



House of Commons  
European Scrutiny Committee

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**Fourth Report of  
Session 2010–11**

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Documents considered by the Committee on 20 October 2010

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## Notes

### Numbering of documents

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

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

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

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

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

### Abbreviations used in the headnotes and footnotes

EC	(in " <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).

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# 1 Food distribution to deprived persons

(31957) 13435/10 COM(10) 486	Amended draft Council Regulation amending Council Regulations (EC) No 1290/2005 and (EC) No 1234/2007 as regards distribution of food products to the most deprived persons in the Union
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<i>Legal base</i>	Articles 42 and 43(2) TFEU; co-decision; QMV
<i>Document originated</i>	17 September 2010
<i>Deposited in Parliament</i>	23 September 2010
<i>Department</i>	Environment, Food & Rural Affairs
<i>Basis of consideration</i>	EM of 4 October 2010
<i>Previous Committee Report</i>	None, but see footnotes 3 and 6
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

## Background

1.1 In order to avoid a build-up of public intervention stocks, the Common Agricultural Policy (CAP) has over the years contained provisions for the subsidised sale of produce to specified outlets. In particular, a measure<sup>1</sup> was introduced in 1987, enabling produce in intervention stocks to be supplied free of charge to designated charitable organisations for distribution to the most deprived persons in those Member States which choose to participate.

1.2 According to the Commission, that measure contributed to achieving two of the objectives of the CAP in the Treaty — to stabilise markets, and to ensure that supplies reach consumers at reasonable prices — and has proved to be a reliable supply of food for the most deprived. It also says that the need for it has increased following successive enlargements, and as a result of recent rises in food prices, but it also notes that, with the various reforms of the CAP, intervention has been removed in some sectors,<sup>2</sup> whilst for the others it has now been restored to its original function as a safety net, thereby significantly increasing the programme's reliance on market purchases.

1.3 It therefore proposed<sup>3</sup> in September 2008 that the existing Community legislation in this area should be amended so as:

- to allow food to be sourced either from intervention stocks or from the market (though priority would be given to the use of suitable intervention stocks where these are available);

1 Council Regulation (EEC) No 3730/87 (OJ No. L 352, 15.12.87, p.1.) This measure was subsequently repealed, and integrated into Council Regulation (EC) No 1234/2007 (OJ No. L 299, 16.11.07, p.1.) which consolidated into one instrument existing sectoral legislation under the CAP.

2 Such as olive oil, sugar and maize.

3 See (29981) 13195/08: HC 16–xxxiii (2007–08), chapter 1 (29 October 2008).

- to enable a wider range of products to be distributed, allowing Member States to choose on the basis of nutritional criteria;
- to provide for the distribution to take place under an EU plan which would be established for three years, rather than annually at present;
- to provide for co-financing, with the EU making a contribution of 75% for 2010–12 and 50% for 2013–15 (85% and 75% respectively in Member States eligible for the Cohesion Fund).

1.4 As our predecessors noted in their Report of 29 October 2008, the UK has not participated in this scheme since the mid-1990s because of its dwindling intervention stocks and the bureaucratic overheads involved, and the then Government remained unconvinced as to the merits or appropriateness of the proposal, believing that the EU should act only where there are clear additional benefits. In particular, it considered that social measures are a matter for Member States, more properly and efficiently delivered through domestic social programmes<sup>4</sup> which take account of the prevailing situation and available funding in individual countries, and it therefore intended to work with like-minded Member States to oppose an expansion of the scheme.

1.5 Our predecessors also noted that the proposal was being made under the same legal base as the existing scheme (Article 37 of the EU Treaty), but that, since the focus of the revised scheme was more likely to be on the purchase of products on the open market, a number of Member States had questioned the appropriateness of that Article. In addition, they drew attention to the Commission's financial statement that the scheme would have no impact on the budget for 2008 or 2009, with any budgetary implications taking effect from 2010 and being determined when the first three-year food distribution programme (covering 2010–12) is drawn-up: and they pointed out that, should the EU budget be increased as a result of the new programme, this would have financial implications<sup>5</sup> for the UK.

1.6 In drawing the proposal to the attention of the House, they noted that it clearly raised some important issues on the future scope of the CAP, and the appropriateness of EU as opposed to Member State action. In view of this, the lack of clarity over the budgetary implications, and the questions over the proposed legal base, they recommended the document for debate in European Committee. That debate took place on 20 January 2009.<sup>6</sup>

1.7 Our predecessors also drew attention subsequently to a Special Report<sup>7</sup> (No 6/2009) by the European Court of Auditors on the EU's arrangements in this area, in which the Court highlighted certain concerns previously voiced by the UK and made a number of recommendations (including the need for the Commission to consider whether it is appropriate to continue financing such a measure through the CAP).

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4 Such as Healthy Start in the UK.

5 Either through its contributions to expenditure by other Member States (or, should it join the programme, being required to contribute 25% of any funds received under the co-financing arrangements, rising to 50% from 2013, in addition to which any receipts would serve to reduce the size of the UK's budget abatement).

6 *Gen Co Deb*, European Committee A, 20 January 2009, cols 3-7.

7 See (30962) 13721/09: HC 19--xxix (2008–09), Chapter 7 (28 October 2009).

## The current proposal

1.8 The Commission has now brought forward this amended proposal, which is intended mainly to align it with the Lisbon Treaty (notably by enabling the Commission to adopt delegated and implementing legislation under Articles 290 and 291 of the Treaty) and to reflect some of the views raised by the European Parliament. However, notwithstanding the comments by the Court of Auditors, it retains unchanged the main aspects of the original proposal, the only significant changes being to specify a lower minimum contribution from participating Member States of 25% (10% for cohesion countries), as compared with the 50% rate in the original proposal (25% for cohesion countries) after a three year transitional period, and to establish an annual ceiling of €500 million for the contribution from the EU budget. In addition, the proposal introduces enhanced reporting obligations on participating countries, and there would also be an obligation on the Commission to provide a report on the scheme in 2014.

## The Government's view

1.9 In his Explanatory Memorandum of 4 October 2010, Minister of State for Agriculture and Food at the Department for Environment, Food & Rural Affairs (Mr Jim Paice) reiterates most of the points made by the previous Government, including in particular reservations over the proposal's appropriateness on subsidiarity grounds, and stresses that measures of this kind should more properly be delivered through domestic social programmes and national funding. He also points out that, although the Lisbon Treaty now provides the legal base, that now proposed (Article 43 TFEU) is similar to the one used for the existing scheme, and that there remains a question-mark over its appropriateness given the prospect of purchases being made in future from the open market.

## Conclusion

**1.10 In light of our role under the Lisbon Treaty to monitor compliance with the principle of subsidiarity, we ask the Minister to clarify to what extent the Government objects to this proposal on the grounds of subsidiarity and to what extent on the grounds of competence, since this was not clear from his Explanatory Memorandum. In the meantime, we are setting out our preliminary analysis below, and we would be grateful for the Minister's comments on this in his response.**

1.11 It seems to us that, where intervention stocks are relied on for food aid, the Commission is competent to act under Articles 39(1)(c) and (e) and 43(2) TFEU, and that it is better placed to do so than a Member State, given its role in managing EU intervention stocks, as set out in Article 27 of Regulation (EC) No 1234/2007 (which establishes a common organisation of agricultural markets, and is thus a key component of the CAP). So we do not consider that food aid sourced from intervention stocks could be argued to infringe subsidiarity.

1.12 On the other hand, although the Commission says that "priority would be given to the use of suitable intervention stocks where these are available", where the food is sourced from the open market — which according to the Court of Auditors is more

often the case — the link with the CAP is tenuous, and so the legal base no longer seems to us to be valid, as the Court of Auditors also found. Moreover, as there appears to be no alternative legal base in the TFEU, and Article 352 TFEU is not invoked, we question where the EU gets its competence to act. This, however, is an argument about competence rather than subsidiarity (if the EU is not competent to act, subsidiarity does not come into play). So our initial conclusion is that the proposal raises questions of competence rather than subsidiarity.

1.13 We would be grateful if, in responding, the Minister could also tell us to what extent other Member States share the Government's views, and what his assessment is of the likelihood of Member States opposing the Commission's proposal.

1.14 Finally, because the timetable for issuing a reasoned opinion is so tight, we would be very grateful for a response in time for our meeting on 3 November.

## 2 Financial management

(31839) 12614/10 COM(10) 403	Draft Decision amending the Inter-Institutional Agreement of 17 May 2006 on budgetary discipline and sound financial management as regards the multiannual Financial Framework, to address the financing needs of the ITER project
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<i>Legal base</i>	—; co-decision; QMV
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	Minister's letter of 30 September 2010
<i>Previous Committee Report</i>	HC 428–ii (2010–11), chapter 9 (15 September 2010)
<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 Inter-Institutional Agreement on budgetary discipline and sound financial management provides for many aspects of the planning, preparation, execution and control of the EU Budget. The agreement is between the Council, the European Parliament and the Commission — it has no legal base but is politically binding. It is an important tool of budgetary discipline and includes a multiannual Financial Framework. The Financial Framework is intended to ensure that, in the medium term, EU expenditure develops in an orderly manner and within the limits of its own resources. It contributes to budgetary discipline by setting ceilings on the amount of funds available to the EU Budget in broad

policy areas for each year it covers. The current Inter-Institutional Agreement was agreed in June 2006 and its Financial Framework spans spending over 2007–2013.<sup>8</sup>

2.2 On 4 May 2010 the Commission presented a Communication, *ITER status and possible way forward*, which, amongst other things, identified a shortfall in funding for the International Thermonuclear Experimental Reactor (ITER).<sup>9</sup> On 12 July 2010 the Council adopted conclusions that confirmed the short-term financing need for additional commitment appropriations for ITER, identified by the Commission as €1.4 billion (£1.2 billion) in 2012 and 2013 — that includes €800 million (£660 million) in 2012 and €600 million (£495 million) in 2013. The Council called on the Commission to propose securing this funding within the overall ceiling of the current Financial Framework, based primarily on redeployment of funds within Heading 1a of the budget (competitiveness for growth and employment). At the same time, Council said that the EU contribution to ITER's construction phase must be limited to €6.6 billion (£5.4 billion) (in 2008 values) over the period 2007–2020, and called for greater cost control and containment.<sup>10</sup>

2.3 This draft Decision is intended to amend the Inter-Institutional Agreement on EU financial management so as to change the Financial Framework for 2007–2013 in order to meet the Council's conclusions of July 2010 on ITER financing. In July 2010 the Commission put forward this as a means of securing €860 million (£709 million) of the €1.4 billion (£1.2 billion) additionally required for 2012 and 2013 — it suggested that:

- €460 million (£379 million) be secured through redeployment of funds within the 7th Research Framework Programme under Heading 1a; and
- a further €400 million (€330 million) be transferred, from the unallocated margin of Heading 2 (preservation and management of natural resources) in 2010, to Heading 1a in 2012 and 2013.

This would result in no overall increase to the Financial Framework.

2.4 When we considered this document, in September 2010, we heard that:

- the Government supports ITER as a vital step to practical fusion energy supply, while considering that important management issues need to be addressed, along with the rising costs of the project;
- for this reason the Government supported the Council conclusions of 12 July 2010 on ITER, including the call for cost control and containment and for further improvement of the governance of the ITER project;
- it would argue, therefore, for a more substantial proportion of the funding shortfall for ITER to be met through redeployment of funds within Heading 1a; and
- it was important to note in this context that the Financial Framework already foresees a substantial increase of funding for the 7th Research Framework Programme from

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

9 See <http://www.iter.org/>.

10 See (31601) 9424/10 + ADD 1: HC 428-i (2010–11), chapter 27 (8 September 2010).

2010–2013, reflecting the continued strategic importance to the EU of research, innovation and development work.

We commented that, whilst we recognised the importance of the ITER project, we shared the Government’s concern about the use of unallocated margins. So before considering the proposal further we asked to hear from the Minister about developments in the Government’s push for a more substantial proportion of the funding shortfall for ITER to be met through redeployment of funds within Heading 1a. Meanwhile the document remained under scrutiny.<sup>11</sup>

## The Minister’s letter

2.5 The Economic Secretary to the Treasury (Justine Greening) tells us now that:

- UK officials continue to engage with their counterparts in other Member States, to encourage support for the Government’s approach;
- the Council’s budget committee discussed the Commission’s financing proposal on 6 September 2010 and a substantial majority of Member States had concerns about the proposal, specifically referring to the need fully to respect Council’s call for the financing shortfall to be funded “primarily through redeployment within Heading 1a”;
- in addition the majority, like the Government, wished to see the entire funding shortfall addressed at once, rather than in a series of decisions as suggested by the Commission;
- the Commission and the Presidency are now considering how to proceed towards a solution on this matter, given the negative view of Council on the Commission’s financing proposal; and
- the Government will continue to work hard, with Member States, the Commission and the European Parliament, to achieve its goals in the financing of the funding shortfall for ITER.

## Conclusion

**2.6 We are grateful to the Minister for this interim account of where matters stand on this document and look forward to hearing further about developments. Meanwhile the document remains under scrutiny.**

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<sup>11</sup> See headnote.

### 3 Financial services

(31956) 13840/10 + ADDs 1–2	Draft Regulation on short selling and certain aspects of credit default swaps
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<i>Legal base</i>	Article 114 TFEU; co-decision; QMV
<i>Document originated</i>	15 September 2010
<i>Deposited in Parliament</i>	22 September 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 22 September 2010
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	Not yet known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

#### Background

3.1 The Commission held a four week public consultation on short selling,<sup>12</sup> during June and July 2010, following both the various restrictions on short selling imposed by most Member States in the autumn of 2008 and the concerns expressed by some governments about the possible role played by credit default swaps in relation to the prices for Greek sovereign bonds in the spring of 2010.<sup>13</sup>

#### The document

3.2 With this draft Regulation the Commission proposes introduction of a number of permanent measures, as well as some temporary measures to be employed in adverse circumstances, in relation to the short selling of financial instruments.

3.3 The permanent measures the draft Regulation would introduce are:

- a two-tiered disclosure regime for equities, in line with the recommendations made by the Committee of European Securities Regulators — persons (both natural and legal) would be required to notify the relevant competent authority if they had a net short position equal to 0.2% of the value of the issued share capital of the company concerned and each 0.1% above that, to disclose to the public details of their net short position if it equalled 0.5% of the value of the issued share capital of the company concerned and each 0.1% above that and to disclose if the person's net short position were to fall below each threshold;

12 The practice of selling assets that have been borrowed from a third party with the intention of buying identical assets back at a later date to return to the lender and with the hope of profiting from a decline in the price of the assets between the sale and the repurchase.

13 A sovereign credit default swap is a contract in which one party pays a fee to another party in return for compensation or payment in the event of the sovereign experiencing a specified credit event (such as where a sovereign repudiates or declares a moratorium on paying its debt).

- a private disclosure regime for significant net short positions in sovereign debt — persons would be required to notify the relevant competent authority of significant net short positions relating to the issued sovereign debt of a Member State or of the EU. As with the equities disclosure regime, a threshold would be set at an initial amount and then incremental amounts above that. A disclosure would also be made when the person's net short position falls below each threshold. The Commission would set the disclosure thresholds at a later stage by means of a delegated act and they might be different for each Member State;
- a similar private disclosure regime for 'naked' (or 'uncovered') sovereign credit default swaps. A sovereign credit default swap can be said to be 'naked' if the buyer of protection does not own direct exposure to the underlying sovereign debt. Naked credit default swaps are covered in the draft Regulation because they are the economic equivalent of shorting a debt instrument;
- a requirement for competent authorities to summarise the information they have gathered through the disclosure regime and relay this to the European Securities and Markets Authority on a quarterly basis — the authority would be able to request additional information about net short positions relating to shares, sovereign debt or naked credit default swaps from a competent authority, which would be required to provide this within seven calendar days;
- a requirement for persons trading on a trading venue (a regulated market such as the London Stock Exchange or a multilateral trading facility such as Chi-X Europe Ltd) to mark their short sales on that venue — this would allow individual trades to be identified as short sales. The trading venue is then required to publish at least daily a summary of the volume of orders marked as short orders;
- restrictions on the naked short selling of shares and sovereign debt — one of three conditions would have to be fulfilled: either the shares or sovereign debt instrument are borrowed, the person has entered into an agreement to borrow the shares or instrument or the person has an arrangement with a third party under which that third party has confirmed that the shares or instrument has been located and reserved for lending so that settlement can be effected when it is due. The Commission would further clarify the types of agreements or arrangements meant;
- exemption from the proposed disclosure obligations, the marking regime and the restrictions on naked short selling for market makers, who use short selling to fill client orders when the stock they need is not immediately available, and for authorised primary dealers, who act similarly in the sovereign debt market;
- a requirement for trading venues or central counterparty clearing houses to introduce mandatory buy-in procedures and fines for late settlement. Where the short seller were not able to deliver the shares or sovereign debt instrument for settlement within four working days after the day on which the trade took place, or six trading days after the day on which the trade took place in the case of market making activities, then, in order to ensure delivery for settlement, the trading venue or clearing house would have to buy-in the shares or instrument. If this were not possible, then cash compensation would have to be paid to the buyer based on the value of the shares or debt to be

delivered at the date due plus an amount for any losses incurred by the buyer. The short seller who failed to settle would have to repay all the costs incurred by the trading venue or clearing house and would have the obligation to make daily payments (in effect, a fine) for each day that the failure continued;

- an obligation for competent authorities to cooperate with each other, including entering into agreements with competent authorities in countries both inside and outside the EU to exchange information and facilitate enforcement; and
- a role for the European Securities and Markets Authority in coordinating investigation or inspection where that concerned more than one Member State.

3.4 The transparency requirements would apply regardless of where the person were located, including where the person were located outside the EU, but had a significant net short position in a company that had shares admitted to trading on a trading venue in the EU or a net short position in sovereign debt issued by a Member State or the EU. The disclosure regime would not apply to short positions in companies where the principal venue for trading their shares is outside the EU. The restrictions on naked short selling and the buy-in procedures and fines for late settlement would not apply to shares of a company admitted to trading on a trading venue in the EU where the principal venue for the trading of the shares were located in a third country. The European Securities and Markets Authority would have to publish a list of such exempt shares every two years.

3.5 The draft Regulation would give competent authorities and the European Securities and Markets Authority power to introduce a variety of temporary measures, where there were adverse developments. The authority could take such action when the orderly functioning and integrity of financial markets or the stability of whole of part of the EU financial system was under threat. Competent authorities could take action when there was a serious threat to financial stability or to market confidence in the Member State or its neighbours or in the EU.

3.6 In connection with temporary measures taken by competent authorities the draft Regulation would introduce:

- the power, in defined adverse situations, for a competent authority to introduce a disclosure regime covering short positions in all financial instruments, to prohibit or impose conditions on short selling and to prevent persons from entering into transactions relating to financial instruments or limiting the value of permissible transactions. The competent authority would be free to set parameters, by applying these restrictions to transactions in a specified share, or class of shares, or in other specified circumstances, which are not further defined, would be able to provide for exemptions in specified cases and would be able to impose equivalent restrictions on credit default swap transactions relating to sovereign debt;
- a requirement for the competent authority to notify the European Securities and Markets Authority and other competent authorities of its intention to take any of those measures at least 24 hours before the action was to be taken, unless that were simply not possible or in the case of an introduction of a circuit-breaker — this would allow other competent authorities to consider taking similar action;

- a requirement, within 24 hours of notification, for the European Securities and Markets Authority to respond with an opinion on whether the proposed or actual measure was necessary, justified and of the correct duration and if it considered that other competent authorities should take similar measures;
- a requirement for a competent authority, if it proposed to take measures contrary to the European Securities and Markets Authority opinion, to publish immediately on its website a notice fully explaining its reasons for doing so;
- a provision allowing these temporary measures to be imposed initially for a maximum three month period and to be renewed for further periods not exceeding three months at a time;
- the power for a competent authority to prohibit short selling when the price of a share has fallen by 10% during a trading day from the closing price the previous day. This would apply to other financial instruments, with the Commission specifying in a delegated act the appropriate fall in value for financial instruments other than shares. Such a restriction, or ‘circuit-breaker’ would be temporary and apply for a period not exceeding the day after the price fall; and
- a requirement for the competent authority to publish on its website notice of any decision to impose or renew any temporary measure, outlining the reasons for the actions taken and the evidence to support it.

