



House of Commons  
European Scrutiny Committee

---

**Fifteenth Report of  
Session 2009–10**

---

Documents considered by the Committee on 17 March 2010,  
including the following recommendation for debate:

EU policies until 2020

*Report, together with formal minutes*

*Ordered by The House of Commons  
to be printed 17 March 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 " <i>Legal base</i> ") Treaty establishing the European Community
EM	Explanatory Memorandum (submitted by the Government to the Committee)
EP	European Parliament
EU	(in " <i>Legal base</i> ") Treaty on European Union
GAERC	General Affairs and External Relations Council
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
RIA	Regulatory Impact Assessment
SEM	Supplementary Explanatory Memorandum

### Euros

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

### Further information

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

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

### Staff

The staff of the Committee are Alistair Doherty (Clerk), Laura Dance (Second Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Sir Edward Osmotherly (Clerk Adviser), Peter Harborne (Clerk Adviser), Paul Hardy (Legal Adviser) (Counsel for European Legislation), Dr Gunnar Beck (Assistant Legal Adviser), Hannah Lamb (Senior Committee Assistant), Allen Mitchell (Committee Assistant), Mrs Keely Bishop (Committee Assistant), Dory Royle (Committee Assistant), Shane Pathmanathan (Committee Support Assistant), and Paula Saunderson (Office Support Assistant).

### Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is (020) 7219 3292/5465. The Committee's email address is [escom@parliament.uk](mailto:escom@parliament.uk)

# Contents

---

<b>Report</b>	<i>Page</i>
<b>Documents for debate</b>	
1 HMT (31328) (31329) (31373) EU policies until 2020	3
<b>Documents not cleared</b>	
2 HMT (31339) Growth and Stability Pact: statistical data	19
3 HO (31368) Strengthening FRONTEX	23
<b>Documents cleared</b>	
4 FCO (31404) EU restrictive measures against the Republic of Guinea	27
5 FCO (31405) Restrictive measures against the regime in Burma	31
6 HMT (31399) (31400) (31401) Financial management	38
<b>Documents not raising questions of sufficient legal or political importance to warrant a substantive report to the House</b>	
7 List of documents	43
<b>Formal minutes</b>	44
<b>Standing order and membership</b>	45



## 1 EU policies until 2020

(a) (31328) 6018/10 SEC(10) 116	Commission staff working document: <i>Europe 2020: consultation — first overview of responses</i>
(b) (31329) 6037/10 SEC(10) 114	Commission staff working document: <i>Lisbon Strategy evaluation document</i>
(c) (31373) 7110/10 COM(10) 2020	Commission Communication: <i>Europe 2020 — A strategy for smart, sustainable and inclusive growth</i>

<i>Legal base</i>	—
<i>Documents originated</i>	(a) and (b) 2 February 2010 (c) 3 March 2010
<i>Deposited in Parliament</i>	(a) and (b) 18 February 2010 (c) 5 March 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	(a) and (b) Two EMs of 1 March 2010 (c) EM of 15 March 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	ECOFIN Council on 16 March 2010, European Council on 25–26 March 2010
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	For debate in European Committee

### Background

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

1.2 In November 2009 the Commission published a Working Document seeking the views of citizens, organisations and public authorities on a future “Europe 2020” strategy as a successor to the current Lisbon Strategy for Growth and Jobs. It set out broad proposals for policies over the next ten years intended to enable the EU to make a full recovery from the economic crisis, while speeding up the move towards “a smarter, greener economy”. It described the need for structural reform in the Union, proposes some policy priorities and highlights possible delivery mechanisms.

1.3 The document was sent to the relevant sectoral Councils on 7 December 2009 and discussed at the European Council on 10–11 December 2009. The European Council’s Conclusions recorded that it “takes note of the consultation launched by the Commission on the future strategy and looks forward to discussing an ambitious proposal as early as possible in 2010 with a view to full discussion in the European Council, including at its 2010 Spring meeting”.<sup>1</sup> The public consultation closed on 15 January 2010 and the Commission intended to present a formal proposal for a strategy with a view to its adoption of the strategy at the Spring European Council.

1.4 When we first considered this document we said:

- whatever plan is adopted to follow on from the Lisbon Strategy for Jobs and Growth would be an important determinant for a range of EU policies in the years up to 2020;
- thus, while we were content to clear the document, we were clear that we would wish to recommend the Commission’s formal proposal, once published and deposited, for debate before the Spring 2010 European Council; and
- meanwhile, we wished to see any comments the Government decided to make in response to the document.

Subsequently the Government did send us such a response, as we reported on 20 January 2010.<sup>2</sup>

## The documents

1.5 The first Commission staff working document, document (a), gives an initial indication as to the main trends that emerged from the responses, well over 1,500, to the Commission’s consultation. All Member States provided an input and the Commission describes “broad support” for the policy priorities for Europe 2020 it outlined:

- creating value by basing growth on knowledge;
- empowering people in inclusive societies; and
- creating a competitive, connected and greener economy.

On governance of Europe 2020 the Commission says that:

- Member States agreed that the lessons of the Lisbon Strategy need to be learnt;
- this includes raising the profile of reforms under the strategy, where there is “strong support for conferring lead responsibility to the European Council”, and greater national accountability for progress, where “the majority of Member States agree with the idea of a limited number of EU targets translated into national ones”;

---

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

2 (31210) 16016/09: see HC 5–vi (2009–10), chapter 7 (13 January 2010) and HC 5–vii (2009–10), chapter 12 (20 January 2010).

- several Member States called for “stronger economic policy coordination and more binding governance arrangements”; and
- Member States recognised the “strong inter-linkages” between fiscal policy and structural reform and the need for “coherent policy advice”, although some Member States “want to preserve the role of different economic coordination instruments in the Treaty, so to avoid any possible impression that the Stability and Growth Pact is being weakened”.

1.6 The Commission also received contributions from about 120 regional and local authorities, from some two thirds of Member States, EU institutions and bodies, including the Committee of the Regions and the Economic and Social Committee, three EU political parties, numerous EU and national organisations representing interests including the social partners, consumers, business, environmentalists, educationalists, researchers and academics, almost 500 individual citizens, the Norwegian and Japanese Governments, the IMF, the UN, EFTA, the American Chamber of Commerce and the Japanese Business Council.

1.7 The second Commission staff working document, document (b), is an evaluation of the Lisbon Strategy. The Commission notes:

- the context in which the Lisbon Strategy was formulated in 2000, when “the EU needed to increase its productivity and competitiveness in the face of ever fiercer global competition, technological change and an ageing population”;
- that it “recognised that the reform agenda could not be pursued at the EU level alone, but that...close cooperation between the EU and Member States would be necessary to achieve results”; and
- that it “reflected a first acknowledgement that Member States’ economies are inherently interlinked”.

1.8 The Commission says that two factors have to be taken into account in assessing the Lisbon Strategy:

- the most important assessment is the impact the Strategy had on growth and jobs, but “this is not straightforward, as the economic cycle and external events, as well as public policies, play a determining role”; and
- “the Lisbon Strategy was not implemented in isolation” — the EU has grown from 15 Member States in 2000 to 27 Member States today, the euro area now stands at 16 members and has developed into a major world currency and the Strategy is “coming to the end of its term at a time when the impacts of the economic crisis are deeply felt in Europe”.

1.9 The Commission then outlines a number of main conclusions, including:

- the Lisbon Strategy has helped build broad consensus on the reforms that the EU needs — the four priority areas, research and innovation, investing in people and modernising labour markets, unlocking business potential and energy and climate change, are now at the top of the political agenda “in all Member States”;

- the Strategy has “delivered concrete benefits for EU citizens and businesses” — for example increased employment created 18 million new jobs before the crisis hit and the Commission has proposed administrative burden reductions “worth more than €40.00 billion” (£34.50 billion);
- increased employment, however, “has not always succeeded in lifting people out of poverty” — some groups “still face specific hurdles such as poor access to training for the low-skilled”, while child poverty remains “at a high level in some Member States”;
- structural reforms have made the EU economy “more resilient and helped us weather the storm” — for instance, medium- to long-term structural reforms “no doubt facilitated the design and rapid roll-out of the European Economic Recovery Plan at the end of 2008”;
- the Strategy, however, “was not sufficiently equipped to address some of the causes of the crisis from the outset” — with hindsight more focus could have been on “robust supervision and systemic risk in financial markets, speculative bubbles” and those factors that fuelled the “macroeconomic imbalances and competitiveness problems that were at the root of the economic crisis”;
- the pace of implementing reforms was “slow and uneven” and the strategy suffered from “variable ownership and weak governance structures” — for example, EU level targets were “too numerous” and did not “reflect differences in starting positions between the Member States”;
- a stronger link between the Strategy and “other EU instruments and sector-specific initiatives or policy measures (such as the Stability and Growth Pact, the Sustainable Development Strategy or the Social Agenda) would have improved its effectiveness” — while earmarking of structural funds has “helped mobilise considerable investments for growth and jobs”, although there is further to go; and
- more could have been done to strengthen both the euro area dimension (the importance of interdependence in a closely integrated economy, particularly the euro area, “has not been sufficiently recognised”) and the external dimension of the Strategy.

1.10 In the Communication, document (c), the Commission presents its formal proposals for the Europe 2020 strategy. The Commission sets out the challenges facing the EU over the coming decade and the need for “a strategy to turn the EU into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion” and proposes:

- policy priorities that focus on smart, sustainable and inclusive growth;
- seven flagship initiatives to deliver on these policy priorities;
- mobilising EU instruments and policies such as the single market to pursue the strategy’s objectives; and

- a governance structure that includes five headline targets that the EU should aim to achieve by 2020.

1.11 The challenges facing the EU over the next decade are said by the Commission to include:

- recovering from the crisis;
- securing and maintaining efficient and sustainable financial systems and public finances;
- globalisation;
- pressure on resources; and
- ageing.

And it proposes three mutually reinforcing policy priorities which should frame the Europe 2020 strategy:

- smart growth — developing an economy based on knowledge and innovation;
- sustainable growth — promoting a more resource efficient, greener and more competitive economy; and
- inclusive growth — fostering a high-employment economy, delivering social and territorial cohesion.

