements of the Centre may be brought into service early, “as much of the infrastructure is already in place within the Northwood site.”

12.20 Looking ahead, the Minister concludes by saying that there is no set timetable, “due to the complexity of the issue and the need to ensure lessons are learned from the Pilot Projects, which will run for two years, coupled with the need for Member States to establish their own governance mechanisms for maritime surveillance.”

⁴⁹ “These include: Ministry of Defence; the Foreign and Commonwealth Office; the Department for Transport; the Maritime and Coastguard Agency; the Maritime and Fisheries Agency; the UK Border Agency; and the National Ports Analysis Centre.”

Conclusion

12.21 No questions arise at this stage, but we are reporting this information to the House because of the importance of the issues the Communication covers.

12.22 The Minister does not make it clear how the outcome of the pilot studies is to be presented to the Council. We presume that they will be via a further Commission Communication. In any event, we ask that, in two year's time, she or whichever Minister is then responsible for this matter writes to the Committee to bring us up-to-date with progress thus far and what the Commission and Council's plans then are for taking this matter forward.

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

(31074) Draft Council Regulation amending Annexes A and C to Regulation
15177/09 (EC) No. 1346/2000 on insolvency proceedings.
COM(09) 564

Department for Environment, Food and Rural Affairs

(31250) Commission Report on the SAPARD Annual Report for the year 2008.
5224/10
+ ADD 1
COM(09) 698

(31260) Draft Council Decision on the signing of a voluntary partnership
5406/10 agreement between the European Union and the Republic of the
+ ADD 1 Congo on forest law enforcement, governance and trade in timber
COM(09) 679 and derived products to the European Union (FLEGT).

(31293) Draft Council Regulation amending Regulation (EU) No. 23/2010 as
5943/10 regards the fishing opportunities for certain fish stocks and following
COM(10) 23 the conclusion of the bilateral fisheries arrangements for 2010 with
Norway and the Faroe Islands.

Foreign and Commonwealth Office

(31288) President of the Court of Justice of the European Union's proposals
— for the operating rules of the Judicial Appointments Panel provided
— for in Article 255 TFEU.

(31289) President of the Court of Justice of the European Union's proposals
— for the operating rules of the Judicial Appointments Panel provided
— for in Article 255 TFEU.

Department of Health

(31256) Commission Communication on the application of Directive
5272/10 2004/23/EC on setting standards of quality and safety for the
COM(09) 708 donation, procurement, testing, processing, preservation, storage and
distribution of human tissues and cells.

Department for Transport

(31267) Commission Report Monitoring the CO₂ emissions from new
5515/10 passenger cars in the EU: Data for the year 2008.
COM(09) 713

Formal minutes

Tuesday 9 February 2010

Members present:

Michael Connarty, in the Chair

James Clappison
Jim Dobbin

Keith Hill
Angus Robertson

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 13 read and agreed to.

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

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

2. Standing Order No. 143 and the Scrutiny Reserve Resolution

Ordered, That revised drafts of the Committee's proposed changes to the Scrutiny Reserve Resolution and Standing Order No. 143 be sent to the Leader of the House.

[Adjourned till Wednesday 24 February at 2.30 pm.]

Standing order and membership

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

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

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*)