3.7 In connection with temporary measures taken by the European Securities and Markets Authority the draft Regulation would introduce:

- the ability of the authority to place temporary restrictions directly on both natural and legal persons when the activities carried out threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system and it was not satisfied that the competent authority or Authorities had taken adequate measures to address the threat. In such situations the European Securities and Markets Authority could prohibit persons from trading or limit the value of such trading, prohibit persons from entering into short sales or impose conditions on such sales, prohibit sovereign credit default swaps transactions, limit the value of naked sovereign credit default swaps and require public disclosure of short selling;
- a requirement for the European Securities and Markets Authority to give competent authorities 24 hours notice of any such temporary restriction (unless, in exceptional circumstances, this were not possible);
- requirements for the European Securities and Markets Authority, where appropriate, to consult with competent authorities and the European Systemic Risk Board before taking its decision and to review its decision at appropriate intervals and at least every three months after which, if it were not renewed, it would end;
- the ability for the European Securities and Markets Authority to override any measures taken by a Member State, or to impose measures if the Member State had not deemed it necessary but ESMA considered such measures necessary to address a threat to the

orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system;

- a requirement for the Commission to provide further clarity on the definition of such adverse events, developments and threats to the orderly functioning and integrity of the financial markets;
- the ability of the European Securities and Markets Authority to conduct an inquiry into a particular issue or practice relating to short selling or credit default swaps to assess whether any threat was being posed by them; and
- a requirement for the European Securities and Markets Authority to publish the findings of any such inquiry.

3.8 The proposed Regulation would be directly applicable in all Member States, is expected to apply from 1 July 2012 and would be reviewed by 30 June 2014.

### The Government's view

3.9 The Financial Secretary to the Treasury (Mr Mark Hoban) tells us, in relation to the EU Charter of Fundamental Rights, that:

- the requirement in the draft Regulation that information in relation to net short positions held by a person should be publicly disclosed might give rise to issues in relation to Article 7 (respect for private and family life) of the Charter if the information concerned is personal information — this would not usually apply (in most cases a person holding a short position would not be trading on their own account) and where it did the requirement for disclosure would be likely to be justified; and
- the exercise of powers given to competent authorities and to the European Securities and Markets Authority in the proposed Regulation to prevent persons from entering into certain transactions might in some circumstances raise issues under Article 17 (right to property) of the Charter.

3.10 On the policy implications of the proposal the Minister first says that:

- as the Commission acknowledges, most studies conclude that short selling contributes to the efficiency of markets, increasing market liquidity and leading to the more efficient pricing of securities and ultimately a better deal for investors;
- the Commission also acknowledges that short selling is an important tool that is used for hedging and other risk management activities and market making; and
- the Government supports these views.

3.11 The Minister then comments that:

- the Government agrees that it is important that all Member States have clear and unequivocal powers to take action against short selling in adverse circumstances;

- the UK introduced a temporary short selling prohibition in the autumn of 2008 at a time of extreme market turbulence — this temporary prohibition naturally expired in January 2009 when the market conditions prevalent had ceased, principally when the sharp share price declines in individual banks that led to pressure on their funding had normalised;
- the Financial Services Authority maintains a disclosure regime in relation to short positions in stocks in UK financial sector companies as a proportionate response to any outstanding or future risk short selling may present;
- short selling which is carried out in connection with abusive strategies (such as the spreading of false rumours in order to drive down prices) is already prohibited by the Market Abuse Directive;
- the Financial Services Act 2010 gives the Financial Services Authority clear powers to take action against short selling and to impose a disclosure regime on equities;
- therefore, the Government welcomes the Commission’s proposals towards enhanced transparency requirements for equities and is supportive of the two tier disclosure regime — these proposals are in line with those of the Committee of European Securities Regulators, which the Financial Services Authority attends on behalf of the UK;
- the Government believes any further proposals imposing restrictions or measures on short selling should be both evidence based and proportionate;
- it is aware that no evidence has yet been presented to support a disclosure regime in sovereign bonds, or to support restrictions on credit default swaps;
- naked sovereign credit default swaps can be used for a variety of different purposes other than insurance against actual sovereign default, such as managing the general credit exposure from that country;
- the proposed disclosure measures and restrictions on naked short selling relating to sovereign debt have the potential for a negative impact on sovereign bond markets across the EU and ultimately on a sovereign’s cost of borrowing;
- the Government notes that these proposals give the European Securities and Markets Authority powers to intervene in UK markets, including over the UK gilt market, and believes that the power to intervene in these markets should rest with Member States due to the fiscal impact of interventions in sovereign debt markets;
- the proposal implies significant and unmet ongoing costs for both firms and individuals, trading venues and clearing houses in establishing the infrastructure necessary to meet its requirements; and
- the Government does not support proposed restrictions on short selling that are not evidence based and have little in the way of quantifiable benefit.

3.12 Turning to the financial implications of the draft Regulation the Minister says that the Commission's Impact Assessment identifies the risks, and therefore the costs, of short selling during adverse developments:

- the risk of negative price spirals;
- the risk of settlement failure associated with naked short selling;
- transparency deficiencies; and
- regulatory arbitrage and increased compliance costs.

In the Impact Assessment the Commission argues that these risks are likely to occur again in the future without the proposed Regulation and that uncoordinated national measures are more costly to market participants. The cost of these risks has not been quantified.

3.13 On the Commission's estimates of the costs of the proposed Regulation the Minister says that:

- the EU-wide one-off compliance cost related to the notification and disclosure requirements of equities is approximately €137 million (£113 million);
- annual ongoing costs are estimated to be 10% of this cost, or approximately €13.70 million (£11.30 million);
- these costs represent investment in information technology and information systems, training and compliance procedures;
- the ongoing annual cost of disclosure to the regulator and to the public when the relevant equities threshold is exceeded is estimated to be approximately €2.10 million (£1.73 million) — therefore, the annual EU-wide compliance cost of an equities disclosure regime (not including the one-off cost) is approximately €15.80 million (£13 million);
- the one-off costs for the sovereign bond disclosure requirement is estimated to be in the order of €34.20 million (£28.20 million), with an annual cost of €3.40 million (£2.80 million) and, when the thresholds are exceeded, a further €1.60 million (£1.30 million) — therefore, the annual EU-wide compliance cost of a sovereign bond disclosure regime (not including the one-off cost) is in the order of €5 million (£4.10 million);
- the administrative cost on regulators of quarterly reporting to European Securities and Markets Authority of significant net short positions in their jurisdictions, based on two hours work by a manager, is estimated to be a total annual EU-wide cost to regulators of €6,758 (£5,574); and
- this cost does not include the cost of establishing a marking regime, because no cost estimates other than from the UK have been received — the Financial Services Regime has previously estimated that the cost to individual broking firms of establishing a marking regime would vary from several hundreds of thousand pounds to around £2 million.

3.14 On consultation the Minister says that key industry stakeholders are aware of the proposal and that the Treasury arranged a stakeholder group ahead of the first Council working group meeting.

## Conclusion

3.15 It is clear that the Government has, with good reason, considerable reservations about this draft Regulation. We share these reservations. However before considering the document further, which we are likely in due course to recommend for debate, we should like to hear from the Government about:

- discussion of the draft Regulation in the Council working group, particularly in relation to the Charter of Fundamental Rights, to the potential for fiscal consequences of European Securities and Markets Authority market interventions, to the lack of an evidence base for the proposal and to the unquantified cost of the risks being addressed; and
- representations made to the Government by UK stakeholders.

Meanwhile the document remains under scrutiny.

## 4 Financial services

(31958) 13917/10 + ADDs 1–2 COM (10) 484	Draft Regulation on OTC derivatives, central counterparties and trade repositories
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<i>Legal base</i>	Article 114 TFEU; co-decision; QMV
<i>Document originated</i>	15 September 2010
<i>Deposited in Parliament</i>	23 September 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 22 September 2010
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	Not yet known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested

## Background

4.1 The financial crisis highlighted deficiencies within the over-the-counter (OTC) derivatives markets — a traditionally opaque part of the market traded bilaterally between firms rather than over exchanges. These deficiencies were:

- counterparty risk — the web of relationships in the OTC market means the fear of default of a major market participant can have systemic implications. The AIG affair highlighted weaknesses in the management of counterparty risk, when a credit downgrade required AIG to post collateral it could not afford; and
- transparency — the financial crisis, for example, the failure of Lehman Brothers, demonstrated that market participants and regulators did not have sufficient visibility of exposures in the OTC market, causing unwillingness to trade in stressed markets.

To address these issues the G20 agreed at the Pittsburgh summit on September 2009:

“To this end, all standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements.”

4.2 The Commission has examined derivatives markets and their regulation and published in 2009 two Communications suggesting future policy actions for the regulation of derivatives markets at EU level. The first Communication, *Ensuring efficient, safe and sound derivatives markets*,<sup>14</sup> presented the findings of an in-depth Commission review of the derivatives markets and launched a consultation on the regulation of derivatives markets. The second, *Ensuring efficient, safe and sound derivatives markets: Future policy actions*,<sup>15</sup> outlined “the policy actions the Commission intends to take in 2010 to ... meet the need for greater stability and transparency in these markets.”

## The document

4.3 This draft Regulation would be the main way to implement in the EU the G20 commitment on OTC derivatives, central counterparties and trade repositories. The proposal includes six broad measures:

- requiring central clearing for OTC derivative trades where appropriate;
- new prudential and organisational standards for Central Counterparties (CCPs);
- a requirement to report derivative transactions to trade repositories;
- new arrangements for authorisation and supervision of CCPs following the creation of the pan-EU regulatory authorities;
- new supervisory arrangements for trade repositories; and
- a right for CCPs to interoperate in clearing cash instruments.

14 See (30788) 11873/09 + ADDs 1–2: HC 19–xxvi (2008–09), chapter 7 (10 September 2009) and HC 19–xxxi (2008–09), chapter 13 (11 November 2009).

15 See (31055) 15047/09: HC 5–i (2009–10), chapter 22 (19 November 2009).

4.4 Requiring CCP clearing would make CCPs the counterparty for all eligible trades and as ‘circuit breakers’ in the web of counterparty risk in the event of market stress. The draft Regulation:

- is broad in scope and could potentially capture all market participants and all forms of OTC derivatives;
- would, however, give discretion to the European Securities and Markets Authority to devise rules that would exempt non-financial, that is corporate, end users of OTC derivatives where they were hedging commercial risk or were not systemically significant;
- would have the European Securities and Markets Authority develop objective criteria for adoption by the Commission to assess whether obligatory central clearing would be appropriate for any given OTC derivative product. This process would be initiated when a national regulator approved a CCP’s proposal to clear a new type of derivative product;
- would require the European Securities and Markets Authority, with the European Systemic Risk Board, to develop a list of products, not yet available for central clearing at any eligible CCP, that should potentially be subject to the clearing obligation; and
- includes measures to improve the risk management of derivative transactions that would remain ineligible for central clearing.

4.5 Given the increased systemic significance of CCPs that would result from obligatory central clearing, the draft Regulation provides for new organisational and prudential requirements for CCPs. The draft Regulation would:

- set out on the prudential side common standards for the mechanisms that protect a CCP against failure, notably participation requirements, financial resources, margin calls and the overall default waterfall; and
- set out organisational requirements to ensure CCPs have appropriate governance and risk management arrangements.

4.6 The draft Regulation would:

- require market participants to report the detail of derivative transactions to a trade repository, in order to address the lack of transparency in the OTC derivatives market and give regulators better access to appropriate data;
- move responsibility for registration and supervision of trade repositories from national regulators to the European Securities and Markets Authority;
- require trade repositories be established in the EU, although with scope for recognition by the European Securities and Markets Authority of third country trade repositories that meet specified stringent requirements;
- set out the relationship between CCPs, national regulators and the new European Supervisory Authorities;

- provide for national regulators to be the lead body responsible for authorisation and supervision of CCPs, the European Securities and Markets Authority to have a central role in the college of competent authorities responsible for CCP authorisation decisions and the Authority to facilitate adoption of a joint opinion in the event of disagreement within the college; and
- give CCPs the right to seek interoperability arrangements with other CCPs for clearing cash instruments, provided regulators are satisfied that risks are appropriately managed, with the aim of reducing the fragmented EU post trading infrastructure.

4.7 The draft Regulation would delegate development of much of the technical detail to relevant European Supervisory Authorities, requiring them to submit draft technical standards to the Commission by 31 December 2012, drawn up in accordance with the European Supervisory Authorities legislation, which requires the relevant Authority to consider the costs and benefits and to consult publicly and the Commission to consult the Council and the European Parliament.

### The Government's view

4.8 The Financial Secretary to the Treasury (Mr Mark Hoban) says that the Government believes that the draft Regulation is justified under the principle of subsidiarity because of the need to have consistent application of the clearing obligation throughout the EU, as in the G20 agreement. But, noting that the draft Regulation proposes national supervision of CCPs but supervision of trade repositories by the relevant European Supervisory Authority, he adds that in Council working group negotiations the Government will be keen to ensure that national authorities have a central role in supervising CCPs and trade repositories.

4.9 On the policy implications of the proposal the Minister says that:

- the Government fully supports the implementation of the G20 commitment to increase the safety of the OTC derivatives market;
- the draft Regulation is a critical element of the package of regulatory reforms being implemented in response to the financial crisis, addressing some of the fundamental weaknesses revealed by it;
- transparency in the OTC derivatives market would be transformed by the reporting of transactions to trade repositories and the management of counterparty risk will see a step change enhancement through obligatory central clearing for appropriate derivative products; and
- the Government is aware of the potential implications of concentrating systemic risk within CCPs and the cost of requiring market participants to hold more collateral against derivative positions to comply with CCPs risk management requirements.

He continues that, overall, the Government therefore believes these aims should be achieved in a way that does not discriminate against UK market participants and infrastructures, ensures the regulatory burden imposed is proportionate to the benefit in terms of systemic risk reduction and supports the introduction of robust prudential

standards for CCPs — “thus [it] will be keen to protect the UK position at Working Group.” The Minister adds that it is important that reforms are implemented consistently across G20 partners to prevent regulatory arbitrage.

4.10 On some of the detail of the draft Regulation the Minister says that:

- the Government broadly supports the Commission’s proposal, but notes that the impact on market participants and the resulting reduction in systemic risk will in large part be determined by the detailed technical rules the draft Regulation would require the European Securities and Markets Authority and the European Banking Authority (EBA) to develop for adoption by the Commission;
- given the inherently prudential nature of much of the proposal, the Government believes there are good arguments for a greater involvement of the European Banking Authority in developing and implementing these rules than the draft Regulation currently proposes;
- the Government supports assigning the European Supervisory Authorities responsibility for determining which products should be subject to the clearing obligation, which is a key part of this proposal and will be concerned to ensure that the European Supervisory Authority has the flexibility and expertise to take these decisions in an appropriate and proportionate way;
- the Government supports the principle in the proposal that no CCP should be forced to clear a product it is not comfortable risk managing;
- it supports the proportionate approach suggested by the Commission for corporate (non-financial) market participants, but notes that more work will be required by the European Supervisory Authorities to ensure the detailed implementation of the proposed thresholds is effective in reducing systemic risk, while not imposing unnecessary uncertainty and burden on corporate users of OTC derivatives;
- the Government believes there may be a case for similar flexibility in applying the clearing obligation to financial firms which do not present a systemic risk;
- it supports the Commission’s proposal to give national regulators the lead role in supervising and authorising CCPs, given the potential fiscal risk they represent; and
- the Government believes that national authorities should be responsible for the authorisation and ongoing supervision of trade repositories.

4.11 The Minister, noting that the Commission’s impact assessment is largely qualitative in nature given the opacity of the OTC derivative markets, says that the Government broadly agrees with the conclusion — that the costs are likely to be outweighed by the benefits of market stability brought about by these proposals. He adds that the exact costs of the proposal will depend on the scope of products that will ultimately be submitted to CCP clearing.

4.12 The Minister tells us that the Government has consulted widely with CCPs, clearing banks and buy-side market participants and their trade associations as this draft legislation has been developed.

## Conclusion

4.13 We note that, although the Government is generally supportive of this draft Regulation, there are matters which it wishes to see addressed during negotiation of the proposal. So before considering the document further we should like to hear from the Minister about progress on these matters, including the potential subsidiarity point he mentioned. We should also like to hear about the views of those the Government has been consulting about the draft Regulation. Meanwhile the document remains under scrutiny.

## 5 Cross-border road transport of euros

(a) (31849) 12675/10 COM(10) 376	Draft Regulation extending the scope of Regulation XX on the professional cross-border transportation of euro cash by road between euro-area Member States
(b) (31850) 12680/10 COM(10) 377	Draft Regulation on the professional cross-border transportation of euro cash by road between euro-area Member States
+ ADDs 1–6	Commission staff working documents: impact assessment and summary of impact assessment

<i>Legal base</i>	(a) Article 352 TFEU; EP consent; unanimity (b) Article 133 TFEU; co-decision; QMV
<i>Document originated</i>	14 July 2010
<i>Deposited in Parliament</i>	2 August 2010
<i>Department</i>	Home Office
<i>Basis of consideration</i>	Minister's letter of 4 October 2010
<i>Previous Committee Report</i>	HC 428–ii (2010–11) chapter 14 (15 September 2010)
<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

5.1 The euro was launched on 1 January 1999 and euro banknotes and coins were introduced for cash payments on 1 January 2002. There are currently 16 EU Member States that have adopted the euro as their official currency, which together comprise the euro area.<sup>16</sup> The UK and Denmark both have an opt-out which exempts them from participation in the euro. The remaining nine Member States have not yet met the conditions for adopting the euro.

5.2 Document (b) seeks to facilitate the free circulation of euro banknotes and coins within the euro area by means of a Regulation establishing common rules on the cross-border transportation of euro cash by road. It is based on Article 133 of the Treaty on the Functioning of the European Union (TFEU) which provides for the adoption of measures “necessary for the use of the euro as the single currency”. Article 133 is in Title VIII of Part Three of the Treaty concerning economic and monetary policy, under the chapter on monetary policy. The purpose of this chapter is to establish the objectives, tasks and governance of the European System of Central Banks (ESCB — comprising the European

<sup>16</sup> Participating Member States are Belgium, Germany, Ireland, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland (since 1999), Greece (2001), Slovenia (2007), Cyprus and Malta (2008) and Slovakia (2009).

Central bank and national central banks); regulate the issuing of euro banknotes and coins; and provide the necessary powers to adopt measures for the use of the euro as the single currency in euro Member States.

5.3 Article 133 TFEU only applies to those Member States whose currency is the euro. This means that the UK and the ten other non-euro Member States would not form part of the qualified majority required to adopt the draft Regulation, would not take part in the vote, and would not be bound by the Regulation.

5.4 Document (a) makes provision for the common rules set out in document (b) to be extended automatically to any Member State currently outside the euro area once the Council has decided that it has satisfied the conditions for participating in the single currency. It is based on Article 352 TFEU which empowers the EU to act if “necessary, within the framework of the policies defined by the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers”. EU measures must be unanimously agreed by all Member States. Moreover, because Article 352 TFEU is a residual legal base, only enabling the Union to act in the absence of any other Treaty Article conferring the necessary powers, the Lisbon Treaty expressly requires the Commission to alert national parliaments to its proposed use.