1.12 The five headline targets to be achieved by 2020 suggested by the Commission, to “guide our efforts and steer progress”, are that:

- the employment rate of the population aged 20–64 should increase from the current 69% to at least 75%;
- 3% of the EU’s GDP should be invested in research and development;
- the “20/20/20” climate and energy targets should be met (including an increase to 30% of emissions reductions, if the conditions are right);
- the proportion of early school leavers should fall to 10% from the current 15%, while increasing the share of the population aged 30–34 having completed tertiary education from 31% to at least 40%; and
- the number of citizens living below national poverty lines should be reduced by 25% (that is, 20 million fewer people should be at risk of poverty).

1.13 To “ensure that each Member State tailors the Europe 2020 strategy to its particular situation, the Commission proposes that these EU targets are translated into national targets and trajectories”. These national targets would “reflect the current situation of each Member State and the level of ambition it is able to reach as part of a wider EU effort to meet these targets.” The Commission then sets out its proposed flagship initiatives to complement national efforts.

1.14 First is “Innovation Union”, which would seek to orient research and development and innovation policy towards the solution of grand challenges facing the Union. In doing so the Commission describes actions to be undertaken at EU level:

- completion of the European Research Area;
- improvement of framework conditions for business innovation;
- launching “European Innovation Partnerships”;
- strengthening EU instruments that support innovation; and
- promotion of efforts to co-ordinate the knowledge triangle of research, education and innovation.

And it suggests at Member State level:

- reforming research and development and innovation systems to promote excellence;
- ensuring a sufficient supply of science, technology, engineering, and mathematics graduates; and
- prioritising knowledge expenditure.

1.15 Second is “Youth on the move”, which would aim to enhance the performance and international attractiveness of the EU’s higher education institutions and raise overall quality of all levels of education and training in the EU, combining both excellence and equity, by promoting student mobility and trainee mobility, and improving the employment situation of young people.

1.16 Third is “A digital agenda for Europe” which would aim to deliver sustainable economic and social benefits from a digital single market based on “fast and ultra fast internet”, with broadband access for all by 2013, access for all to much higher internet speeds (30 megabits per second or above) by 2020, and 50% or more of EU households subscribing to internet connections above 100 megabits per second. To enable this the Commission sets out a number of initiatives, including:

- providing a legal framework to facilitate high speed internet infrastructure and related services;
- using structural funds (with respect to broadband roll-out) to create a true single market for online content and services;
- developing (another) spectrum policy;
- increasing EU research and innovation funding for information, communications and technology innovation and technology; and
- promoting internet access for all EU citizens.

It also asks Member States to produce high-speed internet strategies, to establish legal frameworks to help facilitate network rollout and to promote accessible online private and public services.

1.17 Fourth is “Resource efficient Europe”, which would aim to support the shift towards a low-carbon economy that is efficient in the way it uses all resources. The objective would be to decouple economic growth from resource and energy use, reduce carbon dioxide emissions, enhance competitiveness and promote greater energy security.

1.18 Fifth is “An industrial policy for the globalisation era”, which would aim to improve the business environment, especially for small and medium sized enterprises, in order to develop a globally competitive and diversified industrial base. The Commission suggests:

- supporting the transition of manufacturing and service sectors to a low carbon economy, including a review of regulations and standards to encourage greater resource efficiency and promotion of key enabling technologies;
- a horizontal approach at EU level, combining policy instruments such as “smart” regulation, public procurement, competition rules and standard setting;
- promotion of restructuring of sectors in difficulty towards future-oriented activities, energy efficient technologies and production methods;
- renewing the Corporate Social Responsibility policy; and
- assisting the transport, logistics, space policy and tourism sectors.

The Commission also calls on Member States to encourage innovative small and medium sized enterprises (including through public procurement), to improve enforcement of intellectual property rights and to reduce administrative burdens.

1.19 Sixth is “An agenda for new skills and jobs”, which would be EU action focusing on those in employment through the flexicurity agenda, ‘smart’ regulation, social dialogue and mobility and migration. The Commission proposes:

- using, for those out of or entering work, agreed education and training coordination;
- correlating Member State action on these; and
- carrying forward work under the Lisbon Strategy on tax-benefit reform, active ageing, work-life balance and gender equality.

1.20 The last flagship initiative is “European platform against poverty”, which would use the current open method on social inclusion and protection, building on the awareness-raising from the current European Year for Combating Poverty and Social Exclusion to improve visibility and clarity. The Commission also proposes a basis for progressing on the draft equal treatment Directive and adding EU support for ‘social innovations’ to help the most disadvantaged.

1.21 Under the rubric “missing links and bottlenecks” the Commission then argues that “all EU policies, instruments and legal acts, as well as financial instruments”, should be

mobilised to pursue the Strategy’s objectives. It discusses the possibilities under three headings. First, in relation to “A single market for the 21st century”, the Commission says that:

- a stronger, deeper, extended single market is vital for growth and job creation;
- in response to the economic crisis there is a need to re-launch the single market — it still has barriers to cross-border activity and needs to adapt to the growth of information and communication technologies and services;
- creation of an open single market for services through full implementation of the Services Directive could increase GDP by between 0.5% and 1.5%;
- it aims to improve access for small and medium sized enterprises to the single market and through implementation of competition policy ensure that the single market remains an open market;
- it proposes action to reinforce single market measures, drive forward the smart regulation agenda to reduce administrative burdens particularly for small and medium sized enterprises and to support entrepreneurship; and
- it aims to adapt legislation to the digital era and make it easier for businesses and consumers to agree and enforce contracts with partners in other Member States.

1.22 In relation to “Investing in growth: cohesion policy, mobilising the EU budget and private finance”, the Commission notes that it will propose action to develop innovative financing solutions to support the objectives of Europe 2020, including:

- fully exploiting possibilities to improve the effectiveness and efficiency of the existing EU budget through stronger reprioritisation and better alignment of EU expenditure with the goals of the Europe 2020 strategy;
- greater use of the European Investment Bank and the European Investment Fund; and
- making an efficient EU venture capital market a reality.

1.23 In relation to “Deploying our external policy instruments”, the Commission says that:

- external economic policy needs to be deployed to foster EU growth through participation in open and fair markets worldwide;
- an open EU, within a rules based international framework, is the best route to exploit the benefits of globalisation and to boost growth and employment. The Commission is committed to working with the World Trade Organisation (WTO) and bilaterally to secure better market access for EU business, including small and medium sized enterprises;
- it will draw up a trade strategy for Europe 2020, including ongoing multilateral and bilateral trade negotiations, trade opening initiatives in key sectors such as “green” technologies and other high tech products and services, proposals for high level

strategic dialogue with key partners and, from 2011, an annual trade and investment barriers report to identify ways to improve market access; and

- the EU is committed to its international development responsibilities, aiming to eradicate poverty, promote growth and fulfil the Millennium Development Goals.

1.24 The Commission emphasises that pursuit of the Europe 2020 objectives must be based on a credible exit strategy as regards budgetary and monetary policy on the one hand and the direct support given by governments to economic sectors, in particular the financial sector, on the other and that the sequencing and coordination of these several exits, including within the euro area, are important.

1.25 The Commission then outlines a governance structure for Europe 2020, with its suggestions including that:

- the strategy should be based around a thematic approach, focussed on the headline targets and flagship initiatives, and country reporting, to help “Member States define and implement exit strategies, to restore macroeconomic stability, identify bottlenecks, and return their economies to sustainable growth and public finances”;
- Europe 2020 and Stability and Growth Pact reporting and evaluation should be done simultaneously, while keeping the instruments and procedures separate and maintaining the integrity of the pact;
- the Europe 2020 strategy be established institutionally in a small set of integrated guidelines (integrating employment and broad economic policy guidelines), to replace the existing 24 guidelines;
- these new guidelines should reflect the decisions of the European Council and integrate agreed targets;
- policy recommendations under the country surveillance mechanism would address issues with significant macroeconomic and public finance implications and those under the thematic approach would provide detailed advice on microeconomic and employment challenges; and
- there should be a leading and central role for the European Council to steer the strategy, “as it is the body which ensures the integration of policies and manages the interdependence between Member States and the EU.”

1.26 Finally the Commission sets out decisions for the European Council, saying:

“The Commission proposes that the European Council, at its meeting in Spring 2010:

- agrees on the thematic priorities of the Europe 2020 strategy;
- sets the five headline targets ...: on R&D investments, education, energy/climate change, employment rate, and reducing poverty, defining where Europe should be by 2020; invites the Member States in a dialogue with

the European Commission to translate these EU targets into national targets for decisions at the June European Council, taking into account national circumstances and differing starting points;

- invites the Commission to come forward with proposals for the flagship initiatives, and requests the Council (and its formations) on this basis to take the necessary decisions to implement them;
- agrees to strengthen economic policy co-ordination to promote positive spill-over effects and help address the Union’s challenges more effectively; to this end, it approves the combination of thematic and country assessments as proposed in this communication whilst strictly maintaining the integrity of the Pact; it will also give special attention to strengthening EMU;
- calls on all parties and stakeholders (e.g. national/regional parliaments, regional and/or local authorities, social partners and civil society, and last but not least the citizens of Europe) to help implement the strategy, working in partnership, by taking action in areas within their responsibility;
- requests the Commission to monitor progress and report annually to the Spring European Council, providing an overview of progress towards the targets, including international benchmarking, and the state of implementation of the flagship initiatives.

“At its subsequent meetings:

- endorses the proposed integrated guidelines which constitutes its institutional underpinning following the opinion of the European Parliament;
- validates the national targets following a process of mutual verification to ensure consistency;
- discusses specific themes assessing where Europe stands and how progress can be accelerated. A first discussion on research and innovation could take place at its October meeting on the basis of a Commission contribution.”