5.5 The common rules proposed in document (b) would require Member States within the euro area to establish a special licensing regime for professional “cash-in-transit” (“CIT”) companies wishing to transport euro cash by road across internal borders to another euro Member State. EU action is justified, according to the Commission, because Article 133 TFEU imposes a duty to ensure the free and efficient circulation of euro cash and because it is the only practicable way of reconciling divergent national rules which have resulted in a heavily segmented CIT market.

## Previous scrutiny

5.6 In her Explanatory Memorandum of 12 August, the Minister of State for Security and Counter-Terrorism at the Home Office (Baroness Neville-Jones) said that the Commission’s proposals would not apply to the UK unless the UK were to decide to join the euro and so there would be no immediate legal, policy or financial implications. She highlighted a number of provisions which would present difficulties if they were to apply to the UK, notably those concerning the carriage of firearms and the potential additional costs for CIT companies. The Minister did not question the Commission’s choice of legal base for the proposals or their compliance with the principle of subsidiarity.

5.7 We questioned the choice of legal base for documents (a) and (b) for the following reasons:

- the principal purpose of document (b) appeared to fit more readily with the EU’s internal market objectives, notably the removal of obstacles to the free movement of goods and services, than with the monetary policy objectives contained in Title VIII, Part Three of the TFEU;
- the use of an internal market legal base would obviate the need for a separate Regulation — document (a) — based on Article 352 TFEU and ensure that there was

no future risk that the UK might be bound to implement common rules over which it had had little or no say; and

- there was, moreover, a possibility that the adoption of the common rules proposed in document (b) would also affect the free movement of goods and services in non-euro area Member States, thus strengthening the case for an internal market legal base.

5.8 We also questioned whether there was a sufficient need for EU regulation in light of the evidence adduced in the Commission’s explanatory memorandum that the CIT market was predominantly local in character and any impediment to the free circulation of euros was mainly limited to certain border areas. We invited the Minister to respond to our concerns and kept both documents under scrutiny.

### The Minister’s letter of 4 October 2010

5.9 The Parliamentary Under-Secretary of State at the Home Office (Lynne Featherstone) tells us that the Government can see arguments in favour of the use of the single market legal base. She continues:

“However, we also believe that it is arguable that Article 133 could be appropriate to achieve the aims it sets out. We do not therefore intend to challenge the choice of legal base in relation to this dossier. By virtue of Protocol 15 to the Treaties, the UK Economic and Monetary Protocol, the UK does not participate in the shaping of measures based on Article 133 TFEU and such measures do not apply to the UK unless and until the UK decides to adopt the euro. Going forward, I understand that Treasury colleagues will nevertheless carefully monitor the use of Article 133 and are mindful of the risks that measures adopted on the basis of this provision could lead to a partitioning of the common market”.

5.10 On the question of subsidiarity, the Minister recognises that “the scale of the challenge the Commission is addressing does not appear to be great” but says that the Commission’s Impact Assessment considered the possibility of bilateral or multilateral agreements between neighbouring euro Member States to establish rules for cross-border transportation of euros and concluded that such agreements were unlikely to materialise on a large scale. The Government’s view, therefore, is that

“if the Commission is to pursue improved cross-border transport of euros, then unilateral action appears to be the most appropriate course. While bilateral agreements might have been appropriate in the past, to seek to facilitate cross-border cash transportation across all the euro-Member States by that means now would seem bureaucratic and resource intensive. Moreover it would become increasingly so if new members join the euro.”

### Conclusion

5.11 **We thank the Minister for her response. However, we continue to question whether Article 133 TFEU is the correct legal base for document (b) for the following reasons. First, the Minister says it is arguable that Article 133 could be appropriate to achieve the aims set out in document (b). We should be grateful if she could explain**

how and why she considers it to be appropriate, in light of the wording of Article 133 and the broader objectives set out in Title VIII, Part Three of the TFEU. Second, the Minister says that there are arguments in favour of using a single market legal base. If that is the case, we ask the Minister to explain why she thinks the Commission is justified in proposing a further Regulation — document (a) — based on Article 352 TFEU. Article 352 only authorises EU action to attain one of the objectives set out in the Treaties in cases where the Treaties have not provided the necessary powers. The Minister appears to acknowledge that the Treaty does confer the necessary powers to regulate the cash-in-transit market and that they are to be found in the internal market provisions of the TFEU. Use of these provisions would obviate the need for a separate Regulation based on Article 352 TFEU.

5.12 In our previous Report, we asked the Government to confirm whether there was a possibility that the common rules proposed in document (b) would affect the free movement of goods and services in Member States outside the euro area. If it would, this would seem to strengthen the case for using an internal market legal base. The example we have in mind is the land border between the Republic of Ireland and Northern Ireland. We should be grateful for the Government's view.

5.13 We raise a further concern regarding the use of Article 133 TFEU. Article 3(1)(c) TFEU states that the Union has exclusive competence in the area of monetary policy for the Member States whose currency is the euro. As previously noted, Article 133 features among the Articles in Title VIII of Part Three of the TFEU dealing with monetary policy. We ask the Government whether it considers that the Commission, in proposing Article 133 as the legal base for document (b), is seeking to assert exclusive competence for rules governing the transportation of euros and, if so, to explain what consequences this would have if, for example, the UK were to seek to conclude a bilateral agreement on the transportation of currency by road with the Republic of Ireland.

5.14 Pending the Government's response, we shall keep the draft Regulations under scrutiny.

## 6 Right to information in criminal proceedings

(31834) 12564/10 + ADD 1–2 COM(10) 392	Draft Directive of the European Parliament and of the Council on the right to information in criminal proceedings
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<i>Legal base</i>	Article 82(2) TFEU; co-decision; QMV
<i>Deposited in Parliament</i>	28 July 2010
<i>Department</i>	Justice
<i>Basis of consideration</i>	Minister's letter of 29 September 2010
<i>Previous Committee Report</i>	HC 428–ii (2010–11); chapter 15 (15 September 2010)
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Legally important
<i>Committee's decision</i>	Not cleared; further information requested

### Background

6.1 This proposal is the second step of the procedural rights Roadmap, which was adopted by the Council in November 2009<sup>17</sup> and subsequently included in the Stockholm Programme. The Roadmap gave a mandate to the EU to bring forward five legislative and non-legislative measures to safeguard procedural rights in criminal proceedings.

6.2 This proposal aims to set common minimum standards regarding the right to information in criminal proceedings throughout the EU. The aim is to improve the rights of suspects and accused persons by ensuring that they receive information about their rights in the criminal process; it is also to ensure that they receive information about the nature of the accusation against them to enable them to prepare a defence.

6.3 We reported in detail on the contents of the proposal on 15 September.<sup>18</sup> In conclusion we said we thought the Explanatory Memorandum submitted by the Parliamentary Under-Secretary of State for Justice (Crispin Blunt) looked like a rushed job, because it did not address the arguments for and against the UK opting into the proposal and did not contain a sufficient assessment of whether the proposal complied with the principle of subsidiarity. We were also concerned that the proposal sought to regulate the disclosure of evidence, which we thought was more appropriately left to Member States, and to impose training obligations on Member States.

### The Minister's letter of 29 September

6.4 In order to provide the Committee with an Explanatory Memorandum within the ten day limit and before Parliamentary recess, the Minister explains that it was deposited the day after the proposal was sent to the Committee. In this very short timescale, a full

<sup>17</sup> See (30985): HC 19–xxviii (2008–09), chapter 15 (21 October 2009).

<sup>18</sup> See headnote.

assessment of the pros and cons of opting into this proposal was not possible and the Government provided as full an analysis as possible in the time provided. An impact assessment will follow in due course setting out the costs and benefits of the proposal.

6.5 He explains that the UK already complies with many of the provisions of the draft Directive, which draws clear inspiration from the letter of rights provided to those in custody in England, Wales and Northern Ireland (the PACE letter) recently praised as being the best letter of rights available across Europe. In England, Wales and Northern Ireland, with the exception of the disclosure Article, the overall legislative impact is slight. There is greater impact in Scotland as rights are given to the suspect orally and are not uniformly provided in a written form. He says the main thrust of the Directive on the letter of rights can be seen as an attempt to bring some other Member States, where standards leave something to be desired, up to a standard which already exists here. So the Minister concludes that the draft Directive will improve the lot of Britons subject to the criminal justice systems of other Member States and opting into the measure would send out a strong signal that the UK is serious about protecting the rights of Britons abroad.

6.6 In terms of our concerns about subsidiarity, as the purpose of the measure is to seek to build trust across Member States, the Government considers the proposal to be consistent with the principle of subsidiarity. This measure, along with others on the Roadmap, is an important support and counterbalance to measures such as the Framework Decision on the European arrest warrant, the exchange of information from criminal records, mutual recognition of decisions on supervision measures and the mutual recognition of judgments in criminal matters imposing custodial sentences. Such instruments are based upon mutual trust. The purpose of the adoption of minimum standards is to assure appropriate levels of trust. Given that measures of mutual recognition apply across the EU, the Government agrees that measures intended to build such trust cannot be pursued exclusively at the level of the individual Member State.

6.7 The Government does not object in principle to the inclusion of a provision on training in the Directive. Given the fact that according to the Commission, only 12 Member States provide a letter of rights to arrested persons, it understands the Commission's approach in wanting to ensure that the new system is properly embedded by means of training. And the Minister notes that a provision on training is included in the Directive on Interpretation and Translation. The Government is however concerned that the wording of the training provision does not draw a distinction between the role of a Member State and the role of its independent judicial authorities. The text included within the Directive on Interpretation and Translation, which requires that Member States should encourage judicial authorities to provide training in the areas mentioned, is a better formulation.

6.8 The Minister notes that we have serious doubts as to whether the EU should be regulating how criminal evidence is disclosed, but says that the principle of defence access to evidence is one which is set out within the ECHR, upon which the present Directive builds. That said, the Government does have concerns about the prescriptive nature of Article 7. There are a number of ways in which access to evidence can be allowed. This, he says, is a view shared by a significant number of other Member States and the UK is not isolated in trying to secure amendments. The negotiability of this provision forms one of

the central tenets of the Government’s deliberations as to whether the UK should opt into this proposal.

6.9 The Minister concludes his letter by saying that he will keep us informed of developments as negotiations proceed and inform us of the Government’s decision on whether or not to opt into this proposal.

## Conclusion

6.10 **We are grateful for the further explanations contained in the Minister’s letter; we had not appreciated the time within which the Explanatory Memorandum had to be completed. We still have serious misgivings about whether disclosure of evidence in criminal proceedings should be regulated in an EU Directive, but we note that the Government has concerns of its own over Article 7, and wait to hear from the Minister with a further update on the negotiations.**

6.11 **In the meantime the proposal remains under scrutiny.**

## 7 EU-Republic of Korea Free Trade Agreement

(31569) 8502/10 + ADDs 1–21 COM(10) 137	Draft Council Decision concluding the Free Trade Agreement between the European Union and its Member States and the Republic of Korea
(31570) 8523/10 + ADDs 1–21 COM(10) 136	Draft Council Decision authorising the signature and provisional conclusion of the Free Trade Agreement between the European Union and its Member States and the Republic of Korea

<i>Legal base</i>	Articles 91, 100(2), 167(3) and 207 TFEU; consensus
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	Minister’s letter of 11 October 2010
<i>Previous Committee Report</i>	HC 468–i (2010–11), Chapter 31 (8 September 2010)
<i>Discussed in Council</i>	September 2010
<i>Committee’s assessment</i>	Legally and politically important
<i>Committee’s decision</i>	Cleared

## Background

7.1 In our Report of 8 September 2010, we drew to the attention of the House these two documents concerning the conclusion of a Free Trade Agreement (FTA) between the EU and the Republic of Korea. Whilst we were content to clear the documents on the grounds that they did not raise any new or significant policy issues over and above those which our

predecessors had identified in their Report of 30 March 2010,<sup>19</sup> we did raise one legal point on which we asked the Government to comment.

7.2 This arose from the inclusion in the Agreement of so-called Mode 4 provisions, which deal with the movement of personnel providing services, and which are essentially similar to commitments which have been made under the World Trade Organisation’s General Agreement of Trade in Services (GATS) and in a number of other Free Trade Agreements. We were told that these now fall within the scope of the UK’s Title V opt-in measures under the Lisbon Treaty in the field of Justice and Home Affairs, and that the UK had exercised its opt-in so far as these arrangements are concerned. However, we noted that these two Council Decisions are founded on the EU’s common commercial, transport and cultural policies, not Freedom, Security and Justice policies under Title V TFEU, to which the opt-in procedure applies. We also pointed out that, consistent with the legal bases, the recitals to the FTA do not foresee the possibility of the UK or Ireland opting into the part of the FTA which deals with Title V measures, and that, under Article 2, the opt-in Protocol (Protocol 21) applies only to international agreements concluded by the EU pursuant to Title V, which is not the case here. We therefore said it was unclear to us on what legal basis the Government considers it necessary to opt into the Mode 4 provisions on the temporary movement of personnel, and we asked the Government to explain this, and at the same time to indicate whether Ireland had followed the same approach as the UK in thinking that the opt-in Protocol applies.

### Minister’s letter of 11 October 2010

7.3 We have now received, from the Minister for Employment Relations, Consumer and Postal Affairs (Mr Edward Davey), a letter of 11 October 2010, in which he says that, whilst he has noted our view, he is unable to agree with it and considers that the Government’s interpretation is both consistent with the wording of the Title V Protocol and with the need to safeguard the UK’s national interest. He goes on to argue:

“As regards consistency with the terms of the Title V Protocol, my view is that the wording of Article 2 of the Title V Protocol supports the interpretation that the UK opt-in applies to the provisions of international agreements which fall within the scope of Title V even where the relevant Council Decision to sign and conclude does not cite a Title V legal base. Importantly, Article 2 refers to a separable “provision” of an international agreement not being binding on the UK in the absence of an opt in, rather than to a “measure” not binding the UK in its entirety. In my view this indicates that the crucial question in assessing whether the protocol applies is whether a specific *provision* of an international agreement falls within the scope of Title V rather than whether the agreement taken as a whole justifies the inclusion of Title V legal base in the Council Decision to sign and conclude.

“I would also argue that this interpretation of the terms of Article 2 is the one which is most consistent with the intention behind the Title V protocol. In contrast, interpreting the Protocol so as to make the application of the UK’s opt-in conditional on the citation of a Title V legal base would shift the focus from whether the content

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<sup>19</sup> See (31430) — : HC 5–xvi (2009–10), chapter 5 (30 March 2010).

of a provision of an international agreement falls within the scope of Title V to a formalistic consideration of whether a decision has been taken to include a particular legal base. This is not to say of course that the UK would not always push for the inclusion of a Title V legal base in such circumstances, but in the light of the range of different provisions which may be included in an international agreement this may not always be achievable.

“As to your question regarding the recitals, I agree that wherever possible it is desirable for the UK to obtain a recital recording the basis of our participation in a particular instrument — as in reaching an agreed position with Ireland. However, this is again not always achievable and therefore in this instance we have published a declaration on adoption of the Council Decision to sign this Agreement setting out the position on UK participation in relation to the Title V provisions. We consider that this sufficiently safeguards the UK position as regards the application of the opt-in.

“As to the Irish position regarding the application of the Title V Protocol to international agreements, discussions are currently taking place with Dublin to establish exactly what the Irish position is.”

## Conclusion

**7.4 We are grateful to the Minister for his response, but are not convinced by it. We think a “provision of any international agreement *concluded by the Union pursuant to*” Title V TFEU in Article 2 of the opt-in Protocol means there must be a clear indication — legal base and, usually, recital — in the agreement that one or some of its provisions have been concluded as a result of the EU’s competence to act under Title V. For reasons of legal certainty, the test must be an objective one, rather than a subjective one as argued by the Government: all 27 Member States and the third country concerned have to know how the agreement will apply to the UK and Ireland. We are surprised that the Minister considers this approach “formalistic”.**

**7.5 We also note that, under Article 3 of the opt-in Protocol, the UK has to notify the Council of a decision to opt in within three months after a proposal “has been presented to the Council pursuant to Title V”. Again, unless there is a clear indication of a legal base in Title V, there is no way of knowing that the proposal is presented pursuant to Title V.**

**7.6 As we have already cleared these documents, we see no reason to continue this correspondence, but we hope that future international agreements will clearly indicate if a provision is concluded pursuant to Title V.**

## 8 Youth on the Move

(a) (31954) 13726/10 COM(10) 477	Commission Communication: <i>Youth on the Move: An initiative to unleash the potential of young people to achieve smart, sustainable and inclusive growth in the European Union</i>
+ ADD 1	Commission Staff Working Document: <i>A guide to the rights of mobile students in the European Union</i>
(b) (31955) 13729/10 COM(10) 478	Council Recommendation: <i>Youth on the Move: promoting the learning mobility of young people</i>
+ ADD 1	Commission Staff Working Document — results of consultation on the Green Paper on the learning mobility of young people
+ ADDs 2–3	Commission Staff Working Documents: Impact assessment and summary

<i>Legal base</i>	(a) — (b) Articles 165 and 166 TFEU; co-decision; QMV
<i>Document originated</i>	15 September 2010
<i>Deposited in Parliament</i>	22 September 2010
<i>Department</i>	Business, Innovation and Skills
<i>Basis of consideration</i>	EM of 6 October 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	19 November 2010
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

8.1 In June 2010, the European Council agreed a new European Strategy for Jobs and Growth (the “Europe 2020 Strategy”) and identified five “headline targets” to guide Member States and the European Union in their efforts to promote employment and green growth, encourage innovation, research and development, improve levels of educational attainment and reduce poverty. Two of the headline targets are particularly relevant to young people:

- “improving education levels, in particular by aiming to reduce school drop-out rates to less than 10% and by increasing the share of 30–34 year olds having completed tertiary or equivalent education to at least 40%; and

- “aiming to raise to 75% the employment rate for women and men aged 20–64, including through the greater participation of young people, older workers and low-skilled workers and the better integration of legal migrants.”<sup>20</sup>

8.2 In its Communication on the Europe 2020 Strategy, the Commission proposed seven new “flagship initiatives”, including one entitled “Youth on the Move” which seeks to identify a number of actions at EU and national level to enhance the performance of education systems, improve the quality of education and training across the EU, promote mobility, and facilitate the entry of young people to the labour market.<sup>21</sup>

## The Commission Communication

8.3 In its latest Communication, the Commission fleshes out the actions it envisages to take forward its flagship initiative, Youth on the Move. According to the Commission, action is needed because youth unemployment is unacceptably high (averaging almost 21% across the EU for those under 25) and too many young people leave school early, resulting in skills shortages (especially in the IT sector) and an inability to compete for jobs requiring high-level qualifications. Youth on the Move seeks to put “young people at the centre of the EU’s agenda to create an economy based on knowledge, research and innovation, high levels of education and skills in line with labour market needs, adaptability and creativity, inclusive labour markets and active participation in society.”<sup>22</sup>

8.4 The Commission proposes a variety of actions, summarised below under four main headings:

8.5 **Promoting lifelong learning** by increasing investment in education and training, reducing school drop-out rates, improving early years education, and strengthening the links between employers and the education sector (including through work experience, apprenticeships, vocational training and careers advice). Specific actions proposed include:

- two Council Recommendations, the first (in 2010) to provide a framework for measures to reduce school drop-out rates, and the second (in 2011) to promote the recognition and validation of skills acquired outside formal learning structures, such as volunteering and youth work;
- establishment of a high-level expert group on literacy to share and develop best practice on improving literacy among adults and children;
- strengthened co-operation in the field of vocational education and training; and
- measures to improve the quality and availability of traineeships.