## The Government’s view

1.27 In relation to the Commission’s paper on the responses to its consultation, document (a), the Economic Secretary to the Treasury (Ian Pearson) first reminds us that the Government responded with an outline of its emerging views on the Europe 2020 strategy and that those views, which would help to ensure focus on the key policy priorities and improve political engagement and coherence between the macroeconomic, microeconomic and financial pillars of EU economic policy, are set out in greater detail in its paper on an *EU Compact for Jobs and Growth*.<sup>3</sup> The Minister comments that the document provides a valuable overview of responses to the consultation and the themes that emerged and that the Government welcomes the fact that there is an emerging

---

3 See <http://www.cabinetoffice.gov.uk/media/329788/compact-jobs-growth.pdf>.

consensus among Member States and other stakeholders on the policy priorities for Europe 2020.

1.28 The Minister continues, on the governance of the new strategy, that the Government:

- agrees that, while the Lisbon Strategy set the right direction for economic reforms, the successor strategy needs to raise the public profile of these reforms and increase the accountability for progress; and
- has proposed establishing an annual economic summit of EU leaders to draw together analysis of progress based on reporting from the macroeconomic (the Stability and Growth Pact), microeconomic (peer review of structural reform) and financial sector (European Systemic Risk Board) processes and to set future direction for EU policy making.

1.29 On the second document, on lessons from the Lisbon Strategy, document (b), the Minister says that the Government welcomes the Commission’s timely (in relation to discussion of the successor strategy) assessment of the Lisbon Strategy. He comments that:

- the Government agrees that the Lisbon Strategy has played an important part in promoting economic reform across the EU by providing political impetus for EU and national policies, a toolkit for reform based on learning from the best performers in the EU and coordination in areas where action or inaction in one Member State would impact on citizens in another — as such, it was a factor in rising employment rates and productivity across the EU;
- the EU and its Member States did not, however, make enough progress quickly enough and the progress that they did make has been set back by the economic crisis; and
- the Government agrees that Europe 2020 will need to raise the public profile of the necessary economic reforms and increase the accountability for progress.

The Minister concludes by referring again to the Government’s proposed “EU Compact for Jobs and Growth” and its proposal for an annual economic summit of EU leaders.

1.30 On document (c) the Minister first says that the proposals’ conformity with the principle of subsidiarity will depend on the details as they emerge but notes that the Commission does say “The European Council should provide overall guidance for the strategy, on the basis of Commission proposals built on one core principle: a clear EU value added.”

1.31 Turning to the policy implications the Minister says that:

- the Government welcomes the Commission’s Communication, which correctly highlights the huge challenges that the EU faces over the next ten years;
- it welcomes the Commission’s proposed priorities for Europe 2020 — smart, sustainable and inclusive growth; and
- these priorities are interdependent and mutually reinforcing.

1.32 On the headline targets and benchmarking proposed by the Commission the Minister comments that:

- the Government supports the idea of a small number of headline objectives that set the priorities for the Europe 2020 strategy, with agreed indicators used to measure progress towards them;
- it remains to be convinced, however, that the indicators proposed by the Commission represent a coherent assessment of economic growth;
- this might be better achieved by a more comprehensive set of indicators that would be relevant to all Member States, such as employment rate, labour productivity, and capital services growth as a measure of effective investment;
- of the indicators proposed by the Commission, the Government would question, for example, whether targets in “percentage of GDP invested in R&D” and “number of those living below the median disposable income” would really help Member States, many of whom have different economic and social structures, to address innovation and social inclusion;
- the Government believes that it is important to get the levels right — national targets in these indicators should not be based on EU-level figures;
- they should be established by governments on the basis of national consultation — it would then be reasonable to hold governments publicly to account for progress towards those targets;
- this “bottom-up” approach would help raise ownership and accountability, as well as being more credible than “top-down” targets imposed on Member States, so addressing two key lessons from the Lisbon Strategy; and
- ambition could be encouraged by peer review and domestic debate on the appropriate level for the targets.

1.33 In introducing the Government’s views on the Commission’s proposed flagship initiatives the Minister says that:

- the policy proposals in the Communication are broadly in line with those made by the Government in its *EU Compact for Jobs and Growth* paper and the Government looks forward to engaging with EU partners on the detail;
- the Government will seek the right balance of competence between community and nation state in delivering economic policy; and
- on the flagship initiatives that define the policy focus of Europe 2020, the Government’s view is that significantly more work needs to be done on the initiatives and delivery mechanisms and on the links between them.

1.34 On the specific initiatives the Minister says first, in relation to “Innovation Union”, that the Government:

- supports EU initiatives which address the Union’s relative weakness in its capacity to convert outputs from research into high value, innovative products and services;
- welcomes the broad aims of this flagship initiative, especially the focus on tackling grand challenges such as climate change and ageing population and on strengthening all links in the innovation chain; and
- welcomes the emphasis on a supportive regulatory framework and on the need to enhance access to finance to support growth in the key industries of the future.

1.35 On the initiative “Youth on the move” the Minister says that:

- the proposal appears to largely carry forward work under recently agreed cooperation on youth and on education and training;
- the Government will need to see the full proposal for a youth employment framework, in particular how this relates to those other processes and also to the European Employment Strategy;
- the Government would oppose any unnecessary duplication, especially where it imposes burdens on Member States; and
- the description of Member State action should be covered by the open method approach to respect competence and subsidiarity.

1.36 Next, in relation to “A digital agenda for Europe”, the Minister says that the Government:

- welcomes the inclusion of this initiative, with the commitments on broadband being broadly consistent with those set out in *Digital Britain*<sup>4</sup> and the *UK Compact for Jobs and Growth*;
- looks forward to the more comprehensive EU information and communication technologies policy, which the Commission is due to launch in April 2010 — a Government priority for the EU digital agenda is competitive and open information and communication technologies markets (especially in relation to future fast broadband markets), which will help economic recovery in the EU; and
- is keen for the EU to take measures to stimulate take up of internet and to complete the single market for online consumer and business services to improve choice, security and the growth of innovative businesses.

1.37 In relation to “Resource efficient Europe”, the Minister says that:

- the Government supports the development of such an initiative, which will be an important contribution to ensuring that the EU moves towards a low-carbon, resource-efficient and climate-resilient economy; and

---

4 See [http://www.culture.gov.uk/what\\_we\\_do/broadcasting/5631.aspx](http://www.culture.gov.uk/what_we_do/broadcasting/5631.aspx).

- by putting in place measures to decouple economic growth from the use of resources and by supporting the transition to a low carbon economy (including the promotion of renewable energy and energy efficiency), the initiative will help to underpin long-term growth and create new ‘green’ jobs for the future.

1.38 On “An industrial policy for the globalisation era” the Minister says that the Government is broadly supportive of this industrial policy, which is consistent with the *Compact for Jobs and Growth* and maintains continuity with current EU industrial policy. He continues that the Government’s key industrial policy priorities for the EU are:

- open and competitive markets;
- the creation of new jobs and development of skills;
- creating the right framework to help the competitiveness of businesses including small and medium enterprises;
- encouraging a smooth transition to a low carbon economy; and
- encouraging innovation and its commercial exploitation and enterprise.

1.39 Turning to “An agenda for new skills and jobs” the Minister says that the Government:

- supports the New Skills New Jobs agenda and the strategic framework for cooperation in education and training, which have already been launched;
- will scrutinise any forthcoming proposals for EU action on labour mobility to ensure that they do not impinge on the its ability to manage the UK labour market in a flexible way, by forecasting skills needs, working closely with and being responsive to employers’ needs and incorporating migration controls for third country nationals where necessary;
- will want further information about a second phase of the flexicurity agenda to ensure the Council’s agreed principles are respected and the priority remains to tackle labour market segmentation; and
- supports, in relation to the legislative framework, better regulation and improving implementation of existing standards, especially where the Government believes that UK law sets the standard.

1.40 On the final flagship initiative, “European platform against poverty”, the Minister says that the Government:

- welcomes this and has recently revamped its own stakeholder engagement under the open method to help achieve this;
- will need to examine specific proposals when brought forward, but what is in the Communication appears consistent with agreed EU priorities and Member States’ competence and to fit with current Government priorities; and
- has a particular interest in developing social innovations.

1.41 Next the Minister discusses the Commission’s views on delivery mechanisms, the “Missing links and bottlenecks” section of the Communication, telling us first, in relation to “A single market for the 21st century” that the Government:

- supports the Commission’s aim to defend and deepen the single market and to focus on creating growth and jobs; and
- welcomes the Commission’s re-launch of the single market and believes it is important to build on the achievements of the existing single market.

He adds that the Government’s main single market priorities are to:

- to promote open and competitive markets both internally and externally and resist protectionism;
- take forward an ambitious agenda for the digital economy and other growth industries of the future;
- promote low carbon products and services;
- turn the potential benefits of the Services Directive into a reality; and
- enforce internal market rules to make the single market work better for small businesses and citizens, including the delivery of smart regulation.

1.42 On “Investing in growth: cohesion policy, mobilising the EU budget and private finance” the Minister says that the Government:

- strongly agrees with the Commission’s proposal to fully exploit all possibilities to improve the effectiveness and efficiency of the existing EU budget through stronger prioritisation and better alignment of EU expenditure with the goals of the Europe 2020 strategy;
- set out its position on reform of the EU budget in the *Compact for Jobs and Growth* paper;
- notes the Commission’s suggestion that the review of the Financial Regulation should be used to develop the potential of financial instruments and awaits the Commission’s proposal on this issue;
- strongly supports better use of the European Investment Bank and the European Investment Fund in helping small businesses access the finance they need to help them grow; and
- is particularly pleased that the Commission have adopted its proposal on increasing availability of venture capital funding for early-stage innovative small businesses by enabling the European Investment Fund to access capital markets to raise new capital — the Government believes that €3 billion in new capital would be a good starting point.