8.6 **Increasing the rate of participation in higher education** by investing in universities, diversifying sources of funding, strengthening co-operation on quality assurance and

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20 See European Council Conclusions of 17 June 2010 on the Europe 2020 Strategy at <http://ec.europa.eu/eu2020/pdf/115346.pdf>.

21 See Commission Communication on Europe 2020 at <http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%200007%20-%20Europe%202020%20-%20EN%20version.pdf>.

22 Paragraph 9 of the Commission Communication.

building “knowledge partnerships” to encourage research and innovation. Specific actions proposed for 2011 include:

- a further Communication setting out a new agenda for reforming higher education to make it more accessible, to strengthen links between academia and industry and to make graduates more employable;
- publication of a feasibility study on the establishment of an alternative university ranking system to provide a more complete picture of performance based on a broader range of performance indicators; and
- a proposal for a multiannual Strategic Innovation Agenda to develop the role of the European Institute for Innovation and Technology<sup>23</sup> in promoting research, innovation and entrepreneurship.

**8.7 Encouraging learning and employment mobility** by providing opportunities for all young people to study, train or work abroad by 2020. Specific actions proposed include:

- a new Youth on the Move website to provide information on opportunities to study or gain work experience abroad;
- a Council Recommendation to remove obstacles to, and promote, learning mobility;<sup>24</sup>
- a Youth on the Move card to provide benefits and discounts for young people;
- a European Skills Passport to record and encourage recognition of skills acquired in different EU countries;
- a pilot project (“Your first EURES job”) to provide advice, recruitment and financial support to young jobseekers willing to work abroad and to SMEs keen to recruit mobile workers; and
- a European Vacancy Monitor to record job vacancies across the EU.

**8.8 Improving opportunities for youth employment** by ensuring more young people stay in further education or undertake training and providing active support to gain entry to the labour market. Specific actions proposed include:

- encouraging use of the Commission’s new European Progress Micro-finance Facility<sup>25</sup> to support potential young entrepreneurs;
- measures to make better use of the European Social Fund to support young people;
- examining the feasibility of creating an EU student loan facility, in co-operation with the European Investment Bank, to support students wishing to train or study abroad; and

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23 The European Institute of Innovation and Technology was established in 2008 to encourage innovation by developing partnerships between higher education and research organisations and industry.

24 The Commission defines learning mobility as transnational mobility for the purpose of acquiring new skills.

25 The Facility was established in March 2010 to facilitate access to microfinance and has a budget of €100 million for the period 2010–2013.

- an analysis of factors affecting labour market outcomes for young people, especially the impact of successive short-term temporary contracts on wage levels, pensions and training opportunities.

8.9 The Commission urges Member States to introduce a “Youth Guarantee” to ensure that young people enter higher education or have a job or work experience within four months of leaving school. The Commission says that Member States should also provide an adequate social safety net for young people, through access to targeted benefits which are conditional on seeking employment or training. Other suggestions include the introduction of a minimum income for young people combined with incentives for employers to make the use of permanent, rather than temporary, contracts more attractive.

8.10 The Commission indicates that the Youth on the Move initiative will be funded from existing EU programmes for education and training and that greater use should be made of the European Social Fund. Additional sources of funding may be needed if the idea of creating an EU student loan facility is pursued further.

### The draft Council Recommendation

8.11 The draft Recommendation forms part of the Youth on the Move initiative. It draws on responses to a Commission Green Paper on Learning Mobility (2009) which, according to the Commission, “revealed a clear consensus . . . . on the objective of expanding mobility opportunities for young people”<sup>26</sup> while also recognising that obstacles remained. The purpose of the draft Recommendation is to provide specific guidance to Member States on the removal of remaining obstacles to learning mobility and on fostering a “mobility culture” amongst all young people. Recommendations to Member States include:

- raising awareness about the opportunities for learning abroad through better information and advice, including on grants and funding;
- promoting the value of learning mobility in terms of personal and professional development and future employability;
- facilitating mobility by, for example, recognising the importance of language learning in the school curriculum;
- removing legal, institutional and administrative obstacles to learning abroad;
- ensuring that educational grants and loans can be used for learning abroad;
- introducing quality assurance schemes for mobile learning;
- improving procedures for recognising and validating periods of learning abroad;
- providing specially targeted information and intervention (mobilising teachers, youth workers, etc) for disadvantaged learners;

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26 See 13729/10, ADD 1, paragraph 1.

- encouraging mobility partnerships, especially between the education and business sector, and providing incentives (for example, special grants to business) to offer places for trainees, interns or apprentices;
- using “multipliers” — teachers, trainers and youth workers — to promote mobility; and
- establishing a “Mobility Scoreboard” to monitor progress in removing obstacles to mobility.

8.12 In addition, the draft Recommendation “takes note” of a number of actions to be taken by the Commission in line with its Communication. For example, the Commission will review existing EU education, training and youth programmes with a view to developing an integrated approach under the next Financial Framework (2014–20) to support the Youth on the Move Strategy.

8.13 The legal bases proposed for the draft Recommendation are Articles 165 and 166 of the Treaty on the Functioning of the European Union (TFEU) which enable the Council to adopt (non-binding) recommendations to encourage youth exchanges and the mobility of teachers, students, instructors and trainees.

### The Government’s view

8.14 The Minister of State for Universities and Science (Mr David Willetts) notes that the Communication and draft Recommendation are linked to the Europe 2020 Strategy and focus on non-binding measures, such as target-setting, reports and recommendations, which allow Member States to determine what action to take in light of their own circumstances. He continues:

“Although the initiative does not indicate a direct increase of EU competence, it does represent an extension of reach and influence ... The Government would not accept any prescriptive action at European level in the areas covered, for example in the proposed ‘Youth Guarantee’, or in the proposed Recommendation on reducing early school leaving or in removing obstacles to learning abroad”.

8.15 The Minister expresses the Government’s support for the modernisation of higher education systems across Europe, but questions the need for a new EU agenda for reform before existing EU initiatives have been evaluated. He indicates that the Government does not consider the Commission’s proposal to develop a new university ranking system to be a priority. The Minister says that many of the ideas concerning youth employment, such as the micro-finance facility, the skills passport, the Youth on the Move card, and a possible student loan facility for mobile learners will require separate proposals which will be subject to scrutiny.

8.16 The Government supports the main points in the draft Council Recommendation on promoting learning mobility, including the emphasis on achieving “quality outcomes”, but “would be unwilling to make changes to present policies if this would result in greater costs to the UK of funding young people abroad”. The Minister explains that financial support is available for students studying abroad as part of their UK higher education course, but that “there are no current plans to extend the provision of financial support to students wishing

to undertake study solely at European institutions”. The Government would, however, continue to review the potential for introducing such provision.

8.17 While supporting the focus on young people’s access to the job market through better education, training and mobility, the Government also emphasises the importance it attaches to adult education so that older learners can continue to improve their skills and employment prospects.

## Conclusion

8.18 The Youth on the Move initiative is intended to proceed in parallel with the implementation of the Europe 2020 Strategy for Jobs and Growth. The EU, however, has limited competence in the field of education and vocational training under Articles 165 and 166 TFEU, which specify that any EU measures must “support and supplement the action of Member States”. As a result, the Communication and draft Recommendation seek to mobilise the efforts of Member States and a range of other actors — teachers, trainers, youth workers, businesses — to support the goal of promoting learning mobility. The broad scope of the Commission’s Communication makes it difficult to discern where the boundary between EU and national action lies. It is not clear what locus the EU has on a number of ideas contained within the Communication, such as school drop-out rates, developing a new university ranking system, or determining the content of the “Youth Guarantee”. Nor is it clear how some of these ideas will contribute to learning mobility.

8.19 We note that many of the ideas in the Communication will be the subject of separate scrutiny, at which point we will seek assurances from the Government that any proposed action at EU level remains within the powers conferred on the EU under Articles 165 and 166 TFEU. Meanwhile, we are content to clear the Communication and draft Recommendation from scrutiny.

## 9 Marine data and observation

(31945) 13455/10 + ADDs 1–2 COM(10) 461	Commission Communication: <i>Marine Knowledge 2020 — Marine data and observation for smart and sustainable growth</i>
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<i>Legal base</i>	—
<i>Document originated</i>	8 September 2010
<i>Deposited in Parliament</i>	16 September 2010
<i>Department</i>	Environment, Food & Rural Affairs
<i>Basis of consideration</i>	EM of 29 September 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

9.1 According to the Commission, improving knowledge is one of the three main elements of the EU's integrated maritime policy, and is necessary to achieve good environmental status for marine waters, in accordance with the Marine Strategy Framework Directive, which it describes as the policy's environmental pillar. It notes that, at its meeting in November 2009, the Council encouraged it to make proposals for increasing the use of scientific knowledge, and that this Communication responds to that request by outlining the case for a more coordinated approach to the collection and assembly of marine data, and by indicating how the different EU policy measures can help to achieve that aim.

### The current document

9.2 The Commission notes that the majority of marine data are collected by public institutions in the Member States at an annual cost of more than €1 billion and with a specific purpose in mind. However, it adds that those processing the data face a number of obstacles, such as difficulty in discovering the data which already exist, restrictions on access, use and re-use, different standards, formats and nomenclature, and different pricing policies. In view of this, it suggests that the aim should be to reduce operational costs and delays for users, to increase competition and innovation by providing wider access to quality-checked, rapidly available and coherent data, and by providing a sounder basis for managing future changes. It goes on to outline the actions already underway across the EU to collect and make available data, in response to the existing legal framework of Directives and enabling actions, whilst at the same time recognising that these provisions do not address all the current barriers to identifying, accessing and using data, and do not apply to all of the relevant data collecting bodies, such as academic and scientific institutions. The document also highlights examples of where a shared data approach is already being

developed or adopted, and the respective strengths and weaknesses of each approach, including the need for proper guardianship of the data.

9.3 The Commission then proposes a number of specific improvements to the existing instruments and actions. These include:

- ensuring that data from EU-supported regional development and marine and maritime research programmes are more widely available for re-use;
- examining what further measures are needed to promote coastal information systems, in response to the EU Recommendation on Integrated Coastal Zone Management (2002/413/EC);
- supporting demonstrations of GMES<sup>27</sup> marine services under the Seventh Framework Programme's space theme until 2014;
- full enforcement by Member States of access rules for fisheries data, with options for widening the scope of access to be explored;
- the coupling of data access systems to provide a more efficient use of resources for the implementation of the Marine Strategy Framework Directive;
- actions to improve the coverage of data, resolution and range of parameters;
- the Commission itself ensuring that its Agencies regularly release data and encouraging Member States to make available data gathered for a specific purpose, if necessary in an aggregated form; and
- work by Eurostat on the coastal influence in territorial regions.

9.4 The Communication outlines further actions planned by the Commission to bring about increased consistency of approach to data collection and assembly within current initiatives. These include ensuring data received have common standards, bringing data policies progressively into line to enable free access without restriction of use, ensuring that data being gathered for other purposes are relevant to the Marine Strategy Framework Directive, expanding data coverage to near-coast waters through a prototype European Marine Observation and Data Network (ur-EMODnet) action, assessing gaps in the monitoring network, and ensuring EU activities can contribute towards a global interoperable marine knowledge system.

9.5 The document also sets out a series of actions the Commission is proposing to take forward for working towards an operational European marine data infrastructure, the final shape of which is yet to be defined. These include looking to the industry to contribute appropriate resources to safeguard and disseminate data, increased communication between national data centres, the piloting of checks on sea-basin data, the prioritisation of data for ur-EMODnet, and the establishment of a prototype secretariat to manage the ur-EMODnet process.

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27 Global Monitoring for Environment and Security Initiative.

9.6 The Commission says that a formal mid-term assessment of the uptake of data from the prototype ur-EMODnet by scientists, authorities and industry, will commence in 2011 and report in early 2012, and that it intends to establish a Member States' Expert Group to ensure links with existing work in Member States.

### The Government's view

9.7 In his Explanatory Memorandum of 29 September 2010, the Parliamentary Under-Secretary at the Department for Environment, Food & Rural Affairs (Lord Henley) describes the Communication as a statement of intent by the Commission to further the creation of marine knowledge. He says that the objectives are clearly set out in terms of reducing costs and delays, improving quality of decision making and strengthening marine research, with the ultimate intention of creating a European marine data infrastructure to enable the integration of data across Member States' borders in a consistent and coherent manner.

9.8 He suggests that the approach proposed is of increasing importance as the demand for good quality evidence on the complex systems of concern in marine management continues to grow, along with the associated costs, and that this is consistent with activities already underway within the UK to identify and provide access to marine environmental data. He also regards it as consistent with the approach of the Office of Public Sector Information (OPSI), which sets standards for, delivers access to, and encourages the re-use of public sector information, and the UK Location Programme, which will enable access to spatial and non-spatial data.

9.9 The Minister says that, while strongly supportive of co-ordinating and joining-up access to data across the EU, the Government would like to ensure that any European standards established comply with international standards in order to avoid duplication, and he believes that the oversight provided by both the planned Member States' Expert Group and the existing independent group of experts should help to keep in check any potential tendency for the project to expand its scope excessively.

9.10 Finally, he notes that the further, planned impact assessment for the end of the period 2011–2013 will provide the opportunity for a more detailed analysis of (for example) the non-linear costs of expanding the sea-basin coverage, and may as a consequence result in higher or lower costs for implementation than are currently estimated. He also points out that some UK data are subject to Trading Fund rules, which would need to be taken into account in the further development of this work., and that, whilst the Government recognises the need for reporting on progress, it would expect any additional reporting to be built on current related reporting requirements, in order to minimise the cost burden.

### Conclusion

**9.11 Although this Communication does not raise any particularly contentious issues, it deals with an area of some environmental importance. Consequently, whilst we see no need to withhold clearance, we think it right to draw the document to the attention of the House.**

## 10 Specific measures for agriculture in the outermost regions

(31977) 13576/10 + ADD 1 COM(10) 501	Commission Report on the impact of the POSEI reform of 2006
(31978) 13575/10 COM(10) 498	Draft Regulation laying down specific rules for agriculture in the outermost regions of the Union

<i>Legal base</i>	— Articles 42 and 43 TFEU; co-decision; QMV
<i>Documents originated</i>	24 September 2010
<i>Deposited in Parliament</i>	28 September 2010
<i>Department</i>	Environment, Food & Rural Affairs
<i>Basis of consideration</i>	EM of 18 October 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

10.1 Because of their remoteness, insularity, small size, difficult topography and climate, and economic dependence on a few products, it has long been recognised that the outermost regions of the EU require additional help, and in particular they have benefited from a specific regime under the Common Agricultural Policy (CAP) — the POSEI scheme (*Programmes d'Options Spécifiques a l'Enloignement et l'Insularité*) — to support local production and the supply of essential products. At present, nine regions in three Member States are listed in the relevant EU measure (Council Regulation (EC) No 247/2006 — six French overseas departments<sup>28</sup> (DOMs), the Azores and Madeira, and the Canary Islands). In these two documents, the Commission has reported upon the operation of the POSEI programmes since they were last amended in 2006, and has proposed a new Regulation to incorporate a number of changes which it considers to be necessary.

### The current documents

#### *Document (a)*

10.2 The Commission notes that the POSEI scheme has two main elements:

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<sup>28</sup> Guadeloupe, French Guyana, Martinique, Reunion, Saint-Barthelemy and Saint-Martin.

- Specific Supply Arrangements (SSA), providing for exemptions from import duties on certain products in order to mitigate the supply costs of those used for the everyday consumption or the manufacture of essential foodstuffs;
- Measures to maintain or develop support for local production (SLP) by developing their processing and/or marketing.

It also points out that the EU's budgetary provision for the Programme for 2011 and subsequent years amounts to €653 million, of which €278 million is allocated to France, €268 million to Spain, and €106 million to Portugal, with €107 million being earmarked for Specific Supply Arrangements and the balance of €546 million being used to support local agricultural production. It concludes that the Programme has achieved its main objectives, but notes that, in some cases, the resources allocated have been exhausted, and in particular that the annual SSA budget is nearly fully executed in almost all the regions in question.

### **Document (b)**

10.3 In the light of this analysis, the Commission has proposed a new Regulation which would re-cast Council Regulation (EC) No 247/2006, and in the process simplify some of its provisions and align it to the new comitology provisions of the TFEU. In particular, whilst retaining the existing financial allocations, it would increase by 20% the maximum annual SSA ceilings for France and Portugal, and it would also seek to reduce the administrative burden by deferring by two months the deadline by which the three Member States have to submit to the commission their annual programme modifications.

### **The Government's view**

10.4 In his Explanatory Memorandum of 18 October 2010 the Minister of State for Agriculture and Food at the Department for Environment, Food & Rural Affairs (Mr Jim Paice) says that the new comitology provisions arising from the TFEU will require detailed scrutiny, and he also suggests that, although the direct impact of these measures in the UK are minimal, the value for money of the POSEI Programme is open to question, not least in the current climate. In particular, he notes that the Programme is open-ended, and says that logic suggests that, if it is achieving its aims, the financial support should diminish over time as better infrastructure and more sustainable competition bases are established, notably as regards the supporting of local production.

### **Conclusion**

10.5 **Since the outermost regions as defined here clearly face particular problems of the sort identified by the Commission, we accept that there is a case for providing them with some kind of special assistance, and, as the Minister's Explanatory Memorandum suggests, the impact of the measures proposed in the UK is minimal. Having said that, the sums involved each year are by no means negligible, and we note the Government's view that, if the measures are achieving their stated aims, the need for financial support from the EU should diminish over time — a consideration not reflected in the current proposal. Consequently, although we do not propose to withhold clearance, we think it right to draw the proposal to the attention of the House.**

## 11 The European External Action Service

(a) (31439) 8029/10 —	Draft Council Decision establishing the Organisation and Functioning of the European External Action Service
(b) (31747) 11507/10 + ADD 1 —	Draft Council Decision establishing the Organisation and Functioning of the European External Action Service

<i>Legal base</i>	Article 27(3) TEU; unanimity, with the consent of the Commission and after consulting the European Parliament
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister's letter 24 September 2010
<i>Previous Committee Report</i>	(a) (31439) 8029/10: HC 5–xvii (2009–10), chapter 1 (7 April 2010) (b) (31747) 11507/10: HC 428–i (2010–11), chapter 64 (8 September 2010)
<i>Discussed in Council</i>	26 July 2010 Foreign Affairs Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Both cleared (debated on the Floor of the House on 14 July 2010); further information requested

### Background

11.1 Prior to the coming-into-force of the Lisbon Treaty, in 1999, the office of High Representative for Common Foreign and Security Policy was introduced by the Amsterdam Treaty. Javier Solana occupied that position thereafter. Together with an increasing number of officials in the Council Secretariat, he assisted the Council in foreign policy matters, through contributing to the formulation, preparation and implementation of policy decisions. He acted on behalf of the Council in conducting political dialogue with third parties. The six-monthly rotating Presidency was in charge of chairing the External Relations Council, representing the Union in CFSP matters, implementing the decisions taken and expressing the EU position internationally.

11.2 Under the Lisbon Treaty, new arrangements came into being. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, appoints the High Representative. He or she is subject, together with the President of the Commission and the other members of the Commission, to a vote of consent by the European Parliament.

11.3 At their informal meeting in Brussels on 19 November 2009, ahead of the entry into force of the Treaty of Lisbon (TEU) on 1 December 2009, EU Heads of State or Government agreed on the appointment of Baroness Catherine Ashton as the High Representative of the Union for Foreign Affairs and Security Policy (HR).

11.4 The High Representative now exercises, in foreign affairs, the functions which, so far, were exercised by the six-monthly rotating Presidency, the High Representative for CFSP and the Commissioner for External Relations. According to Articles 18 and 27 TEU, the High Representative:

- conducts the Union’s common foreign and security policy;
- contributes by her proposals to the development of that policy, which she will carry out as mandated by the Council, and ensures implementation of the decisions adopted in this field;
- presides over the Foreign Affairs Council;
- as one of the Vice-Presidents of the Commission, ensures the consistency of the Union’s external action and is responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union’s external action;
- represents the Union for matters relating to the common foreign and security policy, conducts political dialogue with third parties on the Union’s behalf and expresses the Union’s position in international organisations and at international conferences; and
- shall be assisted by a European External Action Service.

11.5 Article 27(3) TEU constitutes the legal basis for the Council decision on the organisation and functioning of the EEAS.

“In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the member states. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.”

## European Council Guidelines on the EEAS

11.6 On 30 October 2009, the European Council agreed on guidelines for the European External Action Service (EEAS).<sup>29</sup> The future HR was invited to present a proposal for the organisation and functioning of the EEAS as soon as possible after the entry into force of

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<sup>29</sup> A paper presented by the then EU Presidency, available at <http://register.consilium.europa.eu/pdf/en/09/st14/st14930.en09.pdf>.

the Lisbon Treaty, with a view to its adoption by the Council at the latest by the end of April 2010.<sup>30</sup> This was endorsed by the December 2009 European Council.

11.7 According to the guidelines, the EEAS will be a single service under the authority of the High Representative, with an organisational status reflecting and supporting the High Representative's unique role and functions in the EU system. The EEAS will help the High Representative ensure the consistency and coordination of the Union's external action as well as prepare policy proposals and implement them after their approval by Council. It will also assist the President of the European Council and the President as well as the Members of the Commission in their respective functions in the area of external relations and will ensure close cooperation with the Member States. The EEAS should be composed of single geographical (i.e., covering all regions and countries) and thematic desks, which will continue to perform, under the authority of the High Representative, the tasks currently executed by the relevant parts of the Commission and the Council Secretariat. Trade and development policy as defined by the Treaty should remain the responsibility of relevant Commissioners of the Commission.

11.8 With respect to its staffing:

- EEAS staff will be appointed by the High Representative and drawn from three sources: relevant departments of the General Secretariat of the Council, of the Commission and of national diplomatic services of the Member States. Recruitment will be based on merit, with the objective of securing the services of staff of the highest standard of ability, efficiency and integrity, while ensuring adequate geographical balance;
- in order to enable the High Representative to conduct the European Security and Defence Policy (ESDP), the EU's crisis management structures should be part of the EEAS, under the direct authority and responsibility of the High Representative.

11.9 The EEAS should be a service of a *sui generis* nature, separate from the Commission and the Council Secretariat, with administrative budget and staff management autonomy and its own section in the EU budget, to which the usual budgetary and control rules will apply, and which the High Representative will propose and implement. It is to be guided by cost efficiency and aim at budget neutrality.

11.10 Overseas, the Commission's delegations will become Union delegations under the authority of the High Representative and be part of the EEAS structure. They will contain both regular EEAS staff (including Heads of Delegation) and staff from relevant Commission services. All staff should work under the authority of the Head of Delegation. EU delegations should work in close cooperation with diplomatic services of the Member States and play a supporting role as regards diplomatic and consular protection of Union citizens in third countries.

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30 The extract from the European Council conclusions reads thus:

"The European Council takes note of the preparatory work in view of the entry into force of the Lisbon Treaty (doc. 14928/09). It endorses the Presidency's report on guidelines for the European External Action Service (doc. 14930/09) and invites the future High Representative to present a proposal for the organisation and functioning of the EEAS as soon as possible after the entry into force of the Lisbon Treaty with a view to its adoption by the Council at the latest by the end of April 2010. In this context, it also recognises the need, as underlined in the European Security Strategy, for the European Union to become more capable, more coherent and more strategic as a global actor, including in its relations with strategic partners, in its neighbourhood and in conflict-affected areas."

## The first Council Decision

11.11 In March 2010, the HR presented a draft Council Decision. The previous Government submitted this for scrutiny shortly before the dissolution. This included detailed views from the then Minister for Europe (Chris Bryant), which are set out in the previous Committee’s report of 7 April 2010.<sup>31</sup>

## The previous Committee’s assessment

11.12 When it considered this draft Council Decision, the previous Committee began by expressing its appreciation of the assiduousness of the then Minister for Europe in keeping it informed about the development of this proposal, and for having submitted his Explanatory Memorandum so soon after its publication, so that it could be considered before the dissolution of Parliament.

11.13 The previous Committee noted that, while the draft Council Decision had remained faithful to the guidelines and timeline endorsed by the European Council, it was somewhat short of the finished article—for example, the Annex, which lists the departments of the Commission and Council Secretariat to be transferred to the EEAS, was incomplete.

11.14 The previous Committee also noted that the then Minister did not refer to adoption of the Decision before the end of April, but said instead that that the Council would be “seeking political agreement” on it by then—a formulation normally used in the context of co-decision. This, the previous Committee felt, perhaps unconsciously acknowledged the elephant in the room, i.e., the European Parliament (EP). The HR had said that her proposals “shall take effect on the day of the adoption of the amending Budget of the European Union providing for the corresponding posts and appropriations in the EEAS”—put otherwise, could be implemented only as and when the European Parliament did so. And all the indications thus far were that it was endeavouring to make its agreement to this and the associated staff and financial regulations dependent on changes to this Council Decision, particularly with regard to the Deputy Secretary General positions. Powerful voices there, it seemed, wished to see three political Deputy Secretaries General, broadly reflecting the political balance of the EP, who would deputise for the HR when necessary—bizarre notion, the previous Committee felt, but one that was nonetheless in play, in a situation in which the EP had demonstrable leverage.

11.15 The previous Committee also noted that the crucial proposals in Article 8—about who was to do what, when and with whom concerning the plethora of EU external programmes and instruments—remained open to discussion. The complex arrangements set out therein seemed much more to reflect unresolved “turf wars” and the inherent difficulties of a position that had a large footprint in two institutions than a formula consistent with the “principle of cost-efficiency aiming towards budget neutrality”. As a consequence, the previous Committee was unable to understand the division of responsibilities between the EEAS and the Commission in the programming of the EU’s external cooperation programmes, particularly with respect to development and neighbourhood policies in Article 8(4) and (5).

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31 See headnote: (31439) 8029/10: HC 5–xvii (2009–10), chapter 1 (7 April 2010).

11.16 On the plus side, the previous Committee found the previous Minister’s position on the provision of consular services to UK citizens overseas “commendably clear and robust.”<sup>32</sup> Even so, the previous Committee noted, he had nothing to say about what impact he thought the creation of a world-wide EU diplomatic service, delivering technical assistance and in charge of an expanding EU common foreign and security policy, would have on Britain’s capacity to promote her own bilateral interests in the major centres of power and opportunity, which would remain crucial to our future as a global economic and political actor.

11.17 With a general election imminent, the normal option of holding the Council Decision under scrutiny while the Minister provided further information between the date of the meeting and the end April was not available to the previous Committee. The option of a debate ahead of adoption was also not possible. But the previous Committee did not feel able, on the basis of the information presently available, to clear it. In all the circumstances — and recognising that this could not take place until there was a new Parliament — the previous Committee considered that a debate was the best option available to it, and so recommended.

11.18 Given the importance of this proposal, which—the Minister’s assurances on consular protection notwithstanding—was nonetheless likely to be the most significant change in the conduct of British foreign policy for many years, the previous Committee recommended that this debate should be on the Floor of the House. When it took place, it said that it would expect the new Minister to provide a detailed outline of what had been transferred to the EEAS and of the arrangements that had been decided upon under Article 8 between the EEAS and the Commission in the programming of the EU’s external cooperation programmes, and his or her views on:

- how they fulfilled the “principle of cost-efficiency aiming towards budget neutrality”; and
- the impact of this new global diplomatic service on Britain’s ability to promote her bilateral interests.

11.19 In the meantime, the previous Committee retained the document under scrutiny.<sup>33</sup>

11.20 On 26 April, the EU Foreign Affairs Council reached political agreement on the proposal.

11.21 Three accompanying measures are required for the EEAS to take up its work:

- Commission’s draft proposal amending the staff regulations (published on 9 June 2010);<sup>34</sup>
- Commission proposal amending the financial regulation (published 24 March 2010);<sup>35</sup> and

32 For the Committee’s consideration of this matter, see (29353) 5947/07: HC 16–xvii (2007–08), chapter 1 (26 March 2008) and the subsequent debate in the European Committee on 23 June 2008, the record of which is available at <http://www.publications.parliament.uk/pa/cm200708/cmgeneral/euro/080623/80623s01.htm>.

33 See headnote: (31439) 8029/10: HC 5–xvii (2009–10), chapter 1 (7 April 2010).

34 The proposal can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0309:FIN:EN:PDF>.

- an amending budget (published 15 June 2010).<sup>36</sup>

11.22 The European Parliament has co-decision rights in the above measures. Though it is only entitled to be consulted on the Council decision on the establishment of the EEAS, the EP sought to take advantage of its co-decision rights on the accompanying measures in order to seek effective *de facto* co-decision rights on the Council Decision. Negotiations continued thus since the end of April.

11.23 On 21 June 2009 a further “quadrilogue” (the HR, the Presidency representing the Member States, the Commission and EP representatives) was held in Madrid where all parties reached a political agreement on the establishment of the EEAS.<sup>37</sup> This agreement was approved by the EP will vote on 8 July 2010 during its plenary session in Strasbourg. It allowed the High Representative/Vice-President of the Commission to commence the recruitment process over the summer by advertising vacant posts, and envisaged the European Parliament then voting on the amendments to the staff and financial regulations in September and the EEAS to be up and running by December 2010.

11.24 The key elements of that agreement are summarised in our previous Report. In summary, the Committee judged the outcome to be nominally much more in favour of the Council and Member States than the European Parliament was seeking.<sup>38</sup>

## The revised Council Decision

11.25 Against this background, a revised Council Decision was promulgated on the establishment, organisation and functioning of the EEAS. The Decision explained that provisions should be adopted relating to the staff of the EEAS and their recruitment and the Financial Regulation should be adopted in order to ensure budgetary autonomy necessary for the smooth operation of the EEAS. In particular the High Representative would be the Appointing Authority, in relation both to officials subject to the Staff Regulations of Officials of the European Communities and agents subject to the Conditions of Employment of Other Servants, and also have authority over the Seconded National Experts (“SNEs”) in post in the EEAS. The number of officials in the EEAS would be decided each year as part of the budgetary procedure and be reflected in the establishment plan.

11.26 The Decision went on to explain how the EEAS should function including in relation to the following:

- *Nature and Scope*: the EEAS will be administratively autonomous, separate from the Commission and the Council Secretariat and with its central administration headquarters in Brussels and include EU delegations to third countries and international organisations;

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35 The proposal can be found at: [http://ec.europa.eu/budget/library/documents/sound\\_fin\\_management/financial\\_regulation/comm\\_2010\\_0085\\_en.pdf](http://ec.europa.eu/budget/library/documents/sound_fin_management/financial_regulation/comm_2010_0085_en.pdf).

36 The proposal can be found at: [http://www.ipex.eu/ipex/webdav/site/myjahiasite/groups/CentralSupport/public/2010/COM\\_2010\\_0315/COM\\_COM\(2010\)0315\\_EN.doc](http://www.ipex.eu/ipex/webdav/site/myjahiasite/groups/CentralSupport/public/2010/COM_2010_0315/COM_COM(2010)0315_EN.doc).

37 The text of the agreement can be found at: <http://register.consilium.europa.eu/pdf/en/10/st11/st11507.en10.pdf>.

38 See headnote: (31747) 11507/10: HC 428–i (2010–11), chapter 64 (8 September 2010).

- *Tasks*: as well as supporting the High Representative the Decision states that the EEAS shall assist the President of the Commission, the Commission and the President of the European Council;
- *Co-operation*: the Decision outlines the ways in which the EEAS will work with the Council Secretariat and Commission services in order to ensure that there is consistency between the different areas of the Union External action;
- *Central Administration*: as well as being managed by a Secretary General under the authority of the High Representative and assisted by two Deputy Secretaries-General, there will be a number of Directorates General comprising geographic desks covering all countries and regions of the world as well as multilateral and thematic desks;
- *Union Delegations*: the High Representative is responsible for the EU Delegations; the Decision outlines how the delegations will work, including how the delegations will get their instructions, and makes clear that, inter alia, implementation of development spending remains the responsibility of the Commission;
- *Staff*: the Decision explains who shall comprise the EEAS, how they will be recruited and that changes will need to be made to the staff regulations to take account of the EEAS and give a base for staff terms and conditions;
- *Budget*: the Decision makes it clear that the High Representative shall act as authorising officer for the EEAS section of the General Budget;
- *Programming*: the Decision sets out the way in which the EEAS and the Commission will work together on programming and implementation cycle for the key geographic and thematic financial instruments.

11.27 The Minister for Europe (David Lidington) said that the purpose of his accompanying Explanatory Memorandum of 9 July 2010 was to highlight where there had been notable changes from the text submitted by his predecessor, resulting from discussion, then political agreement of the text at the 26 April General Affairs Council and subsequently in consultation with the EP.

11.28 Referring to the June 21 “quadrilogue”, the Minister said that, upon adoption, the final text of the Decision would be accompanied by a number of additional documents namely:

- a Declaration on political accountability;
- elements for a Statement to be given by the High Representative in the plenary of the European Parliament on the basic organisation of the EEAS central administration;
- a Statement of the High Representative on CSDP structures; and
- a Declaration of the High Representative with regard to the appointment procedure she intends to apply in the EEAS.

11.29 The Minister said that the purpose of these accompanying Declarations and statements, which formed part of the overall political agreement, was “to provide welcome clarity around some elements of the text of the Decision.”

11.30 The Minister’s further detailed observations, in both his Explanatory Memorandum and a further letter of 13 July 2010, are set out in our previous Report.<sup>39</sup>

11.31 The EP having voted in favour of this package on 8 July, and Member States wishing to finalise the matter at the 26 July General Affairs Council, the Government submitted both Decisions and the accompanying measures for debate on the Floor of the House on 14 July.

11.32 At the end of that debate, the House resolved:

“That this House takes note of European Document Nos. 8029/10 and 11507/10, draft Council Decisions establishing the organisation and functioning of the European External Action Service; European Document No. 8134/10, draft Regulation on the Financial Regulations for the European External Action Service; and an unnumbered draft Regulation amending Staff Regulations of officials of the European Communities and the conditions of employment of other servants of those Communities; and supports the Government’s policy to agree to the Decision establishing the External Action Service at the Foreign Affairs Council in July 2010.”<sup>40</sup>

## Our assessment

11.33 Had the Committee been in existence at the time, we would both have confirmed our predecessors’ recommendation regarding the first draft of the Council Decision and also recommended that the revised version be debated on the floor of the House. Had we been able to do so, we would have noted that the arrangements set out in Article 8—which are central to the main rationale of the EEAS, i.e., the greater effectiveness of the EU’s external action and the billions of Euros involved—are still no more reassuring than in the original text, especially given the Minister’s statement that: “How this set up will work in practice remains to be seen.”

11.34 We would also have asked the Minister to explain what he meant by “a senior development stakeholder and sufficient development policy capacity to support the strategic programming and lead on sector and country spending allocations”, and to outline what he plans to do with regard to the effective implementation of “the myriad of implementation issues to be worked through over the next six months and beyond, including around appointing the senior management team, the detail of the day to day handling of crisis management the reporting lines to the Development Commissioner and ensuring sufficient development expertise in the EEAS to carry out programming of the financial instruments.”

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<sup>39</sup> *Ibid.*

<sup>40</sup> The text of the debate is available at <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100714/debtext/100714-0003.htm#10071434000003>.

11.35 We would also have noted that something else that remains to be seen too is the extent to which the establishment and operation of the EEAS is able to conform to “the principle of cost-efficiency aiming towards budget neutrality.”

11.36 The debate notwithstanding, we hoped that, between now and the review in 2013, the Minister will take every opportunity to see to it that (as he puts it) “unnecessary duplication of tasks, functions and resources with other structures [are] avoided [and] all opportunities for rationalisation [are] used”, and to ensure that mechanisms are devised that are able properly to assess the effectiveness of the arrangements that will now be put in place governing the planning and implementation of the EU’s external action.

11.37 We would also have highlighted the Declaration on Political Accountability (which we reproduced at the Annex to our previous Report), upon which the Minister was silent in both his Explanatory Memorandum and his letter. During the debate, the Minister was asked to clarify the legal status of those documents and the degree to which they are relied on, and to provide the House with reassurance that the agreement does not give the Commission or the European Parliament any greater power over the budget for the Common Foreign and Security Policy. He replied that:

“Declarations are not legally binding. They are statements that provide a political context for a Council decision and how it will operate as it is taken forward.”<sup>41</sup>

11.38 We thought that the first sentence was self-evident, and the second ambiguous. The EP had made plain its belief that, under these arrangements, it will have greater oversight of EU external action: otherwise, we felt, what would be the point of its negotiating such a Declaration? Reading the text itself, a number of questions arose. Point 1 talks of “exchanges of views prior to the adoption of mandates and strategies in the area of relevant EP Committees” and “enhanced” briefings that “relate in particular to CFSP missions financed out of the EU budget, both to those being implemented and those under preparation”. Then, in Point 10 at the end, the Declaration says:

“The HR will play an active role in the upcoming deliberations on the updating of existing arrangements regarding the financing of CFSP contained in the 2006 IIA on budgetary discipline and sound financial management, based on the engagement with regard to the issues set out in point 1. The new budgetary procedure introduced by the Lisbon Treaty will apply fully to the CFSP budget. The High Representative will also work for greater transparency on the CFSP budget, including, inter alia, the possibility to identify major CSDP missions in the budget (like the present missions in Afghanistan, Kosovo and Georgia), while preserving flexibility in the budget and the need to ensure continuity of action for missions already engaged.”

11.39 We therefore asked the Minister to set out his views on the significance of this Declaration in greater detail, noting that, in the final analysis, CFSP activity depends upon the level of funding and who controls it. We asked in particular that he clarified:

— the full import of the first sentence of Point 10;

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41 *HC Deb*, 14 July 2010, col 1056.

- what the new budgetary procedure was and how it might “apply fully to the CFSP budget”;
- what he understood by “greater transparency on the CFSP budget”;
- what the import was of the words “the possibility to identify major CSDP missions in the budget (like the present missions in Afghanistan, Kosovo and Georgia), while preserving flexibility in the budget and the need to ensure continuity of action for missions already engaged.”

11.40 We also asked to know under what authority the HR had negotiated this Declaration, and the extent to which Member States were involved in its drafting.<sup>42</sup>

### The Minister’s letter of 24 September 2010

11.41 The Minister begins his letter by saying that he shares the Committee’s concern that it is not yet fully clear how the effectiveness of EU development spending will be guaranteed by the structure of the EEAS. He continues as follows:

“On balance, I believe the text of the Decision agreed in July is an improvement on the original April 2010 draft — e.g. the clear reference to development programming ‘under the responsibility of the Development Commissioner’. I do not yet have information regarding how many staff will work on development programming in the final structure of the EEAS. However, I have raised our concern with Baroness Ashton that the information we have so far received regarding the structure of EEAS headquarters has to date included no reference to who will take on responsibility for this important work, despite the text of the Decision that you reference. The same uncertainty still applies to other important areas such as crisis management. I will certainly update the Committee as soon as we obtain reliable information in this regard. The picture is likely to become clearer after Ashton has put in place her top team and clarified the division of portfolios — a process she aims to complete by November.”