1.43 Then, on “Deploying our external policy instruments”, the Minister says that the Government:

- agrees with the Commission on the importance of the external dimension of EU policy to ensure global, open markets — the EU should lead in the fight against protectionism, which threatens to undermine the open trading system and damage EU business;
- believes that the Doha Round of negotiations should continue to be the first priority for the EU, complemented by assertive market access in ambitious bilateral agreements — the Commission should also have a greater focus on economic (including regulatory) co-operation with the EU’s major trading partners; and
- believes that EU policy should stimulate growth globally, especially the trade and growth of developing countries, which are amongst the worst hit by the economic crisis — the EU should press forward on negotiating full, regional Economic Partnership Agreements that are truly development friendly and on delivering Aid for Trade more effectively.

1.44 In relation to the Commission’s suggestions for governance of the Europe 2020 strategy the Minister comments that:

- the Government supports the proposed alignment of work on the EU’s macroeconomic, microeconomic and financial sector policies and the leading role proposed for the European Council;
- these are important prerequisites for an annual economic summit of the EU’s leaders, which would help ensure more coordinated, comprehensive and coherent EU economic policies and greater political buy-in to structural reform; and
- it will be critical though that, while aligning the reporting on these policies, Europe 2020 respects the separate legal bases on which these operate.

1.45 Finally the Minister tells us that the President of the European Council, Herman Van Rompuy, hopes to agree the focus and governance of the strategy, including headline targets at the European Council of 25–26 March 2010.

## Conclusion

1.46 **It whatever form the proposed Europe 2020 Strategy finally emerges, it will be central to EU policies during the next decade. Therefore we have no hesitation in confirming our earlier intention to recommend the Commission Communication, document (c), for debate in European Committee before the European Council meeting of 25–26 March 2010. We recommend also that the two Commission staff working documents, documents (a) and (b) be taken at that debate too, since much of the Communication derives from the matters laid out in them.**

1.47 **We suggest that in the debate Members will wish to examine the policy priorities, headline targets and flagship initiatives set out by the Commission, together with its comments on implementation and governance, particularly on those occasional issues where the Government has expressed hesitation or caution.**

## 2 Growth and Stability Pact: statistical data

(31339) 6559/10 COM(10) 53	Draft Council Regulation (EU) No ... amending Regulation (EC) No. 479/2009 as regards the quality of statistical data in the context of the excessive deficit procedure
----------------------------------	---

<i>Legal base</i>	Article 126(14) TFEU; consultation; unanimity
<i>Document originated</i>	15 February 2010
<i>Deposited in Parliament</i>	25 February 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 10 March 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Not known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared, further information requested

### Background

2.1 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%.<sup>5</sup> Each year the Council of Economic and Finance Ministers (ECOFIN) issues an Opinion on the updated stability or convergence programme of each Member State.<sup>6</sup> 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.

2.2 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 concerned, to require a non-interest-bearing deposit from the Member State concerned

5 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.

6 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.

whilst its deficit remains uncorrected, or to impose appropriate fines on the Member State concerned.

2.3 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. In January 2010 the Commission published a report about Greek Government deficit and debt statistics. The report was broadly factual but delivered highly critical assessments of the Greek statistical system. It identified 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 had led to severe irregularities in the reporting of debt and deficit statistics under the excessive deficit procedure.

2.4 The Commission’s overall assessment was that the current set-up of the Greek statistical system “does not guarantee the independence, integrity and accountability of the national statistical authorities” and it outlined 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;<sup>7</sup> and
- making the NSSG independent, through the revision of the current law on statistics.

However, it did not outline any explicit next steps.<sup>8</sup>

2.5 The generality of statistical production in the EU is governed by the Statistics Regulation, Regulation (EC) No. 223/2009, which provides guidelines on the quality of EU statistics. However production of statistics in relation to the excessive deficit procedure is governed by a narrower provision, Regulation (EC) No. 479/2009.

## The document

2.6 The Commission proposes this draft Regulation to amend Regulation (EC) No. 479/2009 to give power to Eurostat to undertake a monitoring visit to a national statistical

7 (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).

8 (31253) 5175/10 + ADDs 1–6: see HC 5–x (2009–10), chapter 10 (9 February 2010).

authority or finance ministry in cases where there appear to be problems with the quality of that Member State’s statistical data relating to government debt or deficit figures.

### The Government’s view

2.7 The Economic Secretary to the Treasury (Ian Pearson) says that the Government supports the objectives of this proposal, as it seeks to prevent a recurrence of the situation that came to light in Greece in the autumn of 2009. He reminds us that:

- the Greek national statistical authorities were discovered to have produced data of inadequate quality;
- according to the Eurostat report,<sup>9</sup> some statistical data had been deliberately misreported to reduce the size of the national deficit; and
- the Greek published deficit figure was subsequently revised from 6% to 12.7%.

2.8 The Minister comments further that:

- the Government has always supported the Stability and Growth Pact as a framework for ensuring sound public finances across the EU;
- however, for the pact to remain a credible monitoring and enforcement mechanism, it is vital that statistical data provided by Member States is of high quality and that Member States’ debt and deficit figures are reliable;
- whilst the general EU statistical regime is sound and, so far, there have only been problems with national data on deficits in one Member State (Greece), the Government believes that an EU level monitoring system has the potential to prevent and identify future cases of manipulation of statistical data on debts and deficits;
- EU level assessments of statistical data quality already exist in the form of peer review of the European Statistics Code of Practice established under the Statistics Regulation 223/2009;
- however, this proposal gives Eurostat increased powers to monitor national statistical authorities’ data and processes;
- the Government supports the proposal that Eurostat should be able to make a monitoring visit to a Member State’s national statistics authority “where significant risks or problems with the quality of the data have been clearly identified”, as this would deter manipulation of statistical data and bring to light any future incidences of inadequate data underpinning government debt and deficit figures;
- the Government believes that the proposals are broadly in line with subsidiarity;
- the powers proposed for Eurostat will, however, require further definition, as the current draft does not make clear under which circumstances Eurostat should and

should not make a monitoring visit to a Member State — it does not define what these “significant risks or problems” could be, nor does it set out how Eurostat would identify these risks; and

- the Government believes that new legislation in this area must be proportionate to the scale of the problem.

2.9 The Minister then tells us that the Government’s approach to the negotiations will be guided by five aims:

- the text should confirm the need for national statistical authorities to operate independently;
- Eurostat should create a report setting out the justification for a potential monitoring visit to any Member State;
- there should be an agreed, clear set of criteria by which the quality of a Member State’s statistical data could be assessed — this would provide an initial test to determine whether a Eurostat audit or investigation was necessary;
- the proposed Regulation should contain clear examples of cases where monitoring visits to a Member State should be made; and
- Eurostat should conduct their investigations based on published audited reports and other records held within the national statistical authority or finance ministry, where available, rather than direct access to other bodies.

2.10 On the financial implications of the proposal the Minister tells us that:

- the Commission proposes that, in order to implement the measure, twenty new members of staff would be required;
- whilst this does not have significant financial implications for the UK, the Government intends to query the number of full-time staff proposed to monitor Member States’ national statistics, as it seems rather high; and
- on the principle of budget neutrality, the Government will propose that the Commission should assign staff to this work from other areas of the Commission, rather than creating new posts.

## Conclusion

**2.11 While the purpose of this draft Regulation seems unexceptionable, we note that, although the Government supports the thrust of the proposal, it has a number of issues to deal with during negotiations, related both to subsidiarity and proportionality and to staff for Eurostat’s new power. Before considering this proposal further we should like to hear about negotiating progress on these issues, and we ask for as prompt a response as possible, given the eight-week timeframe for national parliaments under the Subsidiarity Protocol. Meanwhile the document remains under scrutiny.**

### 3 Strengthening FRONTEX

(31368) 6898/10 COM(10) 61	Draft Regulation to amend Council Regulation (EC) No. 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)
+ ADDs 1–2	Commission staff working documents: impact assessment and summary of the assessment

<i>Legal base</i>	Articles 74 and 77(1)(b) and (c) TFEU: co-decision; QMV
<i>Document originated</i>	24 February 2010
<i>Deposited in Parliament</i>	2 March 2010
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 11 March 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

3.1 FRONTEX is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States. It began work in October 2005. Its budget for 2009 was €83 million. It is based in Warsaw and has over 220 staff.

3.2 The Regulation which established FRONTEX<sup>10</sup> gave the Agency six tasks: coordination of operational cooperation between Member States in the management of the external borders; training border guards; doing risk analyses; R&D; organising technical and operational help for Member States in need of it; and helping to organise the return of illegal immigrants.<sup>11</sup>

3.3 Contrary to the Government's wishes, the UK is excluded from full participation in FRONTEX because the Court of Justice has ruled that the 2004 Regulation builds on provisions of the Schengen *acquis* to which the UK is not party. But the Regulation includes a provision which enables the UK to participate in some of the Agency's activities (for example, as observers of selected joint operations).

3.4 In 2007, the Council adopted a Regulation for the creation of Rapid Border Intervention Teams (RABITs).<sup>12</sup> The main purpose of the Regulation is to provide short-term emergency help to Member States at risk of being overwhelmed by a surge of illegal immigrants. The

10 Council Regulation (EC) No. 2007/2004: OJ No. L 349, 25.11.04, p.1.

11 See (25365) 6226/04: HC 42–xiii (2003–04), chapter 21 (17 March 2004).

12 Council Regulation (EC) No. 863/2007: OJ No. L 199, 31.7.07, p.30.

Member State's request for a RABIT is made to and decided by FRONTEX. The Agency also decides how many border guards are needed for the "pool" from which it selects officers to serve in RABITs. Member States are not obliged either to ask for a RABIT or to nominate immigration officers to serve in RABITs.<sup>13</sup>

3.5 In February 2008, the Commission published an evaluation of FRONTEX's performance and suggested some additions to the Agency's functions.<sup>14</sup> In December 2008, after considering the evaluation, the European Parliament adopted a Resolution which described FRONTEX as an essential instrument in the EU's strategy on immigration and asked the Commission to make proposals to strengthen the Agency's role and effectiveness.

3.6 In October 2009, the European Council called for the enhancement of FRONTEX's operational capacity and invited the Commission to present proposals for that purpose, including proposals for increased operational cooperation between FRONTEX and countries of origin and transit; common procedures for joint operations at sea; and for FRONTEX to charter flights for the return of illegal immigrants. The invitation to make such proposals is repeated in the Stockholm Programme.<sup>15</sup>

3.7 Article 74 of the Treaty on the Functioning of the European Union (TFEU) provides for the Council to adopt measures to ensure administrative cooperation between Member States on the matters covered by Title V of the Treaty (matters related to justice and home affairs). Article 77(1) TFEU requires the EU to develop policies on, among other things, carrying out checks on people at Member States' external borders and the gradual introduction of an integrated system for the management of those borders.

## The document

3.8 The draft Regulation contains a large number of amendments to the Regulation of 2004 which established FRONTEX ("the parent legislation"). Most of the amendments clarify the provisions of the parent legislation or supplement FRONTEX's powers and duties without changing them substantially. For example, the draft Regulation contains a new definition of "technical equipment" and gives FRONTEX a duty to "participate" in the development of relevant research rather than merely to "follow-up" its development.

3.9 But the draft Regulation also includes significant changes to the parent legislation. They include the following amendments:

- FRONTEX would have a new duty to develop and operate information systems to enable swift and reliable exchanges of information about emerging risks at the external borders.
- The FRONTEX Management Board (which comprises representatives of the participating States and the Commission) would decide, from time to time, what should be the total number of border guards the Member States should make

---

13 (28523) 7647/07: see HC 41–xvii (2006–07), chapter 17 (18 April 2007).

14 (29477) 6664/08: see HC 16–xvi (2007–08), chapter 8 (19 March 2008) and HC 16–xxviii (2007–08), chapter 11 (22 July 2008).

15 The Stockholm Programme outlines proposals for action on JHA matters over the next five years. It was adopted by the European Council on 10–11 December 2009.

available for deployment in FRONTEX Joint Support Teams to take part in joint operations and pilot projects. Member States would be obliged to make the officers available when requested “unless they are faced with an exceptional situation substantially affecting the discharge of national tasks”.<sup>16</sup>

- Member States would also be required to second border guards to FRONTEX for not more than six months in a 12-month period for deployment to joint operations and pilot projects.
- FRONTEX would have a new duty to evaluate the capacity of Member States to cope with present and foreseeable threats and pressures at their external borders and to report the results of the evaluations to the Agency’s Management Board at least once a year.
- FRONTEX would be given a new power to acquire or lease technical equipment (such as boats, aircraft and mobile radar) for use in, for example, joint operations, pilot projects and operations to return illegal immigrants to their countries of origin.
- The Management Board would be given responsibility to decide what technical equipment FRONTEX should have for operational purposes. The Agency would have a duty to maintain records of the equipment, comprising equipment made available by Member States and equipment acquired or leased by the Agency. Member States would have a new duty to contribute equipment to the pool within 30 days of being asked for it.
- Member States would be required to tell FRONTEX once a month about their plans for returns and to what extent help from and coordination by the Agency would be needed.
- Returns should be monitored by an independent person from pre-departure to hand-over in the country of return.
- FRONTEX would have power to post liaison officers to third countries to maintain contacts with the authorities responsible for the control of migration and law enforcement and to encourage them to take part in FRONTEX activities such as pilot projects, joint operations and training for border guards.

## The Government’s view

3.10 In her Explanatory Memorandum of 11 March 2010, the Parliamentary Under-Secretary of State at the Home Office (Meg Hillier) tells us that (for the reason explained in paragraph 3.3 above) the UK is excluded from the draft Regulation and will not be bound by it. But the UK does take part in some joint operations and other activities. It is invited to attend the meetings of FRONTEX Management Board and takes an active part in them as a non-voting observer. In 2010, the Government will contribute €570,000 to the cost of joint operations and other activities in which the UK participates.

---

<sup>16</sup> Article 3 b(3) of the draft Regulation.

3.11 The Minister says that the Government welcomes the draft Regulation:

“An effectively managed and secure external border is in the interests of all Member States, including the UK, not just in terms of combating illegal migration, and cross-border crime but also as part of the EU-wide counter-terrorism effort.”<sup>17</sup>

3.12 At present, border guards from Schengen States have additional protection against criminal and civil liability when taking part in FRONTEX operations. The Minister tells us that:

“While we have no intention of seeking executive powers for UK border officers taking part in Frontex operations we do wish to protect them against unreasonable or malicious prosecution. To this end, we are seeking to add language to the text that would extend to UK officials the cover currently given to the border guards of the Schengen and Schengen-associated states alongside which they work.”<sup>18</sup>

## Conclusion

3.13 **FRONTEX has quickly established for itself a valuable role in helping Member States to control their external borders. There appears to be a consensus that the Agency’s powers should be strengthened. The proposed new duties for Member States to commit themselves to make available officers and equipment are intended to improve FRONTEX’s ability to plan and coordinate joint operations and pilot projects. The UK is excluded from the proposed Regulation and so would not be caught by the new duties it would give Member States.**

3.14 **In our view, the draft Regulation complies with the principles of subsidiarity and proportionality, but the legal base fails to cite Article 77(2)(b) and (d) TFEU instead of, or in addition to, Article 77(1)(b) and (c) TFEU. We think it should, and that this may be an oversight of the Commission, as paragraph (2) sets out the legislative procedure for the adoption of legislation in this field, whereas paragraph (1) concerns the general development of policy. Citation of the correct legal base would also indicate that this proposal is a “draft legislative act” for the purposes of the first two Protocols to the Treaty on the Functioning of the European Union. The Minister’s Explanatory Memorandum is silent on this point, so we would be grateful for her opinion at the earliest opportunity.**

3.15 **We would also be grateful for progress reports on the document as negotiations develop. Meanwhile, we shall keep the document under scrutiny.**

---

<sup>17</sup> Minister’s Explanatory Memorandum of 11 March 2010, paragraph 21, final sentence.

<sup>18</sup> *Ibid*, paragraph 22, last two sentences.

## 4 EU restrictive measures against the Republic of Guinea

(31404) — —	Draft Council Decision and a Council Regulation modifying certain restrictive measures in respect of Guinea
-------------------	---

<i>Legal base</i>	Council Decision: Article 29 TEU; unanimity Council Regulation: Article 215 TFEU; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 11 March 2010
<i>Previous Committee Report</i>	None, but see (31133) —: HC 5–ii (2009–10), chapter 10, (25 November 2009); also see (30721) 11429/09 HC 19–xxiv (2008–09), chapter 8 (15 July 2009) and (26227) 16041/04, (29544) 7499/08 and (30446) 6543/09: HC 19–x (2008–09), chapters 7 and 8 (11 March 2009)
<i>To be discussed in Council</i>	25 March 2010 Foreign Affairs Council
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared; further information requested

### Background

4.1 Under Article 96 of the 2000 Cotonou Agreement between the EU and 77 ACP countries, either party may invite the other for consultations if it considers that the other has failed to respect the “essential” political elements in Article 9: human rights, democratic principles and the rule of law, or to provide good governance. Strengthening this political dimension was one of the main changes introduced in the 2005 revision of the Agreement.

4.2 At the end of 2003, the Commission proposed such consultations with the government of the Republic of Guinea (GOG), having attempted for the previous two years to resolve various democratic shortcomings through normal Article 8 political dialogue, but without success.

4.3 The Committee has taken a particular interest in the Article 96 process in Guinea because the undertakings given by the GOG were all in areas in which success, or failure, might well have much wider lessons, or repercussions, and not just for the Cotonou Process but also ESDP; a number of other ACP countries were similarly challenged, against a background in which the inter-relationship between development, security and good governance was now widely acknowledged. As we have noted, the Cotonou Agreement is clear: respect for human rights, democratic principles and the rule of law are essential elements of the partnership, with the Commission characterising the revision of the political components in 2005 as “strengthening the political dimension by placing greater emphasis on effective dialogue and results”; against the yardstick set out in those last four words, we have found it difficult to find much persuasive evidence that the Article 96 process had, to use the then Minister for Europe’s words, led to the Cotonou provisions

being taken seriously — after over five years of Article 96 engagement, Guinea seemed to be no nearer than it was then to a functioning democratic and law-based society.<sup>19</sup>

4.4 Subsequent developments are set out in the Report referred to above and those referred to therein.<sup>20</sup> As these Reports note, a bloodless coup took place on 23 December 2008, following the death of the then President after a long illness, when a military junta calling itself the National Council for Democracy and Development (NCDD) seized power and its leader, Captain Moussa Dadis Camara, declared himself President. In response, further Article 96 consultations were initiated; subsequently, the Commission proposed that they be closed, and a staged process initiated whereby, in return for measured progress towards, and the holding of, “free and transparent” elections, normal relations would be restored.

4.5 The then Minister for Europe (Baroness Kinnock of Holyhead) supported this proposal, arguing that it was important that the EU played a constructive role in assisting Guinea’s transition to constitutional order and democracy. She was, however, concerned that the “broadly encouraging undertakings” offered during the Article 96 consultations had “not been followed up by action”: the first stages of the roadmap had yet to be completed, with voter registration currently suspended, and the National Council for the Transition (CNT) had not been established. She thought it wise that the Commission had proposed that the EU continued to monitor the situation closely over a period of 24 months, with a regular review at least once every six months, and had reserved the right to amend the “appropriate measures” in the light of the interim authorities’ implementation of the commitments they had entered into.

4.6 Then, on 28 September 2009, unarmed opposition supporters, protesting at Captain Dadis Camara’s intention to run for President next year (despite having sworn this when he seized power) were killed by soldiers in the capital, Conakry. In a letter of 22 October, the subsequent Minister for Europe (Chris Bryant) said that this had been condemned by the EU, the US, the AU and ECOWAS; the latter two had taken the lead to resolve the political crisis and prevent further violence; Member States had argued strongly that the EU should stand ready to support any sanctions imposed by the AU or ECOWAS in order to demonstrate broad international commitment to resolving the crisis. Against this background, he believed that the UK should support EU restrictive measures to bolster any AU/ECOWAS sanctions on Guinea. On 20 October he had received a draft Common Position and list of names drawn up by EU Heads of Mission in Conakry, with proposed sanctions that would impose an arms embargo as well as travel restrictions targeting members of the military junta and individuals associated with them who were responsible for the violent repression of 28 September or the political stalemate in the country. He explained that, given the ECOWAS action, the ongoing political stalemate in Guinea and the need for the EU to send a coordinated and strong message that it condemned the violent crackdown, it was likely that the EU would agree to impose sanctions at the 26–27 October General Affairs and External Relations Council (GAERC); he hoped that the Committee would understand that he might have to agree to the restrictive measures

19 (26227) 16041/04 and (29544) 7499/08; see headnote.