11.42 The Minister then says that the budget is another area of concern. Noting that Member States having agreed an additional uplift to the EU budget of €9.5 million to fund the establishment of the EEAS in 2010, the Minister draws attention to an Amending Letter to its draft EU budget for 2011 published by the Commission on 15 September, asking for an additional €34.4 million, explained as follows:

“EUR 29,2 million requested as additional appropriations in relation to the full-year cost of the new human resources (100 new AD posts, 60 local agents in delegations and 10 contract agents at headquarters) requested in draft amending budget 6/2010, and EUR 5,2 million requested for 18 additional posts and strengthened security of the EEAS definitive premises in 2011.”

11.43 The Minister says that, as the Committee pointed out, the Council Decision establishing the EEAS provides for the aim of budget neutrality:

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42 See (31747) 11507/10: HC 428-i (2010–11), chapter 64 (8 September 2010).

“We are pressing hard for this. The High Representative has committed to seek efficiency savings of at least 10%, and this commitment is repeated in the amending letter for 2011, which also recalls that:

‘The establishment of the EEAS has to be guided by the principles of cost-efficiency, budget neutrality, and sound and efficient management, also taking into account the impact of the current economic crisis on national public finances and the required efforts for fiscal consolidation.’

“I have urged the High Representative to be both more ambitious and more precise. Officials are analysing the amending letter carefully, identifying opportunities to seek savings during negotiations in the coming weeks. We have requested a specific plan showing how the savings will be found between now and 2013, for example through eliminating duplication of activity by the Commission and Council Secretariat units transferring into the EEAS. We will pursue this as part of negotiations on the EU budget for 2011 (including the EAS), which are due to be finalised in mid-November. We are also seeking allies amongst other member states to support us on this point.”

11.44 The Minister then turns to the status of the High Representative’s Declaration on Political Accountability, which accompanied the EEAS Decision:

“The Declaration is not legally binding. Nor does it confer greater power on the European Parliament. It was negotiated under the personal authority of the High Representative, largely as a response to issues raised by the European Parliament. COREPER was given the opportunity to comment on the declarations in draft, but the High Representative reserved the right to decide on the final wording herself. As you rightly note, the European Parliament was able to exert some leverage over the EEAS Decision due to its control over the budget. The High Representative therefore had to go some way to responding to the European Parliament’s concerns without conceding too much on key issues of principle embodied in the text of the EEAS Decision. This Government urged the High Representative to stand firm in her negotiations with the Parliament and we will continue to do so in the months ahead.”

11.45 Regarding the CFSP budget, the Minister says:

“...the declaration sets out a change in how spending through the CFSP budget, which includes civilian CSDP missions, is presented to the European Parliament rather than a substantive change in budgetary practice. The UK supports increased transparency for all EU funding for projects around the world. The Government will continue to push for more realistic estimates of expenditure and improved prioritisation in line with best budgetary practice. In particular, we continue to challenge the Commission and CSDP missions on the rationale and justification for new items of expenditure.”

11.46 With regard to the import of the words “the possibility to identify major CSDP missions in the budget (like the present missions in Afghanistan, Kosovo and Georgia),

while preserving flexibility in the budget and the need to ensure continuity of action for missions already engaged.”, the Minister says:

“Again, we understand this to be about how the CFSP budget is presented rather than a substantive change. The underlying principle for spend on civilian CSDP missions, whose platform costs are funded from the CFSP budget, is that they should have available to them the funding required to implement the tasks in their mandates. This requires surety and continuity of funding. However, as crisis management operations must be flexible, it is not always possible to predict precisely what funds will be required throughout the whole year to respond to developments in theatre. As such, it is essential that additional funding can be made available, or existing funding shifted, to cover new priorities as they emerge in year. The words therefore imply that the High Representative will provide as much up front clarity as possible on budgetary requirements for specific missions, while also preserving the necessary ‘flexibility’ to respond to real world events.”

## Conclusion

**11.47 We are grateful to the Minister for his response, which addresses our concerns as far as is possible at this juncture. But major uncertainties continue to obtain.**

**11.48 First, about how the effectiveness of EU development spending will be guaranteed by the structure of the EEAS, and “other important areas such as crisis management”, with respect to which the Minister for Europe promises a further update “as soon as we obtain reliable information in this regard.” We look forward to receiving it.**

**11.49 Secondly, the threats to the “principle of cost-efficiency aiming towards budget neutrality” embodied in the European Council’s original guidelines and in the Council Decision establishing the EEAS. With that in mind, we reproduce at the Annex to this chapter of our Report the passage on this issue during the debate on the Floor of the House on 13 October 2010 on the draft EU Budget for 2011. There, the Economic Secretary to the Treasury (Justine Greening) provided further information about the proposed increase in the EEAS budget for 2011 and noted what she described as “unhelpful suggestions from the Commission in the future that additional spending at EU level could be offset by savings in member states’ diplomatic services”, which suggestions were “completely unacceptable to the UK.” She also noted that the Government has “pushed, thus far successfully, for the Council to state on the record that the term ‘budget neutrality’ for the EEAS applies solely to the context of the EU budget” in order to counter the Commission’s suggestions. We should be grateful if the Minister would keep the Committee informed about the Government’s endeavours, — which we endorse — and in particular if, and when, a Council statement is issued on this matter.**

## Annex 1: Extract from Debate on the Floor of the House on 13 October 2010 on the draft EU Budget 2011<sup>43</sup>

**Mr John Redwood (Wokingham) (Con):** Why does the Foreign Secretary seem to favour increasing expenditure on the common External Action Service so that we have duplicated embassies, with those at EU level undercutting our own and charging us double?

**Justine Greening:** I have no doubt that other Members will refer to that in their contributions. As my right hon. Friend will be aware, we did not support the setting up of the European External Action Service, but as it is now in place our aim is to ensure that it does not duplicate in the way that he says, and that instead it has a role that has some value. We have been concerned about the increased budget because when the EEAS was set up, a key aspect of the conditions was that there would be fiscal neutrality and that is already being challenged. That is one reason why we have been pressing for that to be explicitly put into the terms of the EEAS remit. We have been successful in that, and we are pressing Cathy Ashton to make 10% savings immediately. Discussions on this are continuing in the EU right now. My right hon. Friend is absolutely right, therefore.

To make a broader point on the EU budget, it is vital that decisions taken on budgeting are stuck to. There is an underlying problem that I talked about in respect of implementation: in too many projects there is a gap between what has been budgeted for and what ends up being spent. It is quite a basic financial management problem, but it needs to be addressed.

Turning to the background to today's debate and what has happened so far, in August the Council adopted its first reading position on the Commission's draft budget. We should bear in mind that this draft budget proposed an increase of 6% in the 2011 budget. That first reading position saw the Council reduce the budget level proposed by the Commission by €788 million in commitment appropriations and by just over €3.5 billion in payment appropriations. However, although the Council reduced the payment levels in the Commission's proposal, the reductions would still have meant an increase of almost 3% in EU budget spending from 2010 to 2011. Also, although the Council's position was to reduce spend in the administration budget by more than €160 million and to cut the total budget for the EU's regulatory agencies by almost €12 million, even that would have left a rise in administration of 2.5%.

I should remind the House that when we had the opportunity in the European Parliament to vote against the rise in the Parliament's 2010 budget, we took it. Although the Council had batted down the rise proposed by the Commission, the Government could not accept the proposed level of budget increase and we therefore voted against the Council's first reading. In fact, six other member states joined us: our Nordic partners—Finland, Sweden and Denmark; and the great brewing nations of Austria, the Netherlands and the Czech Republic. The Council's position was,

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43 HC Deb, 13 October 2010, cols 412-15.

however, adopted by a qualified majority, although I just remind the House that we were very close to achieving a blocking minority on that vote; we were just three votes away from doing so—we got 29 votes when we needed 32. That is why we have been working so hard with our European partners to put our case, because we want, at the minimum, to be in a position to have a blocking minority. We really want to aim for a majority, and that is what we are working towards.

I know that, as we have just heard, the European Scrutiny Committee is considering the Council's first reading position and the Commission's first amending letter. However, I thought it would be helpful for Members taking part in this debate to be given an outline of that developing position. I referred to this briefly in response to my right hon. Friend the Member for Wokingham (Mr Redwood), but I can say that more than 90% of the 2011 budget for the EEAS is transferred from the existing budgets of the Commission and Council. As he points out, an additional €34.5 million is requested to fund new staff posts and other start-up costs.

Overall, the proposal includes the following: first, the establishment plan of more than 1,600 posts—this includes 100 newly created in 2010, and 18 requested for 2011, carrying a remuneration cost of just under €19 million; secondly, just over 2,000 other staff, 70 of whom are newly recruited this year, costing an extra €2.5 million in 2011; thirdly, other staff-related spending, of which less than €2 million would be additional; and, fourthly, spending on buildings and other operational spending amounting to just over €157 million, less than €4 million of which would be additional.

The amending letter stated that cost-efficiency, budget neutrality and efficient management should guide the EEAS, and, as I said, it set a target of 10% efficiency savings in headquarters. Although the Government acknowledge that some additional funding is required in the EEAS's first full year, it is essential that the EEAS demonstrates not only value for money, but budget discipline in its funding bids and a firm commitment to substantial cost efficiencies. It is vital that the aim of budget neutrality is respected, so we are pushing for immediate cost savings and stressing the importance of achieving cost efficiencies, including in decisions over the EEAS's premises.

We have also pushed, thus far successfully, for the Council to state on the record that the term “budget neutrality” for the EEAS applies solely to the context of the EU budget. We pressed for that so that we can counter unhelpful suggestions from the Commission in the future that additional spending at EU level could be offset by savings in member states' diplomatic services. Such suggestions are completely unacceptable to the UK.

**Mr James Clappison (Hertsmere) (Con):** I am extremely heartened by the proposition that my hon. Friend has put before the House this evening on this matter, but will she examine this very carefully indeed? I know that the EEAS was opposed by Conservative Members and is the legacy of those on the other side of the House. As she would say, we are where we are, but on this point of budget neutrality will she make it her business to look carefully at any further proposals to increase expenditure on the EEAS? Budget neutrality has already been breached by the

European Commission and it is likely that further attempts will be made to breach it in future.

**Justine Greening:** I assure my hon. Friend that we are looking across the piece to challenge rises in all areas of the EU budget, including the EEAS. As he points out, only months ago we were given an assurance that there would be fiscal neutrality and that has already been broken. We are challenging that and I believe we are doing so successfully. I assure him that we are making our case very strongly within the EU to challenge those sorts of spends when they are bad value for money and when the money is spent in an unplanned way that proposal that was signed up to. As he points out, that proposal was signed up to by the Labour party when it was in government.

## 12 EU Enlargement: Bulgaria, Romania and Croatia

(a) (31824) 12558/10 + ADD 1 COM(10) 400	Commission Report on progress in Bulgaria under the Co-operation and Verification Regime
(b) (31825) 12562/10 + ADD 1 COM(10) 401	Commission Report on progress in Romania under the Co-operation and Verification Regime

<i>Legal base</i>	—
<i>Documents originated</i>	20 July 2010
<i>Deposited in Parliament</i>	26 July 2010
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister's letter of 6 October 2010
<i>Previous Committee Report</i>	(31824) 12558/10 and (31825) 12562/10: HC428–i (2010–11), chapter 65 (8 September 2010); also see (31436) 7947/10 and (31437) 7948/10: HC 5–xviii (2009–10), chapter 7 (7 April 2010); (30828) 12386/09 and (30829) 12388/09: HC 19–xxvi (2008–09), chapter 22 (10 September 2009); (30437) 6405/09 and (30438) 6407/09: HC 19–xvii (2008–09), chapter 8 (13 May 2009), HC 19–xiv (2008–09), chapter 6 (22 April 2009) and HC 19–xii (2008–09), chapter 3 (25 March 2009); also see (29876) 12177/08 and (29877) 12182/08 HC 16–xxix (2007–08), chapter 2 (10 September 2008); (29431) 6150/08 and (29432) 6161/08 HC 16–xiii (2007–08), chapter 15 (27 February 2008); (28754) 11491/07 and (28768) 11489/07 HC 41–xxxii (2006–07), chapter 11 (25 July 2007) and (27865) 13347/06: HC 34–xxxviii (2005–06) chapter 3 (18 October 2006)
<i>Discussed in Council</i>	13 September 2010 General Affairs Council
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared (decision reported on 8 September 2010); further information now provided and requested.

## Background

12.1 The accession negotiations with Romania and Bulgaria were concluded in December 2004 and a Treaty of Accession was signed on 25 April 2005. The UK ratified the Treaty on 5 April 2006.

12.2 The Commission's October 2005 and May 2006 monitoring reports identified a number of areas where further improvements were needed in order to meet all membership requirements, and all of which went to the heart of a properly functioning governance system based on the effective implementation of laws by an accountable, independent and effective judiciary and bureaucracy. The Accession Treaty allowed for a delay until 2008, but only if the Commission recommended that either country was "manifestly unprepared" for membership. The Commission's final verdict was that both countries would be in a position to take on the responsibilities of membership by 2007.

12.3 There were, however, still significant shortcomings, particularly on JHA issues.<sup>44</sup> So, various post-accession measures were put in place, the most crucial being the Mechanism on Cooperation and Verification (CVM) — a process whereby, having set benchmarks on JHA issues, the Commission works closely with both governments on steps to meet them, and reports to the European Parliament and the Council, with the sanction of non-recognition of judicial decisions under mutual recognition arrangements if progress was insufficient.<sup>45</sup> Accession on 1 January 2007 was now essentially a *fait accompli*; however, given the range of outstanding issues and their implications for actual and aspiring candidates, the Commission's final verdict was debated in the European Standing Committee on 15 January 2007.<sup>46</sup>

12.4 Bulgaria's benchmarks are:

- Benchmark 1 — Independence/ accountability of judicial system
- Benchmark 2 — Transparency/efficiency of judicial process
- Benchmark 3 — Reform of the judiciary
- Benchmark 4 — High level corruption
- Benchmark 5 — Corruption at borders and in local government
- Benchmark 6 — Organised crime

12.5 Romania's benchmarks are:

- Benchmark 1 — Reform of judicial process
- Benchmark 2 — Establishment of an integrity agency

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44 For details, see previous Reports enumerated in the headnote to this chapter.

45 Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria and Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime (OJ L 354, 14.12.2006, p. 56 and 58; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:354:0056:0057:EN:PDF> and <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:354:0058:0060:EN:PDF>).

46 Stg Co Deb, European Standing Committee, 15 January 2007, cols. 3–28.

— Benchmark 3 — Investigation of high level corruption

— Benchmark 4 — Corruption, in particular within local government

12.6 The Commission monitors progress and writes reports every 6 months: interim reports at the start of the year and main reports at mid-year. The previous Committee's consideration of earlier reports is enumerated in the headnote.<sup>47</sup>

12.7 The main report provides an over-view of progress, while the accompanying technical reports detail progress on each benchmark since the last full report.

12.8 Our consideration of the most recent full Commission report of July 2010 is set out in the Report of our meeting on 8 September 2010.<sup>48</sup>

12.9 As we noted there, over the whole post-accession period, it has been very much a case of incremental steps forward, other steps backward, some marking of time, and an overall impression of a continuing lack of sustained commitment by the political class as a whole in both countries. Now, the picture is more mixed: indications of such commitment in Bulgaria, and an upbeat assessment; but serious backsliding in Romania, with disappointment on the part of both the Commission and the Minister of Europe at serious shortcomings over the past year.

12.10 As we also noted, the previous Committee had made clear on a number of previous occasions that its concern was not with a post-mortem on Bulgaria and Romania's accession but, rather, to ensure that the lessons that continue to emerge from it are incorporated into the way in which subsequent accessions are handled, and specifically that of Croatia. In its Report on the similar Commission reports of 2009, the previous Committee recalled not only its own visit to Croatia in June 2009 but also the evidence it took from the then Foreign Secretary (David Miliband) on 2 July 2009 on enlargement, with a particular focus on the lessons to be learned, and especially the Commission's earlier judgement that both Bulgaria and Romania needed to demonstrate three things:

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

12.11 On that occasion, the previous Committee asked him if he agreed that Croatia needed to meet all of these requirements before it is allowed to accede to the European Union.

12.12 The then Foreign Secretary's response, together with a further letter of 25 July 2009 from him, outlined a strengthening of the accession process via the addition of a new

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47 See headnote: (31436)7947/10 and (31437) 7948/10: HC 5–xviii (2009–10), chapter 7 (7 April 2010) and previous references.

48 See headnote: HC 428–i (2010–11), chapter 65 (8 September 2010).

Chapter 23 on judicial reform and fundamental rights, within which Member States would have to agree unanimously on opening and closing benchmarks, and that they had been met, before the chapter could be opened or closed. There, he noted that the Council had not yet set closing benchmarks and that “when the moment comes we and the EU will certainly want to ensure that they set clear requirements for tackling corruption, including a track record of results”.<sup>49</sup>

12.13 Prior to the publication of these latest Commission Reports and receipt of his Explanatory Memorandum, the Committee received a letter of 22 June 2010 from the Minister for Europe with an overview of progress. He noted that Croatia had now opened 30 chapters out of 35, and that 18 have been provisionally closed. He went on to say that the Government had now managed to secure agreement on an EU negotiating position that included “setting rigorous benchmarks in the areas we want” — including on cooperation with the International Criminal Tribunal for (former) Yugoslavia (ICTY) — and proposed to agree to open formal negotiations with Croatia on this basis. Before the chapter could close, a “comprehensive and robust set of benchmarks” would need to be met (31 in all, compared with the 3–6 that most other chapters have), covering a range of important issues including: judicial transparency, impartiality and efficiency; tackling corruption; protecting minority rights; resolving outstanding refugee return issues; and protection of human rights.

12.14 The Government had, the Minister said, also secured clarification that Croatia will need to show a track record of implementation across these areas; and a closing benchmark on cooperation with ICTY:

*“Full cooperation with the ICTY remains a requirement for Croatia’s progress throughout the accession process, including for the provisional closure of this chapter, in line with the negotiating framework adopted by the Council on 3 October 2005.”* [the Minister’s emphasis and italics.]

12.15 The Minister then said that:

“The Government assesses that Croatia has continued to demonstrate commitment to progress the investigation in missing documents requested by the Chief Prosecutor for the trial of General Gotovina. Since December Prime Minister Kosor has chaired 3 inter-agency meetings to drive forward an investigation by a new Task Force. The Task Force is constrained by an order from the Tribunal which prevents them from accessing documents seized from the Gotovina Defence team in December. Despite this the Task Force has conducted approximately 40 interviews with new individuals and fresh searches of premises. Chief Prosecutor Brammertz briefed the Foreign Affairs Council on 14 June and expressed his increasing confidence in the Task Force. This is reflected in his latest report to the UNSC on 18 June.

“On the basis of the agreement of a clear benchmark and this assessment of Croatian cooperation Ministers have agreed in principle to open this chapter when technical negotiations are concluded, probably on Wednesday 23 June. I spoke yesterday to

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<sup>49</sup> See headnote: (30828) 12386/09 and (30829) 12388/09; HC 19–xxvi (2008–09), chapter 22 (10 September 2009).

Davor Bozinovic, State Secretary of the Croatian Ministry of Foreign Affairs, to advise him of this and impress on him the need for Croatia to continue to progress the investigation and demonstrate its commitment to full cooperation with the ICTY.”

12.16 The Minister went on to say that the Commission will monitor Croatia’s progress on this chapter closely, and that he would be happy to provide updates on progress. He also enclosed an extract from ICTY Chief Prosecutor Brammertz’s Oral Report of 10 June 2010 to the UN Security Council.

## Our assessment

12.17 The Commission reports, which were cleared, and the Minister’s comments spoke for themselves. Concerning the wider lessons of the experience with Bulgaria and Romania’s accession, the Committee shared its predecessor’s standpoint.