20 (31133) —: HC 5–ii (2009–10), chapter 10 (25 November 2009) and (30721) 11429/09: HC 19–xxiv (2008–09), chapter 8 (15 July 2009); see headnote.

before scrutiny had been completed; he concluded by undertaking to send the text, along with an Explanatory Memorandum, as soon as a final version was available.

4.7 The 26–27 October GAERC duly adopted Common Position 2009/788/CFSP imposing these limited sanctions. In his Explanatory Memorandum accompanying the Common Position, the Minister said that in view of the lack of progress made by the military junta following repeated calls to restore the rule of law, he strongly agreed that restrictive measures were necessary to reaffirm those calls, and as “a sign of international resolve and support to ECOWAS and AU efforts to mediate.” The Minister explained that: in order to adopt sanctions as swiftly as possible, the Common Position limited restrictive measures to those within Member State competence — a travel ban and arms embargo; individuals were listed only where evidence existed that they were members of the NCDD or associated with them; they would be entitled to challenge the implementation or application of such a ban in the Member States’ courts; and the draft Common Position provided that Member States could grant exemptions from the travel ban for specified reasons including, *inter alia*, where travel was justified on the grounds of humanitarian need. He assessed that these measures “send a strong signal to the military junta that the EU disproves [sic] of the violent crackdown.” Although the Common Position applied for 12 months, the Minister said that the EU intended to review the measures in the coming months against any steps taken by the military junta to restore the rule of law, and that “if no positive steps have been taken, the EU will consider imposing further restrictive measures.”

### Our assessment

4.8 We did not object to the Minister’s action on this occasion and in these particular circumstances, and cleared the document.

4.9 In so doing, we said that we could not avoid wondering nonetheless how effective the Common Position was likely to be. We had in mind that Guinea is the world’s largest bauxite exporter and has significant deposits of gold, diamond, uranium and iron ore — resources that allowed Lansana Conte, the former dictator, to survive periods of international isolation; and that its oil prospects had recently drawn attention after discoveries in nearby countries such as Ghana, Ivory Coast and Sierra Leone, leading (according to media reports) to oil and minerals deals being under negotiation between Guinea’s military government and the China International Fund, who would provide the lion’s share of finance for about \$7 billion worth of projects, ranging from power-generation to the creation of an airline.

4.10 We noted that two EU courses of action — this Common Position and the action taken under the Cotonou Agreement — were to be reviewed in the coming months, with the likelihood that further action would be proposed under one or the other, or both. We therefore asked that, when any Explanatory Memorandum was put forward on such subsequent action, the Minister concerned should ensure that it included his views on this wider perspective of China’s activity in the country and the region, and its impact on the effectiveness of EU action.

## The proposed changes to the Council Decision and the Council Regulation

4.11 In his Explanatory Memorandum of 11 March 2010, the Minister of State at the Foreign and Commonwealth Office (Ivan Lewis) says that:

“In view of the tangible progress recently made under mediator President Compaore towards the restoration of constitutional order in Guinea, the Council of the European Union has now agreed that, as a gesture of goodwill, the EU travel ban should be lifted on the following four individuals who have been instrumental in putting the transitional process to elections in place: Sekouba Konate, Interim President; Mamadou Toto Camara, Minister of Security; Keletigui Faro, Minister of Agriculture and Kabine Komara, previously Prime Minister.”

## The Government's view

4.12 After reviewing the events leading up to last September, when “156 peaceful protestors were killed and there were reports of mass rapes and other human rights atrocities”, the Minister continues as follows:

“These events and the resultant UN Secretary General's Commission of Inquiry report have dictated the UK and the international community's response to Guinea. The report clearly identifies Dadis Camara and other leading figures in the Guinean regime as responsible for events on 28 September. The Prosecutor of the International Criminal Court is currently examining the situation in Guinea. The Deputy Prosecutor visited Guinea in February 2010 and described the events around 28 September 2009 as crimes against humanity.

“On 3 December Dadis Camara was shot in the head by his Aide de Camp, Toumba Diakite, during an argument about responsibility for the massacre on 28 September. He was taken to Morocco for treatment and later moved to Burkina Faso where he is likely to remain for health reasons.

“The African Union (AU) and Economic Community of West African States (ECOWAS), working with appointed mediator, President Compaore of Burkina Faso, took the lead in attempts to resolve the political crisis and prevent further violence and appointed Sekouba Konate as interim President. An Agreement was signed in Ouagadougou on 15 January agreeing to the establishment of a unity transitional government. Jean-Marie Dore was sworn in as interim Prime Minister on 26 January and his cabinet — a coalition of 10 NCDD members and opposition members— was sworn in on 15 February. The Agreement has provided an excellent opportunity to restore constitutional rule in Guinea. Interim President Konate announced on 6 March that Presidential elections would be held on 27 June 2010.

“The UK, along with EU partners, are now keen to recognise progress under the transition and are in favour of lifting the EU travel ban on the following four individuals who have been helpful in brokering the Ouagadougou Agreement and putting the transitional process in place: Interim President Sekouba Konate;

Mamadou Toto Camara, Minister of Security: Lieutenant Colonel Keletigui Faro, Minister of Agriculture and Kabine Komara, previously Prime Minister.”

4.13 The Minister concludes by noting that the proposal is due to be adopted by written procedure at the Council on 25 March 2010.

## Conclusion

4.14 **Though the way in which the main obstacle to progress has been removed is hardly in keeping with the sort of transition process that the Council will have had in mind, the rest of what the Minister describes would appear to warrant the relaxation of the measures in the way proposed. We therefore clear the proposal.**

4.15 **In so doing, we take this opportunity to remind the Minister of our earlier request for his assessment of the impact of Chinese activity in Guinea and more widely on EU efforts to encourage and bolster democratic development (c.f. paragraph 4.10 above) and ask that, the next time any change is proposed to either this Common Position or to the action taken under the Cotonou Agreement, this is provided along with the evidence justifying the proposal.**

## 5 Restrictive measures against the regime in Burma

(31405)	Draft to amend Council Regulation 194/2008 imposing restrictive measures in respect of Burma
—	
—	

<i>Legal base</i>	Article 215 TFEU; QMV
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 11 March 2010
<i>Previous Committee Report</i>	None; but see (30854) —: HC 19–xxvi (2008–09), chapter 17 (10 September 2009); (30542)—: HC 19–xiv (2009–09), chapter 12 (22 April 2009); (29621) —: HC 16–xix (2007–08), chapter 9 (23 April 2008); (29368) 5401/08: HC 16–xi (2007–08), chapter 9 (6 February 2008); and (29083) —: HC 16–ii (2007–08), chapter 21 (14 November 2007)
<i>To be discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared, but further information requested

## Background

5.1 Starting with Common Position 1996/635/CFSP, the EU has adapted and strengthened its sanctions regime against Burma over the last ten years in response to deteriorating circumstances on the ground and the continuing failure by the government of Burma to make progress on human rights and national reconciliation. In line with EU sanctions policy the EU has worked to achieve positive change in Burma by placing pressure on those responsible for its policies, whilst minimising any adverse impact on the general population.

5.2 In 2006, EU Common Position 2006/340/CFSP imposed the following measures:

- a visa ban and assets freeze against named members of the military regime, the military and security forces, the military regime's economic interests and other individuals, groups, undertakings or entities associated with the military regime and their families;
- a visa ban against serving members of the military of the rank of Brigadier-General and above;
- a comprehensive embargo on arms and equipment that might be used for internal repression and ban on military personnel being attached to diplomatic representations in and from Burma;
- a ban on high-level bilateral government visits at the level of Political Director and above;
- a suspension of most non-humanitarian aid;
- prohibition on EU companies making finance available to, or extending participation in, named Burmese state-owned companies, their joint ventures and subsidiaries.

5.3 In view of further deterioration of the situation in Burma, the EU adopted Common Position 2007/750/CFSP on 19 November 2007 (which we cleared at our meeting on 14 November 2007). This provided for new restrictive measures concerning certain imports from, exports to and investments in Burma/Myanmar, targeting its timber and extractive industries, which provide sources of revenue for the military regime. It also broadened the scope of the existing restrictions on investment by applying them also in respect of investment in enterprises owned or controlled by persons or entities associated with the military regime, and broadened the categories of persons targeted by the freezing of funds and economic resources.<sup>21</sup>

5.4 Then, on 6 February 2008, we cleared a revised Council Regulation which:

- extended the current restrictive measures which provide sources of revenue for the military regime of Burma/Myanmar in respect of:
  - extending and updating persons subject to a travel ban;
  - the freezing of their assets;

---

<sup>21</sup> See headnote.

- extending and updating the list of enterprises in Burma subject to an investment ban.
- proposed additional restrictive measures:
  - an export ban on the industrial sectors of logs and timber and defined metals, minerals, precious and semiprecious stones; to include diamonds, rubies, sapphires, jade and emeralds (the Regulation will now include finished products with an exemption for personal items of jewellery);
  - an import ban on products from the above mentioned sectors;
  - an investment ban on new trade in the above mentioned sectors;
  - the provision of technical assistance or training related to relevant equipment and technology destined for enterprises in the above industries in Burma/Myanmar.

5.5 This was subsequently adopted as Council Regulation 194/2008.

5.6 Later, on 21 April 2008, we cleared Common Position 2008/349/CFSP, which renewed the current restrictive measures on sources of revenue for the military regime for a further 12 months and amended the Annexes in respect of:

- updating persons subject to a travel ban (with the inclusion of members of the judiciary) who are responsible for implementing acts of repression by the regime and;
- the freezing of their assets;
- updating the list of enterprises in Burma subject to an investment ban by adding a further 30 names to the list.

5.7 The Common Position that we considered on 23 April 2009 essentially extended the existing Common Position for a further 12 months. Both the list of entities subject to an asset freeze and the list of persons subject to an asset freeze/travel ban were updated (e.g. to take account of changes within the government). Apart from these changes, the restrictive measures were renewed as they were for a further 12 months.

5.8 In her supporting Explanatory Memorandum of 16 April 2009, the then Minister recalled that the Council adopted these restrictive measures after the violent suppression of peaceful protesters in November 2007 — the so-called “Saffron Revolution” — as well as the continued human rights abuses in Burma and detention of over 1100 political prisoners. This was, she again said, consistent with EU policy to increase pressure on the military regime to enter into a meaningful and genuine dialogue with the democratic opposition, whose ultimate aim is the eventual transition to civilian rule and full respect of human rights, including the release of political prisoners and recognition of the rights of ethnic communities.

5.9 The then Minister strongly supported renewal “as it binds the 27 Member States to a robust policy in support of political change in Burma”; extension for a further 12 months was warranted by the lack of improvement of the human rights situation and the lack of substantive progress towards an inclusive democratisation process: “the Burmese military have failed to meet the demands of the international community and continue to violate

human rights, including by continuing to detain and sentence democracy campaigners”, and that “there are now estimated to be over 2200 political prisoners.”

5.10 Then, in his Explanatory Memorandum of 12 August 2009, the Minister of State at the Foreign and Commonwealth Office (Mr Ivan Lewis) explained that on 13 May 2009 Aung San Suu Kyi (whom he thereafter referred to as ASSK) was arrested for violating the terms of her house arrest:

“This violation was as a result of an American man who swam across the lake surrounding her house, he says, to warn her that her life was in danger. ASSK’s house arrest was due to expire at the end of the month and it is widely accepted that the Burmese authorities are using the opportunity offered by this event to ensure ASSK cannot participate in elections due in Burma early next year.”

5.11 The Minister recalled that in June and July the Committee was forewarned that:

- should ASSK be found guilty the EU, with the UK’s full support, would seek to impose further sanctions upon the Burmese regime;
- after much delaying, a guilty verdict was delivered on 11 August; and
- under the proposed new measures, the four individuals overseeing ASSK’s trial would be added to the list of those subject to a travel ban and asset freeze within the EU; several new entities, most notably the media organisations responsible for the Burmese junta’s propaganda, would be subject to an asset freeze; and 48 other entities currently subject to an investment ban had also been identified to have any assets held within the EU frozen.

5.12 Having explained how the procedures for designating individuals were fully compliant with fundamental rights and noted the consistency of these measures with EU policy, often led by the UK, to increase pressure on the military regime in Burma to enter into a meaningful and genuine dialogue with the democratic opposition, with the ultimate aim of the eventual transition to civilian rule and full respect of human rights, including the release of political prisoners and recognition of the rights of ethnic communities, the Minister concluded by saying that the Common Position would be adopted on 13 August 2009.

## Our assessment

5.13 At our meeting on 10 September 2009, we acknowledged the endeavours of the Minister for Europe to forewarn the Committee, accepted the particular circumstances that had led to this breach of scrutiny, and cleared the document.

5.14 We also reported these further proposals because of the widespread interest in the situation in Burma in the House.

5.15 With that interest in mind, we also once again reminded the Minister that such Explanatory Memoranda should also outline the wider context, and any action that had been and was being taken by the government, the EU or other countries — in this instance, in relation to China, without whose support it was difficult to see these further measures

making any more impact than had the previous ones. We noted that we would have liked to know, for example, if the situation in Burma had been discussed during the most recent EU-China Summit; and if so, what the Chinese response was.

5.16 In the meantime, we left it to others to judge what the likely impact of these additional measures would be, though found it difficult to be optimistic in the light of a recent US\$5.6 billion deal between China and Burma, with the help of Indian and South Korean companies, to supply China National Petroleum Corporation (CNPC) with gas for 30 years.<sup>22, 23</sup>

### The Minister for Europe's letter 25 February 2010

5.17 On 25 February 2010, the Minister for Europe wrote to inform the Committee that, with the current EU Common Position on Burma and the restrictive measures it contains due to expire on 30 April, negotiations to secure the rollover of these restrictive measures were therefore about to begin.

5.18 After reiterating the circumstances that led to their imposition in 1996 and recalling the most recent changes to the EU's Common Position in August 2009, he went on to say that in late 2009, the Burmese authorities "showed some willingness to engage with Aung San Suu Kyi and the international community", e.g. in October, Aung San Suu Kyi was permitted to meet the British Ambassador, in his capacity as the EU representative, for the first time in six years, and to discuss western sanctions along with American and Australian officials; and also allowed to meet US Assistant Secretary of State Kurt Campbell in early November. These "small but welcome developments" were followed up in December, when Swedish Foreign Minister Carl Bildt, representing the EU Presidency, met his Burmese counterpart in the margins of the Copenhagen conference, and preparations are underway for a senior officials visit to Burma:

"However dialogue with Aung San Suu Kyi has since stalled and the regime has failed to engage with the US or EU on any issues of substance. The recent release of National League for Democracy Vice-Chairman U Tin Oo, whilst welcome, does not change the fact that we have seen minimal progress towards the changes that we are looking for."

5.19 Given that HMG's position was, the Minister said, that there should be no easing of sanctions in the absence of tangible progress, the Government would therefore look for a renewal of the Common Position for a further 12 months — a position upon which, he said, "there appears, at this stage, to be a broad consensus amongst Member States ..., although formal discussion of the issue has not yet begun."

5.20 Responding to the Committee's expressed interest in its earlier reports in UK and EU engagement with other parties, particularly China, to try and secure change within Burma, the Minister also said:

22 See [http://www.timesonline.co.uk/tol/business/industry\\_sectors/natural\\_resources/article6809986.ece](http://www.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article6809986.ece) for further information.

23 See headnote: (30854) —: HC 19–xxvi (2008–09), chapter 17 (10 September 2009).

“We continue to actively encourage Burma’s regional neighbours, including China, Japan and members of the Association of South East Asian Nations (ASEAN) to press for a transition to democracy. As previously noted, the Foreign Secretary attended the meeting of the UN Secretary General’s Group of Friends on Burma in September 2009, where he stressed that all members, including China, must continue to use their influence to encourage the regime to commit to a path of reconciliation and change. The Prime Minister subsequently raised Burma with Prime Minister Hatayoma of Japan on 26 November 2009, and he and PM Hatoyama agreed on the importance of Aung San Suu Kyi’s release and full participation in the democratic process.

“The Government has repeatedly raised the issue of Burma with ASEAN members. We engaged the Vietnamese government both before and as it took over the chairmanship of ASEAN for 2010, making clear how important its robust leadership on Burma is, and highlighting the need for ASEAN to sustain its calls for the release of political prisoners and credible elections. The Foreign Secretary raised Burma with Vietnamese Deputy Prime Minister Hai in London on 21 October 2009, and in a letter to the Deputy Prime Minister for Foreign Affairs in January 2010 as Vietnam assumed the ASEAN chairmanship. Most recently, the Foreign Secretary raised Burma with the new Indonesian Foreign Minister during a telephone conversation on 8 January 2010. Burma remains a key foreign policy area for the UK Government and we will continue to do all we can, including through Burma’s neighbours, to secure a transition to democracy.”

5.21 The Committee thanked the Minister for this information and looked forward to hearing about the outcome of the negotiations.

5.22 In the meantime, this separate proposal has been put forward.

### **Proposal to amend Council Regulation 194/2008 imposing restrictive measures in respect of Burma**

5.23 After recalling the background (c.f. earlier paragraphs in this chapter of our Report), the Minister for Europe at the Foreign and Commonwealth Office (Chris Bryant) continues in his Explanatory Memorandum of 11 March 2010 as follows:

“It has now become clear that the resulting Regulation (194/2008) banning the in-country purchase of timber and related goods is having a detrimental effect on the ability of European development agencies and NGOs to provide humanitarian and development aid and assistance within Burma.

“The Regulation prevents EU entities from purchasing timber, either directly or indirectly, within Burma. This is now having a serious impact as several European supported aid donors, including DFID, [who] have identified an urgent need to provide replacement housing for the victims of Cyclone Nargis. Their projects have had to be paused while this situation is resolved. This problem will also prevent other development work allowed under the Common Position, including the provision of fishing boats and tools. Timber cannot be sourced elsewhere, i.e. Thailand, as this

would add significantly to the cost and import of such goods may be taxed or even not permitted by the Burmese junta.

“The Council is therefore proposing changes to Regulation 194/2008 governing the restrictive measures in place on Burma that would allow aid and development organisations to buy timber for housing for cyclone victims, as well as for their other programme needs. These houses need to be completed before the monsoon season begins in June.

“The amendments have yet to be finalised so we are currently unable to submit any documents for scrutiny, except the legal advice on this situation from the Council Legal Service. The urgency for this amendment will mean there will be little time for scrutiny when the wording is agreed. We are therefore asking the scrutiny committees to approve HMG’s policy of supporting this amendment. If any drafts do become available before this issue has been scrutinised we would ensure they were forwarded to the committees for their consideration.”

## The Government’s view

5.24 The Minister goes on to say that:

- “humanitarian exemptions are now commonly written into sanctions regimes to allow essential aid and development work to continue in targeted countries, but there is no such exemption covering the commodities ban in the Regulation implementing restrictive measures against Burma;
- the aim of UK policy towards Burma, including through sanctions, is to bring an end to human rights abuses in Burma and to encourage an early transition to civilian, democratic rule, without any adverse impact on the general population of Burma;
- altering the Regulation to allow European development and aid agencies to operate fully in Burma “would be consistent with the UK policy of funding aid and development whilst maintaining pressure on the ruling junta.”