12.18 The Committee was thus reassured by what the Minister had to say in his letter, though it noted his emphasis on the word “full” in the paragraph cited concerning the closing benchmark on cooperation with ICTY. This, we felt, could plainly be open to a number of interpretations, and be influenced by political considerations. We therefore asked the Minister, when he provided the next update, to expand on this, and say, in judging what constitutes “full” cooperation, to what extent the Council will depend upon the assessment in this regard of the ICTY Chief Prosecutor.

## The Minister’s letter of 6 October 2010

12.19 After welcoming the Committee’s interest in this issue, the Minister begins by noting that Croatia is approaching the end of its EU accession negotiations, having closed 22 chapters out of 35. However, he says, Croatia still has important work to complete, notably implementing specific reforms to meet the benchmarks set for closing negotiations on the remaining chapters. He continues as follows:

“One of the main challenges facing Croatia is driving through the changes needed to reform the judicial system, to tackle corruption and ensure respect for human rights in areas such as settling outstanding refugee returns, ensuring full implementation of the anti-discrimination law and strengthening protection of minorities. These issues are dealt with under Chapter 23 of the negotiations. The UK has worked to secure agreement to a comprehensive and robust set of 31 benchmarks which Croatia will need to meet before this chapter can close. Although this is a challenging agenda, progress is encouraging and Croatian leaders regularly restate their commitment and determination to deliver the necessary changes.”

12.20 The Minister then recalls that the UK has sought and secured agreement to a closing benchmark within this chapter stating that (the Minister’s italics):

*“Full cooperation with the ICTY remains a requirement for Croatia’s progress throughout the accession process, including for the provisional closure of this chapter, in line with the negotiating framework adopted by the Council on 3 October 2005.”*

and continues thus:

“Over the last few years the ICTY Chief Prosecutor, Serge Brammertz, has not been fully satisfied with Croatia’s efforts to provide certain missing documents requested for the trial of General Gotovina. He has raised these concerns in his bi-annual reports to the UN Security Council. At the end of 2009, Croatian cooperation improved. Croatia established a task force, conducted raids on several addresses (including the premises of the Gotovina Defence team), seized hundreds of documents and provided Serge Brammertz with some new material (although this did not include any of the key documents he had requested). In his most recent report on 18 June, Serge Brammertz said (the Minister’s italics):

*‘During this reporting period Croatia has, generally, been responsive to our requests for assistance. However, the issue of the missing important documents related to Operation Storm in 1995 remains outstanding. In October 2009 Croatia established an inter-agency Task Force to take over their administrative investigation. While there has been a general improvement in the quality of the interviews conducted, no full account of the whereabouts of the important missing documents has been provided. In addition, key investigative avenues remain unexplored.*

*‘During the past weeks, I have been assured by the authorities that the administrative investigation will pursue additional leads and expand its work as suggested by my Office one year ago. I hope that these activities will result in effective action and concrete results. While the matter remains before the Trial Chamber, I await the results of these efforts by Croatia to see whether Croatia intensifies its administrative investigation and fully accounts for the missing documents before the end of trial.’*

12.21 The Minister then goes on to note that since his letter of 22 June 2010 about the Government’s decision to open Chapter 23 in the light of this report and on the basis of agreement to the closing benchmark, there have been some further developments:

“Closing arguments in the Gotovina trial were made on 1 September, and the trial has now entered the judgment writing phase. We expect a judgment by early 2011. The documents that Serge Brammertz has requested could still be submitted as evidence before the Court until that point, and after the judgment they could still be included in any appeal. Prime Minister Kosor continues to assure us that the Task Force remains active and is doing all it can to establish the whereabouts of the missing documents. We will continue to impress upon the Croatian Authorities at the highest level the importance of completing a thorough investigation into the missing documents.”

12.22 The Minister then turns to the matter of “full cooperation”:

“The previous Government publicly defined “full co-operation” with ICTY as committed and sustained activity demonstrating one hundred per cent effort and political will. I want us to maintain this yardstick and apply it consistently across the region. In the light of concerns raised by the Prosecutor we expect Croatia to

demonstrate, in particular, continued efforts to meet requests for documents, and to take all appropriate steps to conduct a credible investigation to find them.

“The Commission will produce an assessment of Croatia’s progress against all the benchmarks and will make a recommendation to the Council to close Chapter 23 when they judge the benchmarks have been met. It will then be for the Council to decide by unanimity whether or not to close the chapter. The UK is a strong supporter of ICTY and international justice. We believe the Commission’s assessment will need to consider all relevant factors and, of course, take full account of the assessment of the ICTY Chief Prosecutor who has a clear mandate from the UNSC to report on countries’ cooperation with the Tribunal.”

## Conclusion

**12.23 We are grateful to the Minister for this further clarification. It would seem that the ICTY Chief Prosecutor has made his position clear: evidence of Croatia intensifying its administrative investigation and full accounting for the crucial missing documents before the end of the Gotovina trial. And so, too, has the Minister: the Commission’s assessment will need to consider all relevant factors and, of course, take full account of the assessment of the ICTY Chief Prosecutor.**

**12.24 Conditionality in the enlargement process is important not only in the case of Croatia, but also in that of Serbia. There, similar issues arise and a potential conflict between conditionality and politics is evident concerning Serbia’s desire to move to the next stage in the accession process, where reliable press reports suggest that the Commission, the HR and some Member States (encouraged by the United States) appear to wish to reinforce the present “moderate” leadership in the run-up to important elections in the face of apparent unhappiness on the part of the ICTY Chief Prosecutor concerning cooperation with ICTY.<sup>50</sup>**

**12.25 We accordingly ask the Minister to bring the Committee up to date on this latter issue after the 25 October Foreign Affairs Council meeting at which this matter is to be discussed, and remind him that we await a response to our letter to him of 8 September 2010 concerning earlier Council discussion of this matter and details of Brammertz’s June report to the UN Security Council (the outlines of which the Minister had provided in confidence, which meant that the Committee could make no use of it in its Reports).**

**12.26 In the meantime we report this further information to the House because of its specific and wider significance.**

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<sup>50</sup> See, for example, *European Voice* of 14 October 2010.

## 13 Cyprus: the Green Line Regulation

(31980)	Annual Report on the implementation of Council Regulation (EC)
13967/10	No.866/2004 and the situation resulting from its application
+ ADD 1	
SEC(10) 1094	

<i>Legal base</i>	Article 11 of Council Regulation (EC) No.866/2004; —
<i>Document originated</i>	21 September 2010
<i>Deposited in Parliament</i>	28 September 2010
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	EM of 12 October 2010
<i>Previous Committee Report</i>	None; but see (30977) 13289/09: HC 19–xxviii (2008–09), chapter 12 (21 October 2009); also see (31586) 9284/10: HC 428–iii (2010–11), chapter 14 (13 October 2010)
<i>Discussed in Council</i>	To be determined
<i>Committee’s assessment</i>	Politically important
<i>Committee’s decision</i>	Cleared

### Background

13.1 Since Turkish troops landed in Cyprus in 1974 the island has been effectively partitioned, with approximately 37% of the territory of the Republic not under the control of the Government of the Republic of Cyprus (RoC). A “Green Line” buffer zone divides the island and is patrolled by United Nations forces. A significant Turkish troop presence remains in the northern part of Cyprus.

13.2 Pending a settlement of the Cyprus problem, Article 1 of Protocol 10 of the Act of Accession provides that the application of the EU’s *acquis* will be suspended in those areas in which the Government of the Republic of Cyprus does not exercise effective control — that is, the northern part of the island — while Article 2 states that the Council should define the terms under which the provisions of EU law should apply to the line dividing the island (i.e., the Green Line). Protocol 3 of the Act of Accession puts in place special arrangements for the Sovereign Base Areas (SBAs).<sup>51</sup>

13.3 Regulation No 866/2004 established a regime under Article 2 of Protocol 10 with special rules concerning goods, services and persons crossing the line between those areas of the RoC in which the RoC Government does not exercise effective control and those areas in which it does. The Regulation, which came into force on 1 May 2004, followed the rejection in April 2004 of the UN’s settlement plan for Cyprus (the Annan Plan) by the Greek Cypriots. To ensure its effectiveness, this also covered the boundary between the northern part of Cyprus and the Eastern Sovereign Base Area. Several amendments have

<sup>51</sup> For the Committee’s consideration of the latest Commission Report on the special arrangements for the SBAs, see (31586) 9284/10: HC 428–iii (2010–11), chapter 14 (13 October 2010).

been adopted designed to further facilitate trade across the Green Line, while safeguarding proper functioning of EU rules and policies within the single market.

### The Commission Report

13.4 The report covers the period from 1 May 2009 to 30 April 2010. It concludes that the Green Line Regulation continues to provide a workable basis for allowing the passage of persons and goods to the government-controlled areas of the Republic of Cyprus.

13.5 A year ago, the total value of recorded trade across the Green Line during the reporting period amounted to €6,111,030 compared to €4,473,408 in the previous reporting period; 30% of which was accounted for by trade in potatoes. In this period, the Commission notes that the value of Green Line trade decreased for the first time since the Regulation came into force in 2004 — by 16.8% down to €5,232,328 — but says that this has mainly been attributed to a bad harvest and subsequent fall in the potato trade; excluding potatoes (which fell from 30% to 14% of overall trade), Green Line trade remained stable.

13.6 The Commission notes, however, that the overall scale of Green Line trade still remains limited, partly due to the restricted scope of the Regulation itself, and partly due to remaining obstacles to trade. As an example, the Commission says that Turkish Cypriot commercial vehicles, particularly those over 7.5 tonnes, cannot move freely across the island. No further progress is reported regarding other non-tariff trade barriers either. Many Greek Cypriots are said to be still reluctant to purchase Turkish Cypriot branded products, causing Turkish Cypriot traders to struggle to get their products stocked and advertised in the government-controlled areas.

13.7 The report notes that the smuggling of goods across the Line (mainly cigarettes, alcohol and seasonal goods such as game or fire crackers) remains widespread, but has decreased over the reporting period. Seven criminal cases were filed in 2010 compared to 11 in 2009.

13.8 The Commission states that the control of the Green Line at the authorised crossing points is satisfactory, and says that no major incidents were reported in relation to daily crossings. Although the number of apprehended illegal immigrants fell by 54% from the previous year, the report also says (as in previous Reports) that the illegal crossing of third country nationals still remains an area of concern and (ditto) recommends that surveillance on the Line between the crossing points conducted by the Republic of Cyprus and the SBA Administration should be strengthened to help tackle illegal migration, with particular reference on this occasion to several unauthorised crossing points near the village of Pergamos. However, the report also says that there is excellent cooperation the Republic of Cyprus and SBA Customs and Immigration.

### The Government's view

13.9 In his Explanatory Memorandum of 12 October 2010, the Minister for Europe (David Lidington) says that the current Green Line Regulation is sufficient to protect the security of the EU, including by addressing illegal immigration and by regulating the flow of goods into the single market.

13.10 He continues as follows:

“The Government remains committed to ending the isolation of the Turkish Cypriot community and to facilitating the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community. Increased trade between north and south will contribute to the integration of the island and reducing the disparity in economic activity between north and south. It is disappointing, therefore, that overall trade did not increase this year, even taking the bad potato harvest into consideration, as highlighted in the report. However, the opening of the Limnitis crossing (October 2010) should further increase the scope for legal movement of people and goods across the Green Line.”

13.11 In the event of a comprehensive settlement to reunite Cyprus, the Minister notes that the Green Line Regulation would become null and void, “and free trade would flourish between the two communities.” He recalls the direct negotiations that began on 3 September 2008 between the two leaders in Cyprus aimed at reunifying Cyprus, which he describes in similar terms to those used by his ante-predecessor a year ago — “arguably ... the best opportunity in a generation to finally achieve a comprehensive and durable Cyprus settlement, which all Cypriots can accept” — and says that the UK will continue to engage closely with all parties, in the region and wider, to support the efforts of the two leaders.

13.12 The Minister also observes that the continued implementation of the Regulation does not have significant financial implications for UK public expenditure or the EU budget; though the Regulation “already imposes additional monitoring requirements on the Sovereign Base Areas Administration ... the Government considers that this is consistent with their other activities.”

13.13 Finally, the Minister says that the Commission has presented the report to the Council’s “Ad Hoc Working Group on the follow-up to the Council Conclusions on Cyprus of 26 April 2004”, and that no further action is planned.

## Conclusion

13.14 **Though the report raises no questions, we note that the Minister makes no mention of the wider perspective, particularly the continuing failure to reach agreement on the implementation of long-standing proposal to permit direct trade between the EU and the Turkish-occupied part of the island and its wider ramifications; or of the election of a new leader of the Turkish Cypriot community in April, who is widely seen as more hard-line than his predecessor and who is quoted on his recent visit to Brussels as talking of the EU’s “historic responsibility to encourage the Greek Cypriot side to come to the negotiating table” and of implementation of the direct trade proposal as essential to persuading the Greek Cypriot leadership of the need to compromise.<sup>52</sup>**

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52 See *European Voice* of 16 September 2010, page 3.

13.15 As in previous years, we draw the Commission report to the attention of the House because of the widespread interest in developments in Cyprus, and clear the document.

## 14 European External Action Service: personnel and financial management

(a) (32065) — —	Draft Regulation amending the Staff Regulations of officials of the European Communities and the conditions of employment of other servants of those Communities
(b) (32066) 14677/10 —	Draft Regulation amending Council regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as regards the European External Action Service

<i>Legal base</i>	(a) Article 336 TFEU; co-decision; QMV (b) Article 322 TFEU and Article 106a Euratom Treaty; co-decision; QMV
<i>Deposited in Parliament</i>	(a) — (b) 20 October 2010
<i>Department</i>	Foreign and Commonwealth Office
<i>Basis of consideration</i>	Minister's letter of 19 October 2010
<i>Previous Committee Report</i>	HC 5–xvii (2009–10), chapter 2 (7 April 2010)
<i>To be discussed in Council</i>	Late October/early November 2010
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

14.1 Management of the EU's staff and financial resources is governed by the Staff Regulations and the Financial Regulation.

14.2 Amongst matters covered by the Financial Regulation are budgetary principles, establishment, structure and implementation of the budget, procurement, accounts, external audit and discharge by the European Parliament. The Financial Regulation is complemented by detailed Implementing Rules adopted by the Commission.<sup>53</sup>

<sup>53</sup> Commission Regulation (EC, EURATOM) No 2342/2002: see <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:357:0001:0071:EN:PDF>.

14.3 The Council Decision on the organisation and functioning of the European External Action Service<sup>54</sup> (EEAS) requires amendments to the Staff and Financial Regulations before it can become operational.

### Previous scrutiny

14.4 In April of this year<sup>55</sup> the previous Committee recommended that the proposed amendments to the Staff and Financial Regulations, although not finalised, be debated on the Floor of the House. The debate took place on 14 July, and both amending Regulations were subsequently cleared from scrutiny.

### The Minister's letter of 19 October

14.5 Further negotiations on the two proposals have now taken place in Brussels and the Minister for Europe (David Lidington) writes to update the Committee on progress made. He says that both proposals remain largely unchanged from the ones scrutinised earlier this year; and whilst there is not yet a final position, he expects the proposals to be adopted by the European Parliament during this week's plenary in Strasbourg (18–20 October). The Presidency and High Representative are then likely to seek adoption by the Council, possibly as early as 25 October at the General Affairs Committee/Foreign Affairs Committee (or otherwise as an "A" Point at a Council in early November). The Minister says he will make every effort to delay the Council decision for as long as possible, but asks for our early response to the proposals in case adoption is scheduled for 25 October.

14.6 The Minister explains that the High Representative, Baroness Ashton, is keen to see the Regulations adopted quickly. She wants to appoint her top team by early November to help her manage the growing number of foreign policy challenges on her plate (e.g. Western Balkans, Pakistan, Iran) but is reluctant to do this until the proposed amendments to the Staff Regulations have been adopted.

14.7 The Government agrees that prolonged internal wrangling over structures and appointments risks distracting attention from the larger challenge of increasing the EU's impact on external policy issues of shared concern. Serious discussion and agreement of EEAS policy priorities is overdue, but remains difficult without the top team in place.

14.8 The Government is concerned that a credible plan to achieve cost efficiencies in the short-term, and budget neutrality in the longer term, must be put in place as quickly as possible. Baroness Ashton wants this work to be led by the EEAS' Chief Operating Officer (COO), who will be appointed along with the rest of the top team. Until the proposed amendments to the Financial Regulation are adopted, the EEAS does not have the authority to spend EU budget funds and the Commission and Council are therefore making disbursements on the EEAS' behalf. The Government would like to see the amendments finalised, and the COO appointed, to enable rapid progress to be made on a plan for cost savings and eliminating duplication.

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54 Reported at chapter 11 of this Report.

55 See headnote.

### ***The Staff Regulation***

14.9 A compromise text has now been reached following trilogue negotiations between the European Parliament (EP), Commission and Council. There were three particular points of contention.

#### ***Gender balance and geographical balance***

14.10 The EEAS Decision states that candidates should be appointed ‘on merit, while ensuring adequate gender and geographical balance’. MEPs had tabled amendments stating that: ‘candidates from the less represented Member States and the less represented gender may be given priority, provided they have substantially similar qualifications’. The Government agreed with the Presidency that this demand should be resisted firmly. The revised text does not include provision for positive discrimination, but does include two Statements by the High Representative, (Addenda 1 and 2) undertaking to seek opportunities to improve representation, within the provisions of the Regulations.

#### ***Date of opening-up of vacancies to other institutions***

14.11 The EEAS Decision states that ‘before 1 July 2013, the EAS will recruit exclusively officials originating from the General Secretariat of the Council and the Commission, as well as staff coming from the diplomatic services of the Member States’. The EP wanted to bring this date forward, as that would allow its own staff to apply for EAS vacancies, but was not successful

14.12 A related point was on the transitional period during which priority may be given to candidates from Member States in case of substantially equal qualifications (in order to meet the one-third target). Here the EP was unsuccessful in shortening this period from 1 July 2013 to 1 January 2012.

#### ***Modalities of application of Article 29 of the Staff Regulations***

14.13 The EP successfully effected a change to Article 29, to allow its own staff (and those from other institutions) to be treated as internal candidates from the date of their eligibility to apply for EEAS vacancies. The Government did not favour this, but agreed that a concession on this point was acceptable in order to defend our position on the points mentioned above.

### ***The Financial Regulation***

14.14 The EEAS requires a revision to the Financial Regulation in order to be able to spend EU budget funds, and to ensure that the correct financial management arrangements are in place. The negotiations on this in Council were relatively straightforward, technical in nature and largely followed the steer laid down in the EEAS Decision. The Presidency was given a strong mandate by COREPER to defend the original proposal against further amendments by the EP. On 12 October, the Presidency circulated the compromise text for agreement by COREPER. The Government is satisfied that the Presidency followed the

mandate from the Council and successfully held their ground on three of the four outstanding points, as set out below.

### *Liability of temporary staff coming from diplomatic services*

14.15 The EP wanted controls on seconded national experts (SNEs) to be tighter. The Presidency believed this was unnecessary. It was agreed that Article 66 of the Financial Regulation covers all eventualities, and more controls were therefore not required.

### *Member State expenditure under CFSP*

14.16 The EP wanted more detailed information on how CFSP funds are spent. The Presidency argued that the EP had no right to be involved in cooperation that occurs under CFSP between Member States (under the ‘Athena’ mechanism). The Government strongly disagreed that the EP should have any such role, and fully supported the Presidency’s firm stance on this point. There are some changes to the final compromise text, which reflect the way information on CFSP spending is presented, but the Government does not consider them to be substantive.

### *The Discharge Procedure*

14.17 The EP wanted Heads of Delegation to be accountable to the EP under the annual discharge procedure. The Presidency believed this breached the Financial Regulation: the line of accountability lies with Director Generals, and ultimately the High Representative, not with Heads of Delegation. The Council fought consistently against attempts by the EP to have specific rights of control over Heads of Delegation. This point was successfully defended by the Presidency.

### *EAS Internal Auditor*

14.18 The Council wanted an independent EEAS internal auditor, on the grounds that all other Institutions have one, and that they consider it to be generally good financial management. The EP (and the Commission) wanted the EEAS to use the Commission auditors, which would be more cost effective — especially as the Commissioner auditors will still need to audit most of the operational expenditure flowing through EU Delegations around world. An EEAS auditor would, in effect, only be auditing administrative spend, which is low risk.

14.19 The Government did not consider this a priority: provided that there is a transparent and effective audit process it would prefer to see the best value for money solution implemented, and was content for the Presidency to cede to the EP on this point.

14.20 A final outstanding point is that the Commission has adopted a declaration as part of the trilogue agreement stating that it will address the issue of integrating the European Development Fund into the EU Budget. Such a budgetisation of the Fund would require unanimity in the Council. We and many other Member States would oppose.

## Conclusion

14.21 We thank the Minister for this update on the inter-institutional negotiations on the revision to the Staff and Financial Regulations, which is necessary for the operation of the European External Action Service (EEAS). And we are grateful to have been able to consider the amendments before final political agreement in the Council.

14.22 It would appear that the European Parliament exercised its co-decision rights to increase its influence over the operation of the EEAS; but, on balance, we think the compromise text is one which is rational, financially sound, and which preserves the *sui generis* nature of the EEAS and the CFSP.

14.23 We clear both proposals from scrutiny, and ask for the final versions of both proposals to be deposited when they become available.

## 15 Strategy for Equality between Women and Men

(31975) 13767/10 COM(10) 491	Commission Communication: <i>Strategy for equality between women and men 2010–2015</i>
+ ADD 1	Commission staff working document: <i>Actions to implement the Strategy for equality between men and women</i>
+ ADD 2	Commission staff working document: background document

<i>Legal base</i>	—
<i>Document originated</i>	21 September 2010
<i>Deposited in Parliament</i>	28 September 2010
<i>Department</i>	Government Equalities Office
<i>Basis of consideration</i>	EM of 7 October 2010
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	Council Conclusions on the Strategy may be agreed in December
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

## Background

15.1 Since 1957, the EC Treaty (now renamed the Treaty on the Functioning of the European Union—TFEU) has provided a legal base for policy and action on gender equality. Article 2 of the Treaty on the European Union (TEU) cites equality between men and women as one of the Union's founding values and Article 8 TFEU requires the Union, in all its activities, "to aim to eliminate inequalities, and to promote equality, between men

and women”. Article 157 TFEU requires Member States to ensure that “the principle of equal pay for male and female workers for equal work or work of equal value” is applied, and confers power on the Union to adopt measures by a qualified majority “ensuring the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value”. Article 19 TFEU empowers the Council, acting by unanimity, to take “appropriate action to combat discrimination” on a number of grounds, including sex.

15.2 In March 2010, the newly-appointed Commission adopted a Women’s Charter in which it pledged to strengthen the gender perspective in all policies introduced during its term of office and to bring forward specific measures to promote gender equality. The Charter established five “principles of equality” to underpin all Union action:

- equal economic independence
- equal pay for equal work and work of equal value
- equality in decision-making
- dignity, integrity and an end to gender-based violence, and
- gender equality beyond the Union.

### The Commission’s Strategy for Equality

15.3 The Strategy describes the remaining challenges to achieving real gender equality and sets out key actions to be taken under each of the principles of equality in the Women’s Charter. The Commission says that Union action will be based on a dual approach, promoting gender mainstreaming (by considering the gender dimension in all Union policies) as well as the adoption of specific measures to combat inequality. The key actions proposed under each principle of equality are summarised below:

15.4 Actions to promote **equal economic independence** include:

- promoting gender equality in the implementation of all aspects of the Europe 2020 Strategy for Jobs and Growth, particularly with a view to increasing women’s participation in the labour market;
- promoting female entrepreneurship and self-employment;
- assessing any remaining gaps in entitlement to family-related leave, such as paternity or carers’ leave;
- reporting on Member States’ performance in providing childcare facilities, to help reduce the impact of parenthood on rates of female employment; and
- promoting gender equality in EU initiatives concerning immigration and the integration of migrants, to help improve the employment rate of migrant women.

15.5 Actions to secure **equal pay for equal work and work of equal value** include:

- exploring ways to improve the transparency of pay and the impact of atypical working arrangements, such as part-time work or fixed-term contracts, on equal pay, career development and promotion, and pensions;
- supporting equal pay initiatives within the workplace, such as the use of analytical tools to identify gender pay gaps—the Commission cites Eurostat figures indicating an aggregated gender pay gap of 17.8% across the EU in 2008 (and over 20% in the UK);
- introducing an annual European Equal Pay Day to raise awareness about how much longer women need to work than men to earn the same; and
- encouraging women to pursue non-traditional career paths.

15.6 Actions to improve **equality in decision-making** include:

- setting and monitoring targets to improve the gender balance in decision-making, such as the 25% target for women occupying leading positions in academic research;
- monitoring progress towards attaining 40% female participation in Commission committees and expert groups; and
- supporting efforts to increase the participation of women in EP elections, including as candidates.

15.7 Actions to promote **dignity, integrity and an end to gender-based violence** include:

- adoption of a new EU-wide strategy to combat violence against women, including the possibility of criminal measures to tackle female genital mutilation;
- possible legislative action on victims' rights;<sup>56</sup>
- launch of an EU-wide awareness-raising campaign on gender-based violence;
- ensuring that EU asylum legislation and practice takes account of gender equality, including gender-specific training within the European Asylum Support Office; and
- drawing up a report on Men's Health which identifies gender-specific health risks and diseases for men.

15.8 Actions on **gender equality beyond the Union** include:

- ensuring that EU conditionality on equal treatment between women and men is adhered to in countries seeking to accede to the EU;
- implementing the EU Plan of Action on Gender Equality and Women's Empowerment in Development (2010–15);
- encouraging partner countries within the EU's European Neighbourhood Policy to promote gender equality; and

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<sup>56</sup> The reference to legislation on victims' rights does not appear in the Strategy itself but in ADD 1 which provides a more detailed commentary on possible EU actions.

- ensuring that consideration of gender issues is an integral part of EU humanitarian aid.

15.9 The concluding part of the Commission’s Strategy considers a number of cross-cutting issues affecting all five “principles of equality”. These include the need for effective monitoring, enforcement, evaluation and updating of EU equal treatment legislation; using the newly-established European Institute for Gender Equality<sup>57</sup> to monitor existing EU equality indicators and consider the need for new ones; considering gender-related inequalities affecting boys and men as well as the contribution that men can make to achieving gender equality; and producing an Annual Report on Gender Equality to inform an annual Gender Equality Dialogue involving the European Parliament, Council Presidencies, European social partners and civil society representatives.

### The Government’s view

15.10 The Minister for Equalities and Criminal Information at the Government Equalities Office (Lynne Featherstone) says that the Government welcomes the Commission’s Strategy which primarily concerns proposals for action to be taken by the Commission rather than by Member States. The Minister notes that the Commission may, however, propose legislation on female genital mutilation and on the enhancement of victims’ rights in 2011. She adds,

“We will consider any measures proposed for Member States to implement the Strategy on their merits as and when they are proposed, taking into account existing and future commitments to use of funding instruments such as the Structural Funds, and without prejudice to the negotiations on the next financial perspective.”

15.11 The Minister expresses the Government’s preference for a non-legislative approach to implement the Strategy, which could include discussion of indicators to monitor the gender pay gap. She says that the UK will seek to participate actively in the European Commission’s Advisory Committee on Equality between Women and Men<sup>58</sup> and the High Level Group on Equality between Women and Men<sup>59</sup> in order to influence the development of any new proposals resulting from the Strategy. The Minister anticipates that the Employment, Social Affairs, Health and Consumer Protection Council will seek to agree Conclusions endorsing the Commission’s Strategy for Equality at its meeting in December.

### Conclusion

**15.12 We note that the Strategy seeks to give effect to the new Commission’s commitment to make equality between women and men a reality by implementing the principles of equality set out in the Women’s Charter adopted in March. As the**

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57 Established in December 2006 to assist EU institutions and Member States in promoting gender equality in all EU policies and in combating sex discrimination.

58 The Advisory Committee was established in 1981 and produces opinions to help inform the Commission in formulating and implementing EU activities promoting equality between women and men. It includes representatives of the Member States, social partners, and NGOs.

59 The High Level Group was established in 2001 and comprises senior level representatives of Member States responsible for gender mainstreaming and equality issues. It advises EU Presidencies on possible policy areas and initiatives which may contribute to gender equality.

Minister indicates, most of the actions proposed concern measures to be taken by the Commission, in the first instance, and so there are no direct policy, legal or financial implications for Member States resulting from the Strategy. The Strategy and accompanying Commission working documents provide a useful comparative overview of progress towards achieving gender equality across the EU, as well as a helpful indication of future EU action. The Strategy highlights two areas in which legislation is likely to be proposed. The first concerns criminal measures to tackle female genital mutilation; and the second, further measures to enhance victims' rights. Any proposed legislation will be subject to separate scrutiny, at which point we will examine carefully the Commission's reasons for considering that EU legislation is needed in these areas and whether it would be more effective than national legislation. Meanwhile, we are content to clear the Strategy for Equality from scrutiny while reporting it to the House because of its political importance.

## 16 Financial services

(31898) 12940/10 + ADDs 1–2 COM (10) 433	Draft Directive amending Directives 98/78/EC, 2002/87/EC and 2006/48/EC as regards the supplementary supervision of financial entities in a financial conglomerate
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<i>Legal base</i>	Article 53(1); co-decision; QMV
<i>Document originated</i>	16 August 2010
<i>Deposited in Parliament</i>	1 September 2010
<i>Department</i>	HM Treasury
<i>Basis of consideration</i>	EM of 15 September 2010
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	Not yet known
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Cleared

### Background

16.1 The Financial Conglomerates Directive provides for supplementary supervision of regulated entities that form part of a financial conglomerate, that is a group with licences in both the banking and the insurance sector. It focuses on potential risks of double gearing, that is multiple use of capital, and on “group risks”, that is the risks of contagion, management complexity, risk concentration and conflicts of interest. It supplements the sectoral Directives governing the prudential supervision of banking and investment firms and of insurance firms by providing additional supervision at the top level of the group.

16.2 The main objectives of the Directive were to:

- ensure that financial conglomerates are adequately capitalised, preventing the same capital being counted twice over and used simultaneously as a buffer against risk in different entities;
- establish standard methods for calculating a conglomerate’s overall solvency position; and
- provide for the establishment of a single lead regulator for financial conglomerates, rather than multiple lead regulators as at present.

16.3 The Directive was reviewed in 2009 by the Joint Committee on Financial Conglomerates.<sup>60</sup> Its advice pointed to three areas that are currently hampering the achievement of the Directive’s objectives in day-to-day supervision of financial conglomerates:

- supervision at the holding company level;
- supervisory coordination; and
- identification.

16.4 The Directive was implemented in the UK in 2004 through a mixture of Treasury regulations and Financial Services Authority rules.

## The document

16.5 The intention of the Commission’s draft Directive is to amend the Financial Conglomerates Directive in order to address the three areas of concern highlighted by the Joint Committee on Financial Conglomerates.

### *Supervision at the holding company level*

16.6 Supervision at this level is governed by the combination of the provisions of the present Directive, the Banking Directive and the Insurance Groups Directive. The supervisory tools that can be applied at the top level change when that top level becomes a financial conglomerate. This may occur following a change to the group structure, for example following an acquisition. This change in structure and identification can affect the application of sectoral group supervision — as a result:

- certain tools of sectoral group supervision that would have otherwise applied, cannot be applied to the whole group when the group is identified as a financial conglomerate — the tools include waiving of solo-supervision of subsidiaries, application of provisions on disclosure and self-assessment and supervisory review on a consolidated basis; and
- this leads to the anomalous result that a group, which has acquired a licence in the other sector (banking or insurance) and qualifies under the Financial Conglomerates

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<sup>60</sup> The Committee of European Banking Supervisors and the Committee of European Insurance and Occupational Pensions work through the Joint Committee on Financial Conglomerates on convergence in the supervision of financial conglomerates in the EU.

Directive, is subject to a regulatory regime that is enhanced in one way, but may not be as comprehensive as that which applied before the acquisition in another way, even though the group has increased in size and complexity and may therefore represent a higher risk to the financial system.

### *Supervisory coordination*

16.7 The Financial Conglomerates Directive contains provisions for coordination among different sectoral supervisors of a group. It defines who is a “relevant competent authority” and requires a lead competent authority to be appointed, which must consult all relevant competent authorities on certain supervisory issues. However, the current provisions are unclear and result in an unnecessarily large number of relevant competent authorities being consulted, undermining efficient supervision. The draft Directive would allow for all the relevant competent authorities with an interest in the conglomerate in question to be represented at the supervisory college.<sup>61</sup>

### *Identification*

16.8 Qualification as a financial conglomerate depends upon, among other things, whether a group meets certain thresholds with respect to assets and capital requirements. These criteria give rise to three problems:

- the current Directive does not require the inclusion of asset management companies in the threshold tests;
- the threshold tests are ambiguous as to how to deal with certain issues, for example, different accounting treatments of assets or parts of a group which do not always have a solvency requirement; and
- third, the threshold conditions, given their fixed amounts, are not risk-based, and the notion of expected group risks is not addressed by the threshold test. This means that very small groups with a few licences in each sector are subject to supplementary supervision, while the largest most complex groups may technically not qualify as a conglomerate.

### **The Government’s view**

16.9 The Financial Secretary to the Treasury (Mr Mark Hoban), noting that the amendments in the draft Directive have been developed in conjunction with the Joint Committee on Financial Conglomerates, while it was being chaired by a representative from the Financial Services Authority, tells us that a key aim of Government policy on financial groups is to ensure consistent application of group supervision for all financial groups operating in the EU. He comments that:

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<sup>61</sup> This would ensure that following regulatory reform in the UK both the Prudential Regulation Authority and the Consumer Protection and Markets Authority could be represented at the college, assuming they had a relevant interest.

- it has been important, therefore, to ensure that the legislation enables the relevant competent authority to regulate on the basis of the whole group, rather than regulating different sectors of the business independently of each other;
- incorporation of the proposed changes will enable greater EU cooperation in the context of financial conglomerates and will improve oversight of cross-border groups that comprise banking and insurance firms by the appropriate relevant competent, such as the Financial Services Authority; and
- the proposed changes would help promote Government objectives on the supervision of financial groups to improve the stability of financial system and protect customers of financial groups.

The Minister says that the proposals are in line with UK regulatory policy on financial groups and the Government believes they should be supported.

16.10 In two further comments the Minister says that:

- in relation to the Commission's impact assessment for the draft Directive, the cost impact for the financial groups concerned is expected to be negligible, given the overall low level of materiality of the net incremental effect of the identified options; and
- the Government has previously engaged with the industry to inform its assessment of the proposals and the associated costs and benefits.

## Conclusion

**16.11 Although we have no issues to raise about the draft Directive, and clear the document from scrutiny, we draw it to the attention of the House as part of the continuing revision of the EU's regulatory and supervisory legislation for the financial services sector.**

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

### Department for Business, Innovation and Skills

- |                                     |   |
|-------------------------------------|---|
| (31946)<br>13486/10<br>COM(10) 458  | Commission Report to the Council and the European Parliament on the European Research Council's operations and realisation of the objectives set out in the Specific Programme "Ideas" in 2009.   |
| (31974)<br>14162/10<br>COM(10) 388  | Amended proposal for a Directive of the European Parliament and of the Council on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (codified version). |
| (31970)<br>14036/10<br>COM(10) 391  | Draft Directive of the European Parliament and of the Council concerning mergers of public limited liability companies.   |
| (31983)<br>14155/10<br>SEC(10) 1118 | Commission Staff Working Paper on the Internal Market Scoreboard No.21.   |
| (32029)<br>14505/10<br>COM(10) 507  | Draft Directive of the European Parliament and of the Council on the approximation of the laws of the Member States relating to units of measurement (codified version).  |

### Department for Environment, Food and Rural Affairs

- |                                    |   |
|------------------------------------|---|
| (31964)<br>13877/10<br>COM(10) 485 | Draft Council Decision on the signature of the Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part. |
|------------------------------------|---|

- (31967)  
13878/10  
COM(10) 485
- Draft Council Decision on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part.
- (31989)  
14117/10  
+ ADDs 1-3
- Third Financial Report from the Commission to the European Parliament and the Council on the European Agricultural Guarantee Fund - 2009 financial year.
- (32025)  
14390/10  
SEC(10) 1145
- Commission Recommendation to the Council on the participation of the European Union in negotiations on a legally binding instrument on mercury further to Decision 25/5 of the Governing Council of the United Nations Environment Programme (UNEP).
- (31951)  
13619/10  
COM(10) 470
- Draft Council Regulation fixing for 2011 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea.
- (31990)  
14116/10  
COM(10) 497
- Third Financial Report from the Commission to the European Parliament and the Council on the European Agricultural Fund for Rural Development (EAFRD)—2009 financial year.

## Foreign and Commonwealth Office

- (32040)  
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–
- Council Decision repealing Common Position 98/409/CFSP concerning restrictive measures against Sierra Leone

## Home Office

- (31232)  
17709/09  
COM(09) 707
- Draft Council Decision on the conclusion of the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto.
- (31943)  
13186/10  
SEC(10) 1006
- Commission Staff Working Document on the European Migration Network Status Report 2009.

## HM Treasury

(31641)  
10039/10  
COM(10) 215

Draft Council Regulation adjusting the correction coefficients applicable to the remuneration and pensions of officials and other servants of the European Union.

# Formal minutes

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**Wednesday 20 October 2010**

Members present:

Mr William Cash, in the Chair

Mr James Clappison

Julie Elliott

Nia Griffith

Kelvin Hopkins

Chris Kelly

Tony Lloyd

Penny Mordaunt

Jacob Rees-Mogg

## **1. Scrutiny of Documents**

The Committee deliberated.

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 17 read and agreed to.

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

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

## **2. Scrutiny of Pre- and Post-Council Written Ministerial Statements**

The Committee considered Pre- and Post-Council Ministerial Statements.

[Adjourned till Wednesday 27 October at 2.00 pm.]

## Standing order and membership

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

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

Mr William Cash MP (*Conservative, Stone*) (Chair)  
 Mr James Clappison MP (*Conservative, Hertsmere*)  
 Michael Connarty MP (*Labour, Linlithgow and East Falkirk*)  
 Jim Dobbin MP (*Labour/Co-op, Heywood and Middleton*)  
 Julie Elliott MP (*Labour, Sunderland Central*)  
 Tim Farron MP (*Liberal Democrat, Westmorland and Lonsdale*)  
 Nia Griffith MP (*Labour, Llanelli*)  
 Chris Heaton-Harris MP (*Conservative, Daventry*)  
 Kelvin Hopkins MP (*Labour, Luton North*)  
 Chris Kelly MP (*Conservative, Dudley South*)  
 Tony Lloyd MP (*Labour, Manchester Central*)  
 Penny Mordaunt MP (*Conservative, Portsmouth North*)  
 Stephen Phillips MP (*Conservative, Sleaford and North Hykeham*)  
 Jacob Rees-Mogg MP (*Conservative, North East Somerset*)  
 Henry Smith MP (*Conservative, Crawley*)  
 Ian Swales MP (*Liberal Democrat, Redcar*)