## Conclusion

**5.25 Unorthodox though it is, we are grateful to the Minister for having taken account of the present likely timelines and thus enabling the Committee to scrutinise the proposal prior to the emergence of a legal text. We are content for the Minister to proceed in the way that he proposes, and look forward to hearing from him once the proposal has been adopted, and also with regard to the extant Common Position.**

**5.26 We continue to look to him to update the Committee on supporting actions in the wider context, particularly regarding China, and the responses of those approached for support.**

**5.27 In the meantime, whilst clearing the document we are drawing it to the attention of the House because of the widespread interest in this matter.**

## 6 Financial management

(a) (31399) 7180/10 COM(10) 71	Draft Regulation amending Council Regulation (EC, Euratom) No. 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities
(b) (31400) 7182/10 COM(10) 72	Draft Council Regulation laying down the multi-annual financial framework for the years 2007–2013
(c) (31401) 7183/10 COM(10) 73	Draft Inter-Institutional Agreement between the European Parliament, the Council and the Commission on cooperation in budgetary matters

<i>Legal base</i>	(a) Article 322(1) TFEU; co-decision; QMV (b) Article 312(2) TFEU; consent; unanimity (c) Article 295 TFEU; —; QMV
<i>Documents originated</i>	3 March 2010
<i>Deposited in Parliament</i>	9 March 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 11 March 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

6.1 To date, the Financial Framework, which sets out a budgetary framework for the period 2007–2013, has been laid down in the Inter-Institutional Agreement of 17 May 2006 on budgetary discipline and sound financial management.<sup>24</sup> The current agreement also contains instruments, such as the European Solidarity Fund, outside the Financial Framework and rules for:

- operation of the Financial Framework and the case where a Financial Framework has not been agreed;
- the annual budgetary procedure;
- cooperation between the Council, the European Parliament and the Commission in budgetary matters; and

24 See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:139:0001:0017:EN:PDF>.

- sound financial management.

The TFEU requires Member States in the Council to adopt a Regulation, laying down the Financial Framework.

6.2 Rules governing the operation and management of the EU's annual budget are laid down in Council Regulation (EC, Euratom) No. 1605/2002, known as the Financial Regulation, and accompanying Implementing Rules.<sup>25</sup>

## The documents

6.3 The Commission is proposing, with document (b), to incorporate the existing 2007–2013 Financial Framework into a new Regulation, referred to as the Multiannual Financial Framework Regulation. With document (a) the Commission proposes an amendment to the Financial Regulation to reflect some of the changes introduced by the TFEU. (New provisions related to the control and audit obligations of Member States in implementing the budget required by the Article 317 TFEU and changes related to setting up the European External Action Service will be covered by separate proposals.) The Commission proposes incorporation of some provisions of the current Inter-Institutional Agreement into the Multiannual Financial Framework Regulation and others into the amended Financial Regulation or its Implementing Rules. The draft Inter-Institutional Agreement on cooperation in budgetary matters, document (c), is proposed for those provisions that the Commission considers do not fit into either the Multiannual Financial Framework Regulation or the Financial Regulation and that are not rendered obsolete by the TFEU.

6.4 In the proposed Multiannual Financial Framework Regulation, document (b):

- Article 1 refers to the 2007–2013 Financial Framework, contained in the Annex of the present agreement;
- Article 2 reproduces text from the current agreement updated to remove obsolete text and includes a provision for commitment appropriations to be entered into the budget over and above the relevant ceilings, where necessary, to allow mobilisation of the Emergency Aid Reserve, the European Globalisation Adjustment Fund, the Flexibility Instrument, and the European Solidarity Fund;
- Articles 3 to 10 reproduce text from the current agreement relating to adjustments to, or revisions of, the Financial Framework, with technical updates to the language to reflect the change in legal base;
- the decision-making procedure for Articles 6 and 3, which relate to adjustments connected to budget implementation and ensuring the Own Resources ceilings are not exceeded, is updated to bring it into line with the procedure for adoption of the Regulation itself;
- Article 8 maintains the current practice of allowing revisions to the Financial Framework of below 0.03% of EU Gross National Income to be agreed by a joint

---

<sup>25</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:248:0001:0048:en:PDF>.

decision of the Council and the European Parliament, with the Council acting by a qualified majority;

- Article 11 lays down general principles for cooperation between the Council, the European Parliament and the Commission, in accordance with the requirement in the TFEU that the Financial Framework shall ‘lay down any other provisions required for the annual budgetary procedure to run smoothly’;
- Article 12 incorporates text from the present agreement updated to reflect the expectation that the role of the Council or its presidency, in drawing up forecasts of Common Foreign and Security Policy expenditure needs, will be undertaken by the High Representative for Foreign Affairs and Security Policy (High Representative); and
- Article 13 incorporates text from the current agreement relating to the consequences of the absence to agree a new Financial Framework, updated to reflect the wording of Article 312(4) TFEU.

6.5 With the amended Financial Regulation, document (a), the Commission is proposing updates to reflect the TFEU and other technical adaptations, including:

- incorporation of provisions related to the new annual budgetary procedures provided by the Treaty and the joint declaration on ‘transitional measures applicable to the budgetary procedure after the entry into force of the Lisbon Treaty’, agreed on 30 November 2009;<sup>26</sup>
- removal of specific references to ‘police and judicial cooperation’ on the grounds that specific financial provisions in this area are unnecessary now that such cooperation has become an integral part of other EU policies and internal actions;
- removal of references to information on the operations of the guarantee fund for external actions given that this fund is no longer the subject of a special regime;
- changes to specify the role of the High Representative in proposing Common Foreign and Security Policy preparatory measures;
- changes to accommodate the European Council as an institution sharing a budget with the Council;
- a new Article clarifying that the budget ceilings should comply with the Financial Framework; and
- two new Articles are also added to incorporate text from the current Inter-Institutional Agreement, which relate to the requirement that the EU budget or the Financial Framework be amended or revised before any act exceeding the appropriations available may be implemented, to the allocations of commitment appropriations provided for in the relevant basic acts for structural operations, rural development and to the European Fund for Fisheries.

---

<sup>26</sup> See <http://register.consilium.europa.eu/pdf/en/09/st16/st16792.en09.pdf>.

6.6 The draft Inter-Institutional Agreement, document (c), reproduces text from the current agreement with technical updates, including:

- incorporation of rules relating to the operation of the new annual budgetary procedure, including the pragmatic calendar and provisions relating to amending budgets contained in the joint declaration on transitional measures, into the rules for collaboration between the Council, the European Parliament, and the Commission;
- the requirement that information relating to operations not included in the EU Budget and the development of the EU's own resources be presented together with the documents accompanying the Commission's draft budget, rather than with the technical adjustment of the Financial Framework, as specified in the current agreement — it is envisaged that the timing of the presentation of this information would remain the same (end of April or beginning of May);
- clarification that three-way meetings or 'trilogues' are only called to consider proposals to mobilise the Emergency Aid Reserve, the European Solidarity Fund, the Flexibility Instrument and the European Globalisation Adjustment Fund in the event of a disagreement between the Council and the European Parliament, rather than with each proposal as specified in the current agreement — the objectives, purpose, amounts and roles of these instruments would remain unchanged; and
- replacement of references to the 'Council Presidency' or the 'Council', in relation to production of a forward-looking document and financial statement on Common Foreign and Security Policy spending, with references to the High Representative.

Additionally the requirement in the current agreement that the Commission report on its application has been removed from the draft on the grounds that it is obsolete.

### The Government's view

6.7 The Economic Secretary to the Treasury (Ian Pearson) says that the Government's overriding objectives in relation to EU Budget expenditure are to ensure budget-discipline, value for money and sound financial management, and comments further that the Government:

- welcomes inclusion of the existing 2007–2013 Financial Framework, the key tool for budget-discipline, into the Commission's proposed Multiannual Financial Framework Regulation — if agreed this will strengthen the legal base for the 2007–2013 Financial Framework, enhancing EU budget-discipline;
- considers that the changes to the EU Budget legislation required by the TFEU should be a technical exercise of incorporating the existing budget rules into new legal instruments, updated as required by the Treaty; and
- is broadly content that the Commission's proposals broadly reflect this approach and intends to work closely with other Member States in the Council to scrutinise the proposals and question any aspects that deviate from this approach and could have an impact on the Government's budgetary objectives.

## Conclusion

**6.8 We have no questions to ask on these largely technical, albeit important, proposals. However, in clearing them we draw the documents to the attention of the House for the information they give about EU financial management under the new Treaty arrangements.**

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

### Department for Business, Innovation and Skills

(31356)  
6806/10  
COM(10) 52

Commission Communication on the impact of the action plan to strengthen the Commission's supervisory role under shared management of structural actions.

(31369)  
7038/10  
COM(10) 54

Draft Regulation on amending Council Regulation (EC) No. 1215/2009 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process.

### Department for Environment, Food and Rural Affairs

(31367)  
6959/10  
COM(10) 30

Draft Council Decision concerning the conclusion, on behalf of the European Union, of the Protocol on Integrated Coastal Zone Management to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean.

(31370)  
6952/10  
+ ADDs 1-2  
COM(10) 60

Commission Annual Report on Member States' efforts during 2008 to achieve a sustainable balance between fishing capacity and fishing opportunities.

### HM Treasury

(31355)  
6791/10  
—

Opinion No.1/2010: *Improving the financial management of the European Union budget: Risks and challenges.*

# Formal minutes

---

**Wednesday 17 March 2010**

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey

Mr William Cash

Jim Dobbin

Mr Greg Hands

Keith Hill

Kelvin Hopkins

## **1. Scrutiny of Documents**

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

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

Paragraphs 1.1 to 3.13 read and agreed to.

Paragraph 3.14 read, amended and agreed to.

Paragraph 3.15 to 7 read and agreed to.

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

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

[Adjourned till Wednesday 24 March at 3.00 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](http://www.parliament.uk).

### Current membership

Michael Connarty MP (*Labour, Linlithgow and East Falkirk*) (Chair)  
 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